ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2017-59

July 12, 2017

ALBERTA JUSTICE AND SOLICITOR GENERAL

Case File Number F7798

Office URL: www.oipc.ab.ca

Summary: The Applicant made a request for records relating to a complaint that he made to the Minister of Justice and Solicitor General (the Public Body) which he had also copied to the Registrar of the Court of Appeal of Alberta. The Public Body responded but withheld some records pursuant to sections 4(1)(a), 24, and 27 of the Act. The Applicant requested that the Office of the Information and Privacy Commissioner review the timeliness of the Public Body's response, its search, and its use of the exclusions and exemptions applied.

The Adjudicator found that the Public Body did not meet its timelines set out in section 11 of the Act. However, the Adjudicator found that the Public Body performed an adequate search and properly applied sections 4(1)(a), 24, and 27 of the Act.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 4, 10, 11, 24, 27, and 72.

Authorities Cited: AB: Orders 96-006, F2002-022, F2004-003, F2007-029, and F2014-46.

Cases Cited: *Solosky v. The Queen*, [1980] 1 S.C.R. 821, *Blood Tribe v. Canada (Attorney General)*, 2010 ABCA 112, *Stevens v. Canada (Prime Minister, The Privy Council)*, [1998] 4 F.C. 89 (F.C.A), and *Pritchard v. Ontario (Human Rights Commissioner)* 2004 SCC 31.

I. BACKGROUND

[para 1] According to the records I have reviewed, on October 7, 2013, the Applicant made a formal complaint to the Minister of Justice and Solicitor General, which he copied to the Registrar of the Court of Appeal of Alberta. The complaint noted concerns the Applicant had about an affidavit he alleges was lost by the Registrar of the Court of Queen's Bench, the actions of his Case Management Officer, and the scheduling of his taxation hearing.

[para 2] On October 29, 2013, the Applicant made an access request to Alberta Justice and Solicitor General (the Public Body) for:

> …all documents that refer to the investigation of concerns stated in my letters dated October 7, 2013 and October 25, 2013 (your file No 5051). Their list includes but is not limited to: drafts of these letters with eventual corrections, notes, memos, minutes of meetings, and copies of court documents.

[para 3] The Public Body acknowledged the access request on November 5, 2013. On December 9, 2013, the request was clarified to the following:

> …copies of all documents that refer to the investigation of concerns stated in my letters dated October 7, 2013 and October 25, 2013 (your file No 5051). Their list includes but is not limited to: drafts of answers to these letters with eventual corrections, notes, memos, minutes of meetings, and copies of court documents. Excluding all records he had sent us or we had sent him.

[para 4] On December 17, 2013, the Applicant complained to the Office of the Information and Privacy Commissioner (this Office) that the Public Body had not responded to his access request. The Public Body responded to the Applicant's access request on December 23, 2013.

[para 5] On January 13, 2014, the Applicant submitted a Request for Review to this Office stating that the Public Body had not met its timeline, not done an adequate search, and improperly applied sections 4, 24, and 27 to the records at issue.

[para 6] Mediation was authorized but did not resolve all of the issues between the parties and on November 3, 2015, the Applicant requested an inquiry stating that the mediator had not addressed the timeline issue, and not taken into consideration the difference between litigation privilege and solicitor-client privilege or the difference between a private organization and a public body. I received submissions from both parties. In his submissions, the Applicant asked that not only the privilege issue he had raised in his request for inquiry, but also the applicability of all the exceptions applied by the Public Body, which the Applicant had raised in his request for review, be considered

in this inquiry. I granted this request and received additional submissions from both parties on these issues.

II. RECORDS AT ISSUE:

[para 7] The records at issue in this inquiry consist of 33 pages of information provided to the Applicant in response to his October 29, 2013 access request.

III. ISSUES

[para 8] The Notice of Inquiry dated September 6, 2016 stated two issues in this inquiry. The Applicant asked that I add three additional ones which I agreed to do. Therefore, the issues in this inquiry as follows:

1. Did the Public Body meet its obligations required by section 10(1) of the Act (duty to assist applicants)?

2. Did the Public Body comply with section 11 of the Act (time limit for responding)?

3. Are the records excluded from the application of the Act by section 4(1)(a)?

4. Did the Public Body properly apply section 24(1) of the Act (advice from officials) to the information in the records?

5. Did the Public Body properly apply section 27(1) of the Act (privileged information) to the information in the records?

