ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2018-21

May 15, 2018

ALBERTA ENVIRONMENT AND PARKS

Case File Number F8348

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request pursuant to the *Freedom of Information and Protection of Privacy Act* (the Act) to Alberta Environment and Parks (the Public Body) for

> Any emails, correspondence, briefing notes or other documents concerning the eligibility of groups or individuals to appear at hearings of the Alberta Energy Regulator.

The Public Body responded but withheld some information citing sections 24(1)(a), (b)(i)(ii) and (e) and sections 27(1)(a), (b)(iii), and (c)(iii) of the Act. The Public Body also withheld information on the basis that it was not responsive. After its initial response to the Applicant but prior to this inquiry the Public Body decided to also apply section 27(2) of the Act to some of the records at issue.

Given the recent Court of Appeal decision, *Calgary (Police Service) v. Alberta (Information and Privacy Commissioner)*, 2018 ABCA 114, the Adjudicator decided to hold this inquiry in two parts. The first part of the inquiry resulted in Order F2018-20. This is the second part of the inquiry, which deals with the records which were not provided to the Adjudicator because the Public Body argued that sections 27(1)(a) and 27(2) of the Act applied to the records.

The Adjudicator found that the Public Body properly applied section 27(1)(a) of the Act to pages 22, 42-52, and 221-225 of the records at issue. However, the Adjudicator found that the Public Body did not properly apply section 27(1)(a) of the Act to pages 156-192, and 226-260 and did not properly apply section 27(2) of the Act to pages 217-219 of the records at issue.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000 c. F-25, ss. 24, 27, 56, 71, and 72; *Responsible Energy Development Act*, S.A. 2012 c. R-17.3, s. 16.

Authorities Cited: AB: Order F2018-20.

Cases Cited: *Alberta (Information and Privacy Commissioner) v. University of Calgary*, 2016 SCC 53, [2016] 2 S.C.R. 555; *Calgary (Police Service) v. Alberta (Information and Privacy Commissioner)*, 2018 ABCA 114; *Calgary (Police Service) v. Alberta (Information and Privacy Commissioner)*, 2017 ABQB 656; *Solosky v. The Queen*, [1980] 1 S.C.R. 821; and *Canadian Natural Resources Ltd. v. ShawCor Ltd.*, 2014 ABCA 289.

I. BACKGROUND

[para 1] Pursuant to the *Freedom of Information and Protection of Privacy Act* (the Act), on November 1, 2013, the Applicant made an access request to Alberta Environment and Sustainable Resources Development (now Alberta Environment and Parks) (the Public Body) for:

> Any emails, correspondence, briefing notes or other documents concerning the eligibility of groups or individuals to appear at hearings of the Alberta Energy Regulator.

[para 2] The Applicant requested these records for the timeframe of October 1, 2012 to present.

[para 3] On July 30, 2014, the Public Body responded to the Applicant. It noted that there was a package of 260 pages with "no disclosure". The exceptions cited by the Public Body relating to the severing of information were sections 24(1)(a), (b)(i)(ii) and (e) and section 27(1)(a), (b)(iii), and (c)(iii) of the Act. The Public Body also withheld information on the basis that it was not responsive.

[para 4] On August 6, 2016, the Applicant requested that this Office review the Public Body's response to his request. Mediation was authorized but did not resolve the issues between the parties and on March 11, 2016, the Applicant requested an inquiry. This request was accepted.

[para 5] As the inquiry on this matter proceeded, it became apparent that the Public Body was withholding information pursuant to section 27(2) of the Act because another public body, the Alberta Energy Regulator (the Affected Party), claimed solicitor-client

privilege attached to the information. The Affected Party was invited to participate in this inquiry and provided submissions on the application of section 27(2) of the Act to the records at issue.

[para 6] Recently, the Alberta Court of Appeal issued a decision in the judicial review of Order F2016-35. One of the issues in the inquiry that led to Order F2016-35 included the public body's application of section 27(1)(a) of the Act to some of the records at issue. The records to which the public body claimed section 27(1)(a) of the Act applied were not provided to the Adjudicator in the inquiry. The Adjudicator found that the public body had not met its burden to prove that section 27(1)(a) of the Act applied to the records and ordered the public body to disclose most of the records to the applicant. The public body complied with the order and disclosed several records to the applicant, but applied for judicial review of the decision to order disclosure of the remaining records. On judicial review, the Court of Queen's Bench Justice decided that, although the records to which the public body applied section 27(1)(a) of the Act were not before the Adjudicator, the Court required them to make a finding regarding the applicability of section 27(1)(a) of the Act. However, this caused a problem as explained by Justice Hall as follows:

