



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2024-033

July 8, 2024

City of St. John's

Summary:

The Complainant made an access request for the amount the City of St. John's paid in legal fees on opposing the release of certain records. The City provided the Complainant with copies of its relevant legal invoices, but redacted some information, including the total amount of legal fees it paid, under section 30(1)(a) of the **Access to Information and Protection of Privacy Act, 2015**. The Commissioner found that the City was entitled to withhold this information under section 30.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c A-1.2, sections 9 and 30.

Authorities Relied On: [Maranda v Richer](#), 2003 SCC 67.

[Newfoundland and Labrador \(Information and Privacy Commissioner\) v College of the North Atlantic](#), 2013 NLTD(G) 185.

[Newfoundland and Labrador Legal Aid Commission \(Re\)](#), 2019 NLSC 171.

[Asphalt Product Industries Inc v Town Council of Come by Chance \(Town\)](#), 2023 NLSC 12.

[Mastropietro v Newfoundland and Labrador \(Education\)](#), 2016 CanLII 64876 (NL SC).

NL [OIPC](#) Reports [A-2018-019](#), [A-2020-027](#), and [A-2021-023](#).

BACKGROUND

[1] The Complainant made a request to the City of St. John's under the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015) for:

The records of legal fees the City of St. John's paid on fighting the release of St. John's Sports and Entertainment financial statements.

[2] The City provided the Complainant with copies of the City's relevant legal invoices, but redacted certain information, including the specific names of external counsel, descriptions of the legal matter, time external counsel spent on the matter, and the legal fees, under section 30(1)(a) of ATIPPA, 2015.

[3] The Complainant filed a complaint with our Office confirming they wished to receive, "the financial amount the city spent on the matter."

[4] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of ATIPPA, 2015.

PUBLIC BODY'S POSITION

[5] The City provided our Office with the responsive records in full. It maintained its position that section 30(1)(a) of ATIPPA, 2015 allows it to withhold the amount it spent on legal fees for the matter at hand under the protection of solicitor-client privilege.

[6] The City held that "disclosure of the information in the invoices would allow the Applicant or an assiduous inquirer to obtain or deduce privileged communications." The City relied on court decisions and reports from our Office to support this position.

[7] The City cited the Supreme Court of Canada decision [Maranda v. Richer](#), where the court held "that lawyers' billings are protected by privilege when they contain information regarding the content of communications between the lawyer and his or her client, both about the legal advice given and about the terms for payment of the lawyer's fees."

[8] The City further cited [Newfoundland and Labrador \(Information and Privacy Commissioner\) v. College of the North Atlantic](#), in which the Supreme Court of Newfoundland and Labrador addressed a similar situation where an individual requested copies of legal invoices from a public body. The Court applied the Maranda decision, holding that the information from a legal invoice is presumptively subject to solicitor-client privilege. For the matter at hand, the most noteworthy paragraphs from this decision are 41-44:

[41] The information requested, particularly the amounts spent, both as to amount and as to timing, could be used by a diligent and persistent inquirer armed with the public court record to make inferences about the level of effort by CONA in defending the claim and in dealing with various aspects of the litigation as they arise from time to time. Such level of effort, as reflected by the amounts charged for legal services could reasonably be considered as being based on instructions and communications from the client, in this case CONA.

[42] It is at least possible that an assiduous inquirer could infer from the level and timing of expenditures whether CONA has instructed its solicitor to expend efforts in resolving the matter before trial or alternatively, if on the eve of trial, in preparing for trial.

[43] Disclosing information on expenditures for legal services during the litigation for which the services were or are being provided poses a serious risk to the confidentiality that must attach to the communications between solicitor and client during those proceedings. The fair conduct of litigation, while it relies on full disclosure of the substantive factual elements of the claim and dispute, also relies on the ongoing ability of the client to discuss confidentially with his or her solicitor matters such as resolution strategy, trial strategy, assessment of the case and the many other issues on which advice may be sought during litigation.

[44] There is at least a possibility that disclosure for amounts paid for legal services could, in this context, reveal something of the confidential communications that are essential during litigation. This possibility cannot be negated by any level of redaction. Even aggregating the total amount invoiced for services may allow the diligent inquirer to make inferences about CONA's instructions to its solicitors; the simple expedient of making a similar request every month would lead to a greater possibility of making such inferences (emphasis added).

[9] The City further raised Reports [A-2020-027](#) and [A-2021-023](#) where our Office applied the foregoing court decisions to requests for amounts public bodies have spent on legal fees.

[10] The City raised that there is a presumption that legal invoices fall under the protection of solicitor-client privilege, and that the duty to rebut this presumption falls on the Complainant.

[11] The City stated that our Office should differentiate the matter at hand from Report [A-2018-019](#), where we recommended the release of similar information, and the subsequent court decision, [Newfoundland and Labrador Legal Aid Commission \(Re\)](#):

This request is different from similar cases dealing with the subject of legal fees in which OIPC Reports and court decisions have recommended disclosure, as those requests related to aggregate amounts and non-specific cases (such as OIPC NL Report A-2018-019: annual aggregate amounts over a period of ten years). This request seeks records relating to the legal fees arising from one specific case and must be considered as such.