IV. DISCUSSION OF ISSUES

1. Did the Public Body meet its obligations required by section 10(1) of the Act (duty to assist applicants)?

[para 9] Section 10(1) of the Act states:

> *10(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.*

[para 10] As part of its duty to assist the Applicant, the Public Body must conduct an adequate search for responsive records. In Order F2007-029 the former Commissioner stated that the Public Body ought to provide the following evidence as proof of an adequate search:

> • The specific steps taken by the Public Body to identify and locate records responsive to the Applicant's access request

> • The scope of the search conducted – for example: physical sites, program areas, specific databases, off-site storage areas, etc.
>
> • The steps taken to identify and locate all possible repositories of records relevant to the access request: keyword searches, records retention and disposition schedules, etc.
>
> • Who did the search
>
> • Why the Public Body believes no more responsive records exist than what has been found or produced
>
> (Order F2007-029 at para 66)

[para 11] The Applicant states that the Public Body's search was not thorough enough because the responsive records did not contain drafts of letters or any "paper trail and/or log" showing how his letters were handled and by whom from the time that they were received to the time that they were responded to. There is also no information about who decided to delegate responsibility for the responses.

[para 12] In response, the Public Body states that the Applicant narrowed his request to exclude records sent by the Applicant to the Public Body and vice versa, as well as duplicate and incomplete email strings. Therefore, any correspondence referred to as missing by the Applicant was simply not responsive to this request after he narrowed it.

[para 13] Further the Public Body states that one draft letter was located but severed pursuant to section 24 (which will be discussed below).

[para 14] Finally, the Public Body argues that it is not required to create a record that specifically shows a paper trail or a log to respond to an access request. It says it has searched for and provided all responsive records (subject to information it has severed).

[para 15] The Public Body is correct that there is no requirement to create a "log" or "paper trail" if those records do not already exist in some electronic format (see section 10(2) of the Act). It, however, must show that it performed an adequate search for responsive records and those records may show the paper trail the Applicant refers to. Its submissions state:

> The FOIP Office staff utilizes a dedicated FOIP Contact to coordinate the search for all records believed to be contained within the Resolution and Court Administration Services (RCAS) Division of the Public Body. Five staff members were identified as having records responsive to the Applicant's request.
>
> A search of electronic repositories (ARTS [Action Request Tracking System] and Livelink) as well as e-mail systems was conducted to ensure all records were retrieved in relation to this request. The Public Body maintains some types of records of concern to the Applicant

(notes, memos, meeting minutes, etc.) do not exist and is confident that no more responsive records exist in relation to this request.
…

All records that were located but excluded from the responsive records package became non-responsive once the Applicant narrowed the scope of his request.

All excluded records fall within one of the following categories:

• Records sent by the Applicant to the Public Body.
• Records sent to the Applicant by the Public Body.
• Duplicate or incomplete e-mail strings.

The Applicant's correspondence with the Public Body was located during the search for records; however, it falls into the first two categories and was deemed non-responsive.

(Public Body's additional submissions at paras 14, 15, 19, 20, and 21)

[para 16] While it did not provide a sworn affidavit and did not address the key words searched (which would have been preferable but is not required), given the submissions of the Public Body, I believe that it did perform an adequate search and met its obligations under section 10 of the Act.

2. Did the Public Body comply with section 11 of the Act (time limit for responding)?

[para 17] Section 11 of the Act states:

11(1) The head of a public body must make every reasonable effort to respond to a request not later than 30 days after receiving it unless

(a) that time limit is extended under section 14, or

(b) the request has been transferred under section 15 to another public body.

(2) The failure of the head to respond to a request within the 30-day period or any extended period is to be treated as a decision to refuse access to the record.

[para 18] The Public Body acknowledges that it failed to meet the requirements of section 11(1) of the Act but states that it did remain in communication with the Applicant throughout the process and did respond to the Applicant's access request.

[para 19] I find that the Public Body failed to meet its duty under section 11 of the Act but has now responded.

3. Are the records excluded from the application of the Act by section 4(1)(a)?

[para 20] The Public Body relies on section 4(1)(a) to withhold portions of pages 12 and 16 of the records at issue. Initially, the Public Body applied section 4(1)(a) of the Act to additional records but those have since been disclosed.