> Here arises the conundrum. Except for particularized exceptions, such as alleged bias on the part of the tribunal, no new evidence is to be permitted at a judicial review, since it is a review on the record only. Counsel for the Commissioner maintains, therefore, that this Court cannot review the records to determine whether in fact they are solicitor-client privileged.
>
> That cannot be correct. If it is, then it puts the public body in a position where the Commissioner does not have the right to review the documents, but must decide, based on a description, whether they have been proven to be privileged. The question of privilege must be correctly determined. The only way to correctly determine whether the documents are, in fact, privileged, is to have the Court review those documents under its powers to do so. If the Court accepts the Commissioner's submissions that the Court cannot order the documents to be produced to it, to assess the claim of privilege, then the correctness of that assessment could never be determined, and therefore significant risk would arise that documents which are in fact solicitor-client privileged would have to be produced by the public body without ever having been reviewed.
>
> (*Calgary (Police Service) v. Alberta (Information and Privacy Commissioner)*, 2017 ABQB 656 at paras 28 and 29)

[para 7] Justice Hall's solution was to make an exception to the rule where solicitor-client privilege (section 27(1)(a) of the Act) is being claimed and those records have not been reviewed by this Office to require the public body to provide to the Court a sealed copy of the records (see *Calgary (Police Service) v. Alberta (Information and Privacy Commissioner)*, 2017 ABQB 656 at paras 30 and 31). Justice Hall's decision was upheld by the Court of Appeal, which said in part:

> We are satisfied that on a judicial review application where the dispute centres on whether the documents in question are subject to solicitor client privilege, those

> documents should be put before the reviewing Court. It is this simple. The issue – whether solicitor client privilege exists with respect to the disputed documents – cannot be properly determined in these circumstances without examining the documents themselves…
>
> (*Calgary (Police Service) v. Alberta (Information and Privacy Commissioner)*, 2018 ABCA 114 at para 3)

[para 8] As a result of these recent decisions and the new evidential rule on judicial review that applies to records over which section 27(1)(a) of the Act is being applied such that records were not provided to this Office for review, I have decided that this inquiry should be dealt with in separate parts. Part one of the inquiry dealt with the records which were provided to me and resulted in Order 2018-20. This is the second part of the inquiry which will deal with the records to which section 27 was applied and records were not provided. Some of the records had not only section 27(1)(a) or section 27(2) of the Act applied to them but also sections 24, 27(1)(b) and (c). Therefore, should I find that sections 27(1)(a) and 27(2) of the Act do not apply to the records, I will conduct another inquiry into the application of sections 24, 27(1)(b) and (c) to the records at issue.

II. RECORDS AT ISSUE:

[para 9] In its initial submissions, the Public Body advised that it had reviewed the records at issue and additionally applied sections 24 and 27 to the non-responsive records and also applied section 27(2) to pages 217-219 of the records. In addition it withdrew its claim of sections 24 and 27 over some responsive records. As a result of this re-review of the records at issue, the Applicant was provided with additional records. Therefore, the records at issue at issue for this inquiry are pages 156-192, 217-219, 221-225, and 226-260 and the severed information on pages 22 and 42-52, which were withheld or severed pursuant to sections 24 and 27 of the Act.

III. ISSUES

[para 10] The Notice of Inquiry dated July 21, 2017 states the issues in this inquiry as follows:

> **1. Did the Public Body properly withhold information as non-responsive to the Applicant's request?**
>
> **2. Did the Public Body properly apply section 24(1) of the Act (advice from officials) to the information in the records?**
>
> **3. Did the Public Body properly apply section 27(1) of the Act (privileged information) to the information in the records?**

[para 11] As stated above, this order will only make findings on the third issue in this order. Should I find that sections 27(1)(a) or 27(2) of the Act do not apply to the records at issue, I will conduct another inquiry on the application of sections 24, 27(1)(b) and (c) of the Act to the records to which those sections were also applied.