COMPLAINANT'S POSITION

[12] In attempts to rebut the presumption of solicitor-client privilege, the Complainant raised the fact that the litigation in question (regarding the release of St. John's Sports and Entertainment financial statements) is no longer ongoing.

[13] The Complainant also referenced Report [A-2018-019](#) and the Supreme Court of Newfoundland and Labrador's Legal Aid decision referenced above.

[14] Report [A-2018-019](#) dealt with an access request for, "... Legal Aid Commission invoices and details of payments to lawyers from the private bar who represented clients on behalf of the Legal Aid Commission from June 2008 to the present." This Report considered how money spent on legal fees could be "neutral information." Then-Commissioner Molloy concluded that, "disclosing the aggregate amount paid per annum to lawyers or firms over the ten-year period requested by the Complainant would not allow an assiduous inquirer to deduce privileged information."

[15] The Complainant pointed out that the court agreed with former Information and Privacy Commissioner Molloy on Report [A-2018-019](#). In the Legal Aid decision, Justice Orsborn stated:

“I am satisfied that there is no reasonable possibility that disclosure of the amounts paid could lead, directly or indirectly, to the disclosure of privileged communication.”

[16] Finally, the Complainant raised section 9 (public interest) of ATIPPA, 2015 and encouraged our Office to consider the Supreme Court of Newfoundland and Labrador’s decision in [Asphalt Product Industries Inc v. Town Council of Come by Chance \(Town\)](#).

ISSUES

[17] Whether the City properly withhold the amount it spent on the relevant legal fees under section 30(1)(a) of ATIPPA, 2015.

[18] Whether section 9 of ATIPPA, 2015 should override the section 30 exception in this matter.

DECISION

[19] The City established that there is a presumption of solicitor-client privilege attached to the information that the Complainant requested. The presumption that solicitor-client privilege protects legal invoices (including simply the total amount that a public body paid for legal services) is rebuttable, but it is not a low threshold and the burden of proof to rebut the presumption falls on the Complainant. In order to determine whether the Complainant has successfully rebutted that presumption, we need to weigh factors in favour of releasing the information versus withholding it.

[20] The following factors favour withholding the information:

- there is a presumption of solicitor-client privilege;
- there is a single, identifiable client (the City);
- there is much public information about the particular litigation in question;
- the City has already provided the Complainant with date ranges of when it sought legal advice for this litigation; and
- the request is related to a specific legal matter, not just for legal fees in general.

[21] The following factors favour releasing the information:

- the legal matter is no longer ongoing; and
- the legal invoices include fees for non-related matters, so it would be difficult to discern which fees applied to which matter.

[22] Assessing the matter globally in combination with reviewing relevant case law and our previous reports, there are more factors in support of withholding the information.

[23] With respect to the Complainant's request that our Office consider section 9 of ATIPPA, 2015, the Complainant did not provide an explanation as to how the Asphalt Product Industries decision or section 9 apply to the specifics of the complaint at hand. Accordingly, the Complainant has not, "clearly demonstrated that the public interest in disclosure of the information outweighs the reason for the exception" per the requirement in section 9.

[24] It should be mentioned, however, that in making access to information decisions, public bodies should take note of and consider factors that are clear or reasonably apparent that are relevant to the application of section 9 even if they are not raised by the applicant, despite the burden being formally on the applicant. The Commissioner and courts should do the same in reviewing refusals of access, as the Supreme Court of Newfoundland and Labrador noted in [Mastropietro v. Newfoundland and Labrador \(Education\)](#):

[50] I am not saying that it is incumbent upon a person seeking to establish that there is a sufficient public interest in disclosure so as to outweigh the purpose of the exception from disclosure, to present evidence of the public interest in disclosure, in every case. There may well be cases where the public interest in disclosure, is so notorious as to be capable of judicial notice by the Court. There may be other cases, where the records or documents themselves, are such that the Court is able to conclude there is a public interest in disclosure.

[25] We have considered the context surrounding these particular records in conjunction with the public interest over-ride in section 9. While there is plainly an inherent public interest involving records of the expenditure of public funds, when weighed against the purpose of the exception, the threshold to over-ride solicitor-client privilege has not been met.

RECOMMENDATIONS

- [26] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015**, I recommend that the City of St. John's maintain its position on this matter.
- [27] As set out in section 49(1)(b) of ATIPPA, 2015, the head of the City of St. John's must give written notice of his, her, or their decision with respect to these recommendations to the Commissioner and any person who received a copy of this Report within ten business days of receiving this Report.
- [28] Dated at St. John's, in the Province of Newfoundland and Labrador, this 8th day of July, 2024.



Jacqueline Lake Kavanagh
Information and Privacy Commissioner (Acting)
Newfoundland and Labrador