ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2022-26

May 20, 2022

TOWN OF BEAVERLODGE

Case File Number 005467

Office URL: www.oipc.ab.ca

Summary: An individual made a request to the Town of Beaverlodge (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) for specific records relating to the Beaverlodge Airport.

The Public Body provided responsive records but some information was withheld under sections 17(1), 24(1), 25(1) and 27(1).

The Applicant requested an inquiry into the Public Body's response.

The Adjudicator determined that some information withheld under section 17(1) is information to which that provision does not apply. The Adjudicator found that the remaining information to which that provision was applied was properly withheld.

The Adjudicator found that section 25 does not apply, and ordered the Public Body to disclose the relevant information to the Applicant.

The Adjudicator upheld the Public Body's claim of privilege under section 27(1)(a). Given this finding, the Adjudicator did not need to consider the Public Body's application of section 24 to the same information.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 16, 17, 24, 25, 27, 71, 72

Authorities Cited: AB: Orders F2003-015, F2006-006, F2007-012, F2007-014, F2007-032, F2008-028 F2010-007, F2010-036, F2012-08, F2015-22, F2019-17, F2020-13, F2020-36, F2021-19, F2021-38

Cases Cited: *Blood Tribe v. Canada (Attorney General)*, 2010 ABCA 112 (CanLII), *Canada v. Solosky*, [1980] 1 S.C.R. 821, *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII), *Ontario (Ministry of the Attorney General) v. Ontario (Assistant Information and Privacy Commissioner)*, 2005 CanLII 6045 (ON CA)

I. BACKGROUND

[para 1] An individual made an access request dated November 8, 2016, to the Town of Beaverlodge (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) for:

> Any emails, correspondence and documents that pertain to the Beaverlodge Airport or the hangar at the Beaverlodge Airport.
>
> Any emails, correspondence and documents that pertain to any former or present member of First Five (…).

[para 2] The Public Body's response to the Applicant indicates it located 141 responsive records, providing some to the Applicant and withholding information under sections 17(1), 24(1), 25(1), and 27(1).

[para 3] The Applicant requested a review of the Public Body's response. The Commissioner authorized an investigation to settle the matter. This did not resolve the issues between the parties and the Commissioner agreed to conduct an inquiry.

[para 4] Prior to the inquiry, the Public Body released additional information from Document 66.

II. RECORDS AT ISSUE

[para 5] The records at issue consist of the portion of the 141 records that have not been provided to the Applicant. Most of the records are comprised of five or fewer pages; some records are comprised of as many as a few dozen pages.

III. ISSUES

[para 6] The issues for this inquiry were set out in the Notice of Inquiry, dated January 27, 2022, as follows:

1. Does section 17(1) of the Act (disclosure harmful to personal privacy) apply to the information in the records?

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

3. Did the Public Body properly apply section 25(1) (disclosure harmful to economic and other interests of a public body) to the information in the records?

4. Did the Public Body properly apply sections 27(1) (privileged information) to information in the records?

IV. DISCUSSION OF ISSUES

Preliminary issue – Scope of inquiry

[para 7] In his rebuttal submission, the Applicant raised several issues that do not fall within my jurisdiction to consider under the FOIP Act. For example, the Applicant raised concerns about the manner with which the Public Body conducted its council meetings, whether it is appropriate for a Public Body to use two different email addresses apparently issued by the Public Body, and the practices of council in relation to the airport sale bidding process. None of these matters relate to the issues set out in the Notice of Inquiry, or otherwise relate to the Public Body's obligations under the FOIP Act. Therefore, I will not be addressing these issues in this Order.

[para 8] The Applicant also argued in their rebuttal submission that the records at issue should have included particular council meeting agendas. The Public Body's index of records indicates that all meeting agendas were disclosed to the Applicant in their entirety. If the Applicant is arguing that the Public Body's search for responsive records was not adequate because it did not locate all responsive records, the Applicant should have raised this issue before now. The Applicant did not raise a concern about the Public Body's search in their request for review or request for inquiry. A rebuttal submission is far too late in the process to raise a new issue. Therefore, I will not address this issue in the Order.

[para 9] Lastly, the Applicant requested a new copy of records that include page numbers. The Applicant states that the documents they received were not numbered and were "therefore difficult to correlate." The copy of records provided to me by the Public Body do not include page numbers. However, the records were provided in electronic format, with each document provided separately. This allows me to correlate each document with the description in the Public Body's index of records. This is required when providing records at issue for an inquiry, to ensure the decision-maker can review the Public Body's decisions.

[para 10] In Order F2006-006, the adjudicator ordered a public body to provide an applicant with a numbered copy of the records at issue (at para. 8):

> I do not know whether the records that the Public Body provided to the Applicant had page numbers corresponding to the pages of the file submitted by the Public Body *in camera*. I intend to order that, unless page numbers were already provided to the

Applicant, the Public Body re-provide him with the records with page numbers. This is to allow the Applicant to follow the page references in this Order.