IV. DISCUSSION OF ISSUE

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

[para 12] In its initial submissions, the Public Body argued that sections 27(1)(a), (b), and (c)(iii) and section 27(2) applied to the records at issue.

i. Section 27(1)(a):

[para 13] Section 27(1)(a) 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,*

[para 14] I confirmed with the Public Body that the only legal privilege it is claiming is solicitor-client privilege. The Public Body claims that solicitor-client privilege applies to several records it has withheld from the Applicant. The test to determine if solicitor-client privilege applies to a record was set out in *Solosky v. The Queen*, [1980] 1 S.C.R. 821 (Solosky). The test states that the evidence must establish the record is:

1. A communication between a lawyer and the lawyer's client;
2. The communication entails the giving or seeking of legal advice; and
3. The communication is intended to be confidential.

[para 15] I was not provided with the records over which the Public Body claimed section 27(1)(a) of the Act. In support of its assertion that solicitor-client privilege attaches to the records at issue, the Public Body provided an affidavit sworn by an employee of the Public Body, in which she swore in a general way, that all the criteria for the Solosky test were met. She also swore, based on advice she had been provided, that the lawyers referenced in the communications were acting in their capacity as legal advisors.

[para 16] Although the affidavit is very general, the submission goes into more detail. The Public Body argued that lawyers employed by the Government of Alberta, acting as lawyers, provided legal advice, confidentially. Specifically, it argued:

> The Public Body submits that section 27(1)(a) applies to any type of legal privilege within the records at issue. Solicitor-client privilege applies in the same manner

regardless of whether the client is an individual, a corporation, or a government body.

Traditional legal privilege is recognized as an exception to the ordinary legal rule that compels any person with relevant knowledge to testify about it in court. The courts now recognize the high value of clients and lawyers being able to speak in complete candour, without fear that their private exchange would end up being used against them in court.

In *Pritchard v. Ontario* (Human Rights Commission), 2004 SCC 31, Major, J. stated regardless of the fact the legal counsel giving the advice was in-house, it does not change the fact the advice given is still privileged.

> *If an in-house lawyer is conveying advice that would be characterized as privileged, the fact that he or she is "in-house" does not remove the privilege, or change its nature.*

(Public Body's initial submissions at paras 26-28)

[para 17] Section 71(1) of the Act states:

> *71(1) If the inquiry relates to a decision to refuse an applicant access to all or part of a record, it is up to the head of the public body to prove that the applicant has no right of access to the record or part of the record.*

[para 18] Therefore, the burden of proof lies with the Public Body to prove that section 27(1)(a) of the Act applies to the records at issue.

[para 19] The Public Body employee who swore the affidavit was advised that the lawyers involved in the communications were acting as legal advisors (an essential element to meeting the Solosky test). The affidavit did not state that the employee had reviewed the records and made that determination. I was uncertain if the person who advised this employee had reviewed the records or on what basis that person advised this employee that the lawyers were acting in their capacity as legal advisors. I asked the Public Body who provided this advice. It stated:

The [employee] has sworn that she is satisfied that the records to which the Public Body asserts legal privilege, as identified in Schedule 1 to the Affidavit, contain solicitor-client privilege.

The Public Body relies on the decision in *Alberta (Information and Privacy Commissioner) v. University of Calgary* where the Supreme Court of Canada held that the University of Calgary substantiated its claim of solicitor-client privilege by providing an affidavit identifying privilege documents by document numbers.

(Public Body's supplemental submissions dated January 10, 2018 at paras 25-26)

[para 20] The facts before the Supreme Court of Canada in *Alberta (Information and Privacy Commissioner) v. University of Calgary* were that the University of Calgary

withheld responsive records pursuant to section 27(1)(a) of the Act, citing solicitor-client privilege. The Applicant asked this Office to review the University of Calgary's response. Relying on this Office's solicitor-client protocol in place at the time of the review, the University of Calgary opted not to send a copy the records over which it claimed section 27(1)(a) of the Act and instead provided an affidavit which bundled the documents over which the claim was made. The Adjudicator did not feel that there was enough detail provided for the University of Calgary to meet its burden of proof, and so he demanded production of the records. The University of Calgary requested a Judicial Review of the demand and this issue eventually made its way to the Supreme Court of Canada. Therefore, the issue before the Supreme Court of Canada was not whether the University of Calgary had met its burden of proof regarding section 27(1)(a) of the Act but, rather, was whether the wording in section 56(3) the Act was specific enough to allow the Commissioner to compel the production of the records over which the Public Body was claiming solicitor-client privilege.

