



## **REVIEW REPORT 117-2019**

### **Rural Municipality of Baildon No. 131**

**June 10, 2020**

**Summary:** The Applicant submitted a request for information on the cost for legal fees related to the Saskatchewan Association of Rural Municipalities and McDougal Gauley LLP. The Rural Municipality of Baildon (R.M.) withheld the records under section 21 of *The Local Authority Freedom of Information and Protection of Privacy Act*. The Commissioner found that the R.M. withheld the records appropriately and recommended that it continue to withhold them.

#### **I BACKGROUND**

[1] On December 22, 2018, an Applicant made a request for information under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to the Rural Municipality of Baildon (R.M.) for:

... access to information on the cost to the RM for appeals and suit preparation and legal fees to SARM [Saskatchewan Association of Rural Municipalities] and McDougal-Gauley [sic] for the last five years to [Applicant]; and

... answer the following yes of no questions in writing, so that I can determine my options.

[2] On February 11, 2019, the R.M.'s legal counsel responded to the Applicant indicating that it was denying access to all of the records as they are protected by section 21 of LA FOIP and that part of the request was outside of the scope of what is defined as a record in LA FOIP.

- [3] On April 16, 2019, my office received a request for review from the Applicant.
- [4] On April 17, 2019, my office advised the Applicant that we could not review their response in regards to the questions they asked it as the questions are not requests for records.
- [5] On April 23, 2019, my office provided notification to the Applicant and the R.M. of my intent to undertake a review.

## **II RECORDS AT ISSUE**

- [6] The records consist of invoices for legal services obtained by the R.M. In its submission, the R.M. indicated it was withholding 72 pages under subsection 21(a) of LA FOIP and four of those pages were also withheld under subsection 21(b) of LA FOIP. It was no longer considering subsection 21(c) of LA FOIP.

## **III DISCUSSION OF THE ISSUES**

### **1. Do I have jurisdiction to conduct this review?**

- [7] The R.M. is a “local authority” pursuant to subsection 2(f)(i) of LA FOIP. Therefore, I have jurisdiction to conduct this review.

### **2. Does subsection 21(a) of LA FOIP apply to the records?**

- [8] Subsection 21(a) of LA FOIP provides:

**21** A head may refuse to give access to a record that:

- (a) contains any information that is subject to any privilege that is available at law, including solicitor-client privilege;

- [9] My office has established the following test for subsection 21(a) of LA FOIP based on the similar subsection 22(a) of *The Freedom of Information and Protection of Privacy Act*: See the Guide to FOIP, Chapter 4 (updated February 4, 2020) (Guide to FOIP) at page 247:
1. Is the record a communication between solicitor and client?
  2. Does the communication entail the seeking or giving of legal advice?
  3. Did the parties intend for the communication to be treated confidentially?
- [10] The R.M. has withheld records that are invoices between the R.M. and its legal counsel. I appreciate the R.M. providing my office with the records so that my office does not have to conduct the analysis without seeing the record.
- [11] In my Review Report 229-2017, 031-2017, my office found at paragraph [23] that legal invoices are communications between a solicitor and a client and are part of legal advice and therefore, meet the first and second part of the test.
- [12] In the submission provided by the R.M. to my office, the R.M. asserts that the invoices are meant to be confidential between the two parties and indicates that:
- ... the lawyers' invoices were intended to be confidential. The invoices not only indicate in significant detail the work that Baildon's various legal counsel has done on its behalf. The invoices also disclose past litigation strategy and future litigation strategy ...
- [13] I am satisfied that the invoices were intended to be confidential.
- [14] In Review Report 052-2013, I also discussed the presumption of privilege for lawyer's invoices can be rebutted if the Applicant can provide persuasive arguments that the disclosure of information, namely the fees detailed in the invoice, will not result in the Applicant learning of information that is subject to solicitor-client privilege. The Applicant has not provided my office with such an argument.
- [15] I find, therefore, that subsection 21(a) of LA FOIP has been properly applied to the 72 pages of the record and that the R.M. has the discretion to continue to withhold them.

Because I find that subsection 21(a) of LA FOIP applies to these pages, I do not need to consider the other LA FOIP exemption the R.M. has applied to four of these pages.

#### **IV FINDING**

[16] I find that subsection 21(a) of LA FOIP has been properly applied to the records.

#### **V RECOMMENDATION**

[17] I recommend that the R.M. continue to withhold the records pursuant to subsection 21(a) of LA FOIP.

Dated at Regina, in the Province of Saskatchewan, this 10th day of June, 2020.

Ronald J. Kruzeniski, Q.C.  
Saskatchewan Information and Privacy  
Commissioner