[para 21] Section 4(1)(a) of the Act states:

> *4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:*
>
> > *(a) information in a court file, a record of a judge of the Court of Appeal of Alberta, the Court of Queen's Bench of Alberta or The Provincial Court of Alberta, a record of a master of the Court of Queen's Bench of Alberta, a record of a justice of the peace other than a non-presiding justice of the peace under the Justice of the Peace Act, a judicial administration record or a record relating to support services provided to the judges of any of the courts referred to in this clause;*

[para 22] The Applicant argues that the information severed on pages 3 and 14-16 was not information relating to support services provided to the judges of the Provincial Court. In addition, the Applicant argues that since he was a party to the court proceeding that may be mentioned in these records, they cannot be legitimately exempted from disclosure. Specifically he states:

> Since the complainant was a party in the court proceedings that may have been mentioned in documents responsive to his access request, information in the relevant court files and judicial administration records cannot be legitimately exempted from disclosure, he believes. For instance, the MSG file sent by [one employee of the Public Body to another employee of the Public Body] on November 04, 2013 (page 3 of the released materials) likely contains email exchanges (they can be viewed using Outlook) between the complainant and representatives of the Resolution and Court Administration Services. On the one hand, email exchanges can hardly be 'information in a court file' or a 'judicial administration record'. On the other hand, even if the email exchanges in question contain information in a court file or a judicial administration record, they should have been disclosed since the complainant was a party in the relevant court proceedings.
>
> (Applicant's initial submissions at para 20)

[para 23] Section 4 is an exemption from the Act, not an exception to disclosure. Records that fall within section 4 are not subject to the Act.

[para 24] Pages 3, 14, and 15 have been disclosed to the Applicant. Therefore, there is nothing for me to order the Public Body to do with respect to those records and so I will confine my findings to the portions of pages 12 and 16 that the Public Body is continuing to withhold pursuant to section 4(1)(a) of the Act.

[para 25] As mentioned above, these records relate to a complaint made to the court by the Applicant relating to services provided by court clerks. His complaint related to such things as an accusation that an affidavit of service was lost by the Registrar of the Court of Queen's Bench, and concerns about the actions of his Case Management Officer, and the scheduling of his taxation hearing. After receiving the complaint, the Registrar of the Court of Appeal of Alberta assigned the Director of Operations to investigate the Applicant's complaint. The records show that the results of the investigation were provided to the Registrar of the Court of Appeal of Alberta who then passed some information on to the person who would be drafting the response for the Minister of Justice and Solicitor General.

[para 26] The Public Body states that the portions of these records that were withheld consisted of information created by the Registrar of the Court of Appeal or created by support services to the Chief Justice and Registrar of the Court of Appeal, which are court administration records that are captured under section 4(1)(a) of the Act. I agree with the Public Body that these records are court administration records, which would fall under the Act (see Order F2002-022 at para 23).

[para 27] The portion of section 4(1)(a) of the Act referencing support services states, "…a judicial administration record or a record relating to support services provided to the judges of any of the courts referred to in this clause."

[para 28] "Judicial administration record" is defined by section 4(3) of the Act as follows:

> *4(3) In this section, "judicial administration record" means a record containing information relating to a judge of the Court of Appeal of Alberta, the Court of Queen's Bench of Alberta or The Provincial Court of Alberta or to a master of the Court of Queen's Bench of Alberta or a justice of the peace other than a non-presiding justice of the peace under the Justice of the Peace Act, and includes*
>
> > *(a) the scheduling of judges and trials,*
> >
> > *(b) the content of judicial training programs,*
> >
> > *(c) statistics of judicial activity prepared by or for a judge, and*
> >
> > *(d) any record of the Judicial Council established under Part 6 of the Judicature Act.*

[para 29] The records at issue are not records containing information relating to any judge of any of the listed Courts or a master or a justice of the peace. The records contain

information about the Applicant's complaints about the conduct of the Registrar of the Court of Queen's Bench (clerks), and of a Case Management Officer. These individuals are not a judge, justice, master, or justice of the peace. Therefore the records at issue are not judicial administration records.

[para 30] The Public Body also seems to argue that these records are records relating to support services provided to the judges of any of the courts referred to in this clause. Specifically, the Public Body stated:

> As noted above, one of the categories listed in 4(1)(a) is judicial administration record or a record relating to the support services provided to the judges of any of the courts referred to in this clause. In paragraph 22 of Order F2014-046 the Adjudicator stated "Some of the records are records of a judge of an Alberta court, and the remaining records are records relating to support services within the terms of section 4(1)(a). Therefore, I do not have jurisdiction to review the Public Body's decision to withhold these records."
>
> Information created by the Registrar of the Court of Appeal or created by support services to the Chief Justice and Registrar of the Court of Appeal is a court administration record.
> …
>
> Given the above information, the Public Body maintains the records in question are court administration records and are captured under section 4(1)(a).
>
> (Public Body's additional submissions at paras 7, 8, and 10)

[para 31] I have reviewed Order F2014-46 and did not find it helpful as the nature of the records referred to by the Adjudicator was not clear.

[para 32] That being said, the records in this inquiry were about the Applicant's complaints about how the clerks and Case Management Officer performed their roles in relation to a matter the Applicant had before the Courts. Whether a complaint itself, the investigation of a complaint, and the result of a complaint are records relating to support services provided to the judges of any courts referred to in section 4(1)(a) of the Act will depend on the nature of the complaint. I do not believe every complaint submitted to the Courts and every investigation and finding done by or on behalf of the Registrar will fit the terms of section 4(1)(a) of the Act. However, in this case, the complaint was about the services provided by the clerks and Case Management Officer and those individuals were providing their services in support of the judges of the Courts mentioned in section 4(1)(a) of the Act. The words used in the relevant portion of section 4(1)(a) use the wording "related to" which is, I believe, broad enough to cover the records at issue.

[para 33] As a result of the above, I find that the Public Body properly applied section 4(1)(a) of the Act to the records at issue.

4. Did the Public Body properly apply section 24(1) of the Act (advice from officials) to the information in the records?

[para 34] Section 24(1)(a) and (b) of the Act state:

> *24(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal*
>
> > *(a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council,*
> >
> > *(b) consultations or deliberations involving*
> >
> > > *(i) officers or employees of a public body,*
> > >
> > > *(ii) a member of the Executive Council, or*
> > >
> > > *(iii) the staff of a member of the Executive Council,*

[para 35] The Public Body applied sections 24(1)(a) or (b) of the Act to a draft letter on page 17 of the records at issue. It states that this draft letter contains the recommendations on how to respond to the Applicant's complaint. It also argues that since the Applicant has the final version of the letter and because this draft was provided by the person creating it to the Policy and Research Analyst, it would reveal deliberations that were undertaken in relation to the draft letter.

[para 36] The Applicant argues that some of the information severed pursuant to section 24(1) was merely factual. I am not certain if he is making this argument in relation to page 17 (which is the only page currently being withheld pursuant to section 24(1) of the Act) or in relation to all of the records to which the Public Body originally applied section 24(1) of the Act. He also states that the Public Body has not addressed the proper test for section 24(1) of the Act.

[para 37] As the Public Body has already disclosed all the other records to which it initially applied section 24(1) of the Act with the exception of page 17, there is nothing I can order with respect to these records. In addition, although I have already found that section 4(1)(a) of the Act applied to page 16 of the records, I believe that section 24(1) of the Act could have alternatively been applied to page 16 of the records. Therefore, I will confine my findings regarding section 24(1) to pages 16 and 17 of the records at issue.

[para 38] The long established test to determine if sections 24(1)(a) and (b) have been properly applied is that a recommendation, consultation or deliberation must:

1. Either be sought or expected as part of the responsibility of the person from who they are sought;

2. Be sought for the purpose of doing something, such as taking action or making a decision;
3. Involve someone who can take or implement the action.

(Order 96-006 at page 9)

[para 39] Regarding page 17 (which is a draft letter), the letter was drafted by the Director of Operations for the Court of Appeal of Alberta who was asked to do so by the Registrar of the Court of Appeal of Alberta in fulfillment of her job duties to investigate the Applicant's complaint and provide recommendations. I believe that this meets the first part of the test. I would also find this so regarding page 16.

[para 40] The investigation that led to the recommendations and consultations with the Policy and Research Analyst was undertaken by the Director of Operation in order to determine if there was any merit to it as a step in the process of answering the Applicant's complaint. I believe that this meets the second part of the test, and would be the same for the information on page 16.

[para 41] With regard to the third part of the test, the information on page 17 was provided to the Policy and Research Analyst who had the responsibility of drafting the letter for the Minister of Justice and Solicitor General to respond to the Applicant's complaint.