[para 21] In coming to the conclusion that the language was not specific enough, the Supreme Court of Canada did make a reference to what parties in other proceedings (specifically those before the Court) provide in order to substantiate their claims of solicitor-client privilege. The majority of the Court noted that at the time of the order compelling the records, the convention in Alberta was to bundle the records, without detail, and claim privilege. However, the majority of the Court also noted that this was no longer the convention and Justice Cromwell, writing a dissenting judgement, specifically mentioned that the current leading case in Alberta on the level of detail required when solicitor-client privilege is claimed is *Canadian Natural Resources Ltd. v. ShawCor Ltd.* (ShawCor). Justice Cromwell stated:

> The appellant conceded in the hearing before this Court that the University's claim of privilege complied with the requirements of Alberta civil litigation practice at the time, which was governed by *Dorchak v. Krupka*, 1997 ABCA 89, 196 A.R. 81. While I understand that these requirements have since evolved in light of the subsequent decision by the Alberta Court of Appeal in *Canadian Natural Resources Ltd. v. ShawCor Ltd.*, …
>
> (*Alberta (Information and Privacy Commissioner) v. University of Calgary*, 2016 SCC 53, [2016] 2 S.C.R. 555 at para 127)

[para 22] In ShawCor, the Alberta Court of Appeal stated that the record over which solicitor-client privilege is claimed must be described in an affidavit of records in enough detail to support the claim. It found that Canadian Natural Resources Ltd.'s supplemental affidavit of records which stated the number of documents and described five categories of records (with more detail than the Public Body in this inquiry provided) was not sufficient. Therefore, "identifying privileged documents by document numbers" as the Public Body asserts was not enough to establish a claim for solicitor-client privilege. Specifically, the Alberta Court of Appeal stated:

> In summary, records where privilege is asserted must now be dealt with individually. Each record must be numbered in a convenient order and briefly described, short of disclosing privileged information. Records may be bundled where privilege is being

> asserted providing that the bundled record otherwise meets the requirements of Rule 5.7. In accordance with Rule 5.8, a party must also identify the grounds for claiming privilege with respect to each record in order to assist other parties in assessing the validity of the claim. This latter requirement means that, for each record, a party must state the particular privilege being asserted and describe the record in a way, again without revealing information that is privileged, that indicates how the record fits within the claimed privilege. The description of all relevant and material records over which privilege is claimed should be set out in Schedule 2 of Form 26 in the separate categories contemplated therein.
>
> CNRL's affidavits do not comply with these requirements. Harvey's first affidavit made a blanket claim of privilege over an undisclosed number of documents and merely listed the privilege categories set out in Schedule 2 of Form 26, with nothing added except the word "NIL" in reference to the "Other" category. While Harvey's later affidavit disclosed the number of records over which privilege was claimed, namely 1,058, and stated that these records fell into five discrete categories, this too falls well short of what is required under the Rules. It follows that the appeal must be allowed. CNRL is directed to prepare a new or supplementary affidavit in compliance with the Rules and this judgment.
>
> (*Canadian Natural Resources Ltd. v. ShawCor Ltd.*, 2014 ABCA 289 at paras 72-73)

[para 23] Therefore, I do not find that the Public Body's affidavit was detailed enough to meet its burden of proof. That being said, the Public Body did provide more detail about the records over which solicitor-client privilege is asserted in its submissions.

[para 24] The Public Body's initial submission laid out the Solosky test but did not state how the records met the test. I asked the Public Body to state specifically how the records met each part of the test. It advised, that the records were communications between a lawyer and the Public Body; made in confidence; and in the course of seeking or providing legal advice and that it could not give any further detail without waiving its claim of solicitor-client privilege. However, later in its initial submission, in support of its assertion that sections 27(1)(b) and 27(1)(a) of the Act applied to the records over which it also claimed solicitor-client privilege, the Public Body provide more detail about the records. It argued:

> Page 22 of the Records contains legal advice given from a government lawyer to employees of the Public Body as part of the solicitor-client relationship.
>
> Pages 42 to 52 of the Records consist of legal review and advice given by a government lawyer in relation to the provision of legal services. The Public Body submits that withholding part of page 22 and pages 42-52 that contain legal advice provided by a government lawyer is an appropriate application of section 27(1)(a),(b)(iii) and (c)(iii) of the FOIP Act.
>
> The Public Body also found during the subsequent review that pages 226-260 of the Records were not severed under section 27(1)(b)(iii) when they should have been. The Public Body is now claiming section 27(1)(b)(iii) to withhold those pages.

> Pages 156-192 and 226-260 of the Records contain drafts of regulation, which are created by lawyers as part of the legislative process. These drafts contain legal advice from lawyers to the government as part of the parliamentary convention.
>
> Pages 221 - 225 contain advice relating to draft regulation and legal considerations. The information was prepared by or for a lawyer of the Public Body in relation to the drafting of regulation.
>
> The Public Body submits that withholding pages 156-192 and pages 221 - 260 under section 27(1)(a),(b)(iii) and (c)(iii) of the FOIP Act is appropriate because they contain information legal advice prepared by and for a lawyer in relation to the provision of legal services. This information must be withheld in order to protect the legislative process of the government.
>
> (Public Body's initial submissions at paras 32-37)

[para 25] From these arguments, I gather that page 22 is a communication between a government lawyer and employees in which the lawyer provides legal advice to the employees. I believe that this record meets the Solosky test and was properly withheld by the Public Body.

[para 26] Regarding pages 42-52, a government lawyer provided a legal review and advice but it did not say that this was a communication between the lawyer and a client. The affidavit provided by the Public Body states that the records in question were communications between "legal counsel and Public Body". Therefore, I find that the Solosky test was met.

[para 27] Pages 156-192 and 226-260 are drafts of a regulation which the Public Body asserts contain legal advice from lawyers to the government as part of the "parliamentary convention". I did not know what parliamentary convention is and I am not convinced that drafts of regulations by themselves would be considered advice. I asked for further information from the Public Body on this point and was advised:

> As stated in the Public Body's Affidavit of October 5, 2017, all lawyers referenced in the records to which solicitor-client privilege is being claimed by the Public Body were employed by the Public Body as barristers and solicitors and acting in their capacity as legal advisors at the time each of these records were created.
>
> The phrase "as part of the parliamentary convention" was used to explain the process by which a lawyer provides legal advice to the Legislature.
>
> (Public Body's supplemental submissions dated January 10, 2018 at paras 20-21)

[para 28] The Affidavit of October 6, 2017 did state:

> I am advised and do believe that all of the lawyers referenced were acting in their capacity as legal advisors in relation to creation of the Records.

[para 29] As I stated above, I asked who advised the employee who swore the Affidavit that the lawyers were acting as legal advisors and the Public Body did not tell me who provided this advice or on what basis. Therefore, I am not convinced that the lawyers involved with these records were acting in their capacity as legal advisors to their clients. As a result, on the information I have, I cannot find that the Solosky test is met for the information on pages 156-192 and 226-260.

[para 30] Pages 221-225 appear to be legal advice on the draft regulations found on pages 226-260. The affidavit provided by the Public Body states that the records in questions were communications between "legal counsel and Public Body". Therefore, I find that the Solosky test was met.

ii. Section 27(2):

[para 31] Section 27(2) of the Act states:

> *27(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.*

[para 32] The Public Body applied section 27(2) of the Act to the records on pages 217-219 of the records at issue. It stated:

> The Public Body also found that pages 217 to 219 contain another public body's legal privilege, and is now claiming section 27(2) to protect that public body's privileged information in the hands of the Public Body. This information was provided by a lawyer for that public body, and the public body has claimed legal privilege over the document. Therefore, the Public Body must withhold the information to provide the privileged information that another public body gave to the Public Body.
>
> The Public Body submits that pages 217 to 219 contains correspondence from another public body's lawyer to the Public Body in the provision of legal services, and section 27(1)(a),(b)(iii) and (c)(iii) of the FOIP Act is appropriately applied.
>
> (Public Body's initial submissions at paras 38-39)

[para 33] These records were not provided to me. I was uncertain how solicitor-client privilege would apply to these records given that they were correspondence to the Public Body from another public body's lawyer. So I asked the Public Body to explain and received this response:

> The other public body referred to in the Public Body's initial submission requested that pages 217 to 219 be withheld under section 27(1)(a), (b)(iii) and (c)(iii) of the FOIP Act.
>
> Under section 27(2) of the FOIP Act, the Public Body must refuse to disclose that relates to a third party's legal privilege. As a result, the Public Body does not have legal authority to waive the claim of privilege of another public body.

> In addition, the Public Body cannot defend the claim of privilege from another public body. It is up to that public body to defend their own claim of privilege.
>
> (Public Body's supplemental submissions dated January 10, 2018 at paras 22-24)

[para 34] The records were in the Public Body's custody and control. As per section 71 of the Act (cited above), the burden of proof is on the Public Body to prove that it properly applied section 27(2) of the Act to the records at issue. I advised the Public Body that it had a standard of proof to meet and asked, once again, how section 27(2) of the Act could apply to the records. In response, it asked that I invite the other public body to participate in the inquiry, and provided me with the other public body's name.

[para 35] As a result, I invited the Alberta Energy Regulator (the Affected Party) to be an affected party. It accepted the invitation and provided me with a submission and sworn affidavit which stated that its lawyer had provided legal advice relating to draft legislation to officials with the Department of Energy, the Public Body, and a lawyer employed by Alberta Justice. In addition, the email was also sent to two other lawyers employed by the Affected Party. The Affected Party further explained that the information was provided at the request of the officials from the Department of Energy and the Public Body and the Affected Party was required to provide the information to these officials because of section 16 of the *Responsible Energy Development Act* that states:

> Disclosure of information to Minister
>
> 16(1) The Regulator shall, on the written request of the Minister, provide to the Minister within the time specified in the request any report, record or other information, including personal information, that is specified in the request.
>
> (2) Where any report, record or other information disclosed by the Regulator to the Minister under subsection (l)
>
> (a) is subject to any kind of confidence, or
>
> (b) is supplied, explicitly or implicitly, in confidence,
>
> the disclosure of that report, record or other information does not waive or negate any confidence attached to that report, record or other information, and the confidence continues for all purposes.

[para 36] The Affected Party argued that the Public Body was required to withhold the information on pages 217-219 pursuant to section 27(2) of the Act. Section 27(2) of the Act is a mandatory exception but in order for it to apply, the information being withheld must be information described in section 27(1)(a) of the Act (which includes solicitor-client privilege).

[para 37] The Affected Party argues that solicitor-client privilege applies to the information on pages 217-219. In order for solicitor-client privilege to apply, the three parts of the Solosky test (cited above) must be met. I do not believe that the information on pages 217-219 of the records at issue, as those were described to me, meet the Solosky test cited above because there does not appear to be a solicitor-client relationship between the Affected Party and the Public Body or any of the recipients of the email found on these pages. The Affected Party is an agency which is a separate public body and not part of the Public Body. Therefore, the Affected Party's lawyer (the solicitor) is employed by the Affected Party (her client) and not the Public Body.

[para 38] The Affected Party did argue that there is a requirement to provide information to the Public Body by operation of section 16 of the *Responsible Energy Development Act*, but did not argue that this requirement made the Public Body a client of the lawyer involved. I also do not see how this requirement creates a solicitor-client relationship. This requirement may be evidence that there is no waiver when the Affected Party is required to provide information subject to solicitor-client privilege to the Public Body, however the evidence provided by the Affected Party establishes that it was asked by the Public Body to provide advice to the Public Body. Therefore, there is no evidence that the information was first developed as advice for and communicated to the Affected Party by its lawyer (making it subject to solicitor-client privilege) and then was later required to be provided to the Public Body pursuant to section 16 of the *Responsible Energy Development Act*. If this were the case the information could arguably still subject to solicitor-client privilege if the claim was not waived.

[para 39] That being said, it does appear as though the information on pages 217-219 of the records at issue is either information prepared by a lawyer of a public body involving the provision of legal services or correspondence between a lawyer of a public body and any other person in relation to a matter involving advice. So, sections 27(1)(b)(iii) or 27(1)(c)(iii) of the Act could apply to these records (though I will not make a finding on that in this Order). In any event, I find that section 27(1)(a) of the Act, and therefore also section 27(2) of the Act, does not apply to pages 217-219.

V. ORDER

[para 40] I make this Order under section 72 of the Act.

[para 41] I find that the Public Body properly applied section 27(1)(a) of the Act to pages 22, 42-52, and 221-225 of the records at issue.

[para 42] I find that the Public Body did not meet its burden to show that it properly claimed solicitor-client privilege over the information in pages 156-192, and 226-260 of the records at issue. I also find that the Public Body did not properly apply section 27(2) of the Act to pages 217-219 of the records at issue. I retain jurisdiction to review the Public Body's application of sections 24 and 27(1)(b) and (c) in another inquiry. In order that I may do so, the Public Body is to provide me with a copy of the unredacted records

at issue with the redactions highlighted, or otherwise noted, and the relevant section numbers of the Act identified on the records.

[para 43] I further order the Public Body to notify me and the Applicant in writing, within 50 days of being given a copy of this order, that it has complied with the order.

_____

Keri H. Ridley
Adjudicator