[para 11] In this case, I do not know if the Applicant received an electronic copy of the records, and if so, whether that copy was separated by document like the unredacted copy I received for this inquiry. If the Applicant's copy of the records does not indicate the separate documents by number, corresponding to the index of records, I will order the Public Body to provide a new copy with the document numbers indicated. The Public Body may do so either by making a notation on a paper copy, or by providing an electronic copy separated by document, with the same numbering as the copy provided to this Office, corresponding to the index of records.

Preliminary issue – Public Body's representative

[para 12] In their rebuttal submission, the Applicant raised a concern about the Public Body's counsel representing it in this inquiry. The Applicant states that this counsel also represented the Public Body in relation to the airport, to which the records relate. The Applicant asks whether it is appropriate to permit this counsel to act on behalf of the Public Body in this proceeding.

[para 13] I cannot direct the Public Body as to who will represent it in this inquiry. Past orders have found that any bias or conflict of the Public Body and/or its representative would be cured by the inquiry proceeding (Order F2007-012, F2020-13, F2021-19).

1. Does section 17(1) of the Act (disclosure harmful to personal privacy) apply to the information in the records?

[para 14] The Public Body withheld discrete items of information under section 17(1) in Documents 19, 27 52, 61, 63, 66, 83, 86, 95, 96, 99, 102, 111, and 133. Most of the information consists of names and contact information. Additional information was withheld in Documents 66 and 99.

[para 15] Section 17 states in part:

> *17(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.*
>
> *...*

[para 16] Section 17 is a mandatory exception: if the information falls within the scope of the exception, it must be withheld.

[para 17] Under section 17, if a record contains personal information of a third party, section 71(2) states that it is then up to the applicant to prove that the disclosure would not be an unreasonable invasion of a third party's personal privacy.

[para 18] Section 1(n) defines personal information under the Act:

1 In this Act,

...

(n) "personal information" means recorded information about an identifiable individual, including

(i) the individual's name, home or business address or home or business telephone number,

(ii) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,

(iii) the individual's age, sex, marital status or family status,

(iv) an identifying number, symbol or other particular assigned to the individual,

(v) the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,

(vi) information about the individual's health and health care history, including information about a physical or mental disability,

(vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,

(viii) anyone else's opinions about the individual, and

(ix) the individual's personal views or opinions, except if they are about someone else;

[para 19] Previous orders from this Office have found that section 17 does not apply to personal information that reveals only that the individual was acting in a formal, representative, professional, official, public or employment capacity, unless that information also has a personal dimension (Order F2008-028, para. 54).

[para 20] Where this provision was applied to business contact information (such as work phone numbers of public body employees or business employees), it is not information to which section 17(1) can apply.

[para 21] The Public Body has mostly disclosed contact information for public body employees; however, in a few instances, the Public Body withheld contact information of employees under section 17(1). For example, in Documents 19, 52, 61, 83, 86, 102, 111, email addresses or cell phone numbers are withheld, even though they appear to relate to public body employees, and they appear in the context of the employees performing their work duties. From the context of the records, it appears that these email addresses or cell numbers are the individuals' personal contact information; many emails indicate that public body employees were emailed at both their work addresses and personal addresses. The Public Body has withheld only the contact information that appear to be personal. The Public Body has confirmed this in its initial submission.

[para 22] As well, the Public Body has withheld contact information of some individuals who appear to be acting in a professional capacity for third party businesses or associations (at Documents 96, 111, 133). In its initial submission, the Public Body states that it applied section 17(1) only to personal contact information.

[para 23] Past Orders have found that a home or personal phone number or email address may constitute business contact information such that section 17(1) does not apply, if the contact information is regularly used for work purposes. In Order F2008-028, the adjudicator said (at paras. 60-61):

> Given the foregoing, I find that disclosure of many of the telephone numbers, mailing addresses and e-mail addresses that the Public Body withheld would not be an unreasonable invasion of the personal privacy of third parties. This is where I know or it appears that the third party was acting in a representative, work-related or non-personal capacity and the telephone number, mailing address or e-mail address is one that the third party has chosen to use in the context of carrying out those activities. I point out that a home number, cell number or personal e-mail address (i.e., one not assigned by the public body or organization for which an individual works) may also constitute business contact information if an individual uses it in the course of his or her business, professional or representative activities. In this inquiry, where individuals include a cell number at the bottom of a business-related e-mail or other communication (as on pages 510 and 511), or where individuals send or receive business-related e-mails using what may be a personal e-mail address (as on pages 343 and 345, as well as throughout the records in relation to a communications consultant), I find that disclosure of the telephone number or e-mail address would not be an unreasonable invasion of personal privacy. Section 17 therefore does not apply.
>
> There may sometimes be circumstances where disclosure of a home number or personal e-mail address that was used in a business context would be an unreasonable invasion of personal privacy and therefore should not be disclosed. For instance, on page 328, a home number is included along with a business number and cell number, leading me to presume that the home number is being included for the limited purpose of allowing a specific other person to contact the individual at a number other than the usual business or cell number. I therefore find that section 17 applies.