[para 42] With regards to page 16, this is a memo written by the Director of Operations and was addressed to the Registrar of the Court of Appeal of Alberta. The Registrar of the Court of Appeal of Alberta could either accept or reject the recommendation. In addition, it was her job to provide feedback to the Policy and Research Analyst so the Policy and Research Analyst could draft a final letter for the Minister for the purpose of the Minister's response to the Applicant's complaint. Therefore, I find that the third part of the test met for both these pages.

[para 43] I also find that the Public Body took into account appropriate and relevant considerations when deciding to exercise its discretion which included:

> • Considering the general purposes of the FOIP Act, specifically in regard the right of access to records, the Public Body notes that the Applicant has received the final draft of this correspondence, thereby, already providing the Applicant a complete and accurate response in regard to his matters with the Public Body.
>
> • The Public Body should have the ability to provide recommendations/advice and allow for consultation or deliberation without fear of judgment and/or misinterpretation of the information.
>
> • The consideration that release of this information, in whole or in part, could damage the iterative process of drafting correspondence.
>
> (Public Body's second additional issues submission at para 14)

[para 44] As a result, I find that the Public Body properly applied section 24(1)(a) of the Act to the records at issue and could have also applied it to page 16.

5. Did the Public Body properly apply section 27(1) of the Act (privileged information) to the information in the records?

[para 45] Section 27 of the Act states:

> *27(1) The head of a public body may refuse to disclose to an applicant*
>
> > *(a) information that is subject to any type of legal privilege, including solicitor-client privilege or parliamentary privilege,*
> >
> > *(b) information prepared by or for*
> >
> > > *(i) the Minister of Justice and Solicitor General,*
> > >
> > > *(ii) an agent or lawyer of the Minister of Justice and Solicitor General, or*
> > >
> > > *(iii) an agent or lawyer of a public body,*
> >
> > *in relation to a matter involving the provision of legal services, or*
> >
> > *(c) information in correspondence between*
> >
> > > *(i) the Minister of Justice and Solicitor General,*
> > >
> > > *(ii) an agent or lawyer of the Minister of Justice and Solicitor General, or*
> > >
> > > *(iii) an agent or lawyer of a public body,*
> >
> > *and any other person in relation to a matter involving the provision of advice or other services by the Minister of Justice and Solicitor General or by the agent or lawyer.*
>
> *(2) The head of a public body must refuse to disclose information described in subsection (1)(a) that relates to a person other than a public body.*
>
> *(3) Only the Speaker of the Legislative Assembly may determine whether information is subject to parliamentary privilege.*

[para 46] The Public Body asserts that the information found on pages 5 and 6 of the records at issue are subject to solicitor-client privilege. The Applicant argues that solicitor-client privilege does not attach to these records at issue because no part of the

three part test for solicitor-client privilege has been met. He argues, instead, that only litigation privilege could apply to these records and that privilege has expired.

[para 47] The test for asserting solicitor-client privilege was set out in *Solosky v. The Queen*, [1980] 1 S.C.R. 821 at page 837 as:

> i. communication between a solicitor and a client;
> ii. which entails the seeking or giving of legal advice; and
> iii. which is intended to be confidential by the parties.

[para 48] The Public Body stated in its initial submissions that page 5 of the responsive records was an email conversation between an employee of Resolution and Court Administration Services (RCAS) and a lawyer whose primary responsibility it is to provide legal services to RCAS. The employee sought advice from the lawyer and the lawyer responds, providing advice. There are only two people involved in this conversation, the employee and the lawyer. This record was withheld in its entirety from the Applicant.

[para 49] Page 6 of the records at issue was partially severed by the Public Body. It was also an email wherein, the Public Body asserts, the legal advice noted above was referenced and a portion of it outlined. Included in this email conversation were employees of the Public Body because the advice was relevant to those employees.

[para 50] The Applicant argues that there was no solicitor involved in the email. Further he states that there is no evidence that legal advice was sought as opposed to regular communication between in-house counsel and an employee. Finally, the Applicant submits that the communications were not confidential, noting that there was no confidentiality disclaimer in the email.

[para 51] As I noted, the Applicant was not provided with a copy of page 5, which is the communication that the lawyer was involved in. If I understand the Public Body's submissions correctly, the email on page 6 involves only employees of the Public Body and not a lawyer, and the severed portions of page 6 reveal only the advice given by the lawyer.

[para 52] Regarding page 5, I find that it consisted of communications between a solicitor (the in-house lawyer) and a client (the employee). In addition, I find that the employee conveyed the advice to fellow employees to whom the advice was relevant. This conveyance was therefore part of the continuum of the communication between the lawyer and employee. As noted by the Supreme Court of Canada in *Blood Tribe v. Canada (Attorney General)*, 2010 ABCA 112, the test for solicitor-client privilege is not narrow. While I note that the Applicant disputes the applicability of the Blood Tribe decision because it involved different legislation, the principles stated in the decision are applicable to solicitor-client privilege more generally. The Court in Blood Tribe stated:

> The appellant also argues that even if some of the documents contain legal advice and so are privileged, there is no evidence that all of the documents do so. For example, the

> appellant argues that minutes of meetings, emails and miscellaneous correspondence between Justice Canada lawyers and the Department of Indian and Northern Affairs may not contain any actual advice, or requests for advice, at all. The solicitor-client privilege is not, however, that narrow. As the court stated in *Balabel v. Air India*, [1988] Ch 317, [1988] 2 All E.R. 246 at p. 254 (C.A.):
>
> > Privilege obviously attaches to a document conveying legal advice from solicitor to client and to a specific request from the client for such advice. But it does not follow that all other communications between them lack privilege. In most solicitor and client relationships, especially where a transaction involves protracted dealings, advice may be required or appropriate on matters great or small at various stages. There will be a continuum of communication and meetings between the solicitor and client. The negotiations for a lease such as occurred in the present case are only one example. Where information is passed by the solicitor or client to the other as part of the continuum aimed at keeping both informed so that advice may be sought and given as required, privilege will attach. A letter from the client containing information may end with such words as "please advise me what I should do." But, even if it does not, there will usually be implied in the relationship an overall expectation that the solicitor will at each stage, whether asked specifically or not, tender appropriate advice. Moreover, legal advice is not confined to telling the client the law; it must include advice as to what should prudently and sensibly be done in the relevant legal context.
>
> The miscellaneous documents in question meet the test of documents which do not actually contain legal advice but which are made in confidence as part of the necessary exchange of information between the solicitor and client for the ultimate objective of the provision of legal advice.

[para 53] The advice was sought on behalf of, and given for the benefit of, all of the employees whose responsibility it was to address the issue even, if it was not communicated to them directly by the lawyer. Therefore, I find that part one of the *Solosky* test has been met.

[para 54] Further, the fact that the lawyer is in-house counsel does not diminish the Public Body's ability to claim solicitor-client privilege (see *Stevens v. Canada (Prime Minister, The Privy Council)*, [1998] 4 F.C. 89 (F.C.A) at page 11 and *Pritchard v. Ontario (Human Rights Commissioner)* 2004 SCC 31 at para 15-21). Though it may mean that a public body may have to provide more evidence about the context in order to support the claim than it would where external counsel was involved.

[para 55] As long as the in-house lawyer was giving or being asked to give legal advice and not merely policy advice, solicitor-client privilege can apply. I accept the submissions of the Public Body that the severed portions of pages 5 and 6 involve the giving and seeking of legal advice. Therefore, I find that part two of the *Solosky* test has been met.

[para 56] Regarding part three of the *Solosky* test, confidentiality can be implied by the circumstances of the communication (here, a communication between solicitor and client involving obtaining legal advice) it does not need to be express (see Order F2004-003 at

para 30). Further, the email on page 6 was only sent to a small group of people that, according to the Public Body, would find it relevant. There is nothing that indicates that this communication was meant to be a waiver of the privilege; therefore, I find that the implication of confidentiality would be the same. As a result, I find that part three of the *Solosky* test was met and that the Public Body properly applied section 27(1) of the Act to the records at issue.

[para 57] Due to the fact that I have found that section 27(1) of the Act was properly applied because solicitor-client privilege attached to the information in pages 5 and 6 of the records at issue, I do not need to address the Applicant's arguments regarding whether litigation privilege applies to those records.

V. ORDER

[para 58] I make this Order under section 72 of the Act.

[para 59] I find that the Public Body met its duties under section 10 of the Act.

[para 60] I find that the Public Body did not meet its duties under section 11 of the Act.

[para 61] I find that the Public Body properly applied section 4(1)(a) of the Act to the records at issue.

[para 62] I find that the Public Body properly applied section 24 of the Act to the records at issue.

[para 63] I find that the Public Body properly applied section 27 of the Act to the records at issue.

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Keri H. Ridley
Adjudicator