[para 24] More recent Orders of this Office have accepted that where public body employees use their personal contact information for occasional work use, section 17(1) can apply to that contact information. Order F2020-36 states (at para. 63):

> The fact that public body employees offer to be reached via a personal number or email in a particular situation does not make that number or email business contact information. In the cases described above, it seems clear that the personal contact information was not being offered for long-term or ongoing business contact purposes. I find that section 17(1) can apply to this information; this finding is consistent with past Orders (see Orders F2020-03 at para. 42, F2020-16 at para. 23).

[para 25] I agree with the above analyses, that a personal phone number, email address, or home address can become business contact information if it is used routinely for that purpose, such that section 17(1) does not apply. However, where personal contact

information is provided for ad hoc communications, it remains personal information to which section 17(1) can apply. This is true of private sector employees as well as public body employees.

[para 26] In most cases, the Public Body has withheld personal contact information where it is being used as an alternative method of contact (as opposed to routinely for work purposes). However, there are some instances in which section 17(1) cannot apply.

[para 27] In one instance, the Public Body has withheld the name of a public body employee along with their personal email address, in Document 95. While the email address is personal, the email relates to the individual's work duties. Therefore, section 17(1) can apply to the email address, but not the individual's name.

[para 28] The Public Body has also withheld the name of an individual to whom an email is sent, in Document 83. The name is disclosed in the header of the email, indicating that the copy of the email at Document 83 is from this individual's email account. This, along with the content of the email, indicates that the individual is a public body employee acting in their professional capacity. Nothing in the record indicates that there is a personal dimension to this information. As such, section 17(1) cannot apply to the name withheld in Document 83.

[para 29] The contact information for individuals at Document 133 appears on a government grant application form. The individuals, whose names have been disclosed, are acting in a representative capacity, on behalf of an association. Given the context of the record, it appears that the contact information provided by the individuals is the usual contact information used in their capacity as association representatives. Therefore, section 17(1) cannot apply.

[para 30] Names, signatures, and contact information of third party individuals acting only in a personal capacity have been withheld under section 17(1). Most of the names appear in correspondence with a public body. That is all personal information of those individuals to which section 17(1) can apply.

[para 31] Document 66 contains an email from a third party individual. The Public Body has withheld the individual's name and email address, as well as one other paragraph in the email, under section 17(1). I agree that this paragraph could identify the individual who sent the email, such that section 17(1) can apply.

[para 32] Additional information of a third party individual was withheld in Document 86; I agree that this is information to which section 17(1) can apply.

[para 33] Additional information of a third party individual was withheld in Document 99, which is comprised of a letter from the individual to the Public Body. The Public Body has withheld the name and contact information of the individual, as well as three additional sections in the main body of the letter. I agree that this additional information could identify the individual, such that section 17(1) can apply.

[para 34] Lastly, the Public Body has withheld the Applicant's email address under section 17(1) in Document 63, while disclosing the remainder of the information in the record. Section 17(1) does not apply to an applicant's own personal information, unless it is intertwined with other information the public body is permitted or required to withhold and that other information cannot be severed. That is not the case for Document 63, and the Public Body cannot withhold the Applicant's email address under section 17(1).

[para 35] The remaining discussion in this section of the Order relates only to the information to which I have found that section 17(1) can apply.

Application of sections 17(2) – 17(5)

[para 36] Sections 17(2) and (3) refer to circumstances in which disclosure of personal information is not an unreasonable invasion of privacy. None of the parties have argued that any provisions of sections 17(2) or (3) are relevant and, from the face of the records, none appear to apply.

[para 37] Section 17(4) lists circumstances in which disclosure is presumed to be an unreasonable invasion of privacy. The Public Body has argued section 17(4)(g) applies to all of the information withheld under section 17(1). This provision states:

> *17(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if*
>
> *...*
>
> *(g) the personal information consists of the their party's name when*
>
> *(i) it appears with other personal information about the third party, or*
>
> *(ii) the disclosure of the name itself would reveal personal information about the third party*

[para 38] This provision applies to all of the personal information to which section 17(1) may apply.

[para 39] Section 17(5) is a non-exhaustive list of factors to consider in determining whether disclosing personal information would be an unreasonable invasion of privacy. The Public Body states that none of the factors set out in this section apply so as to weigh in favour of disclosing the personal information.

[para 40] Under section 71 of the Act, the Applicant bears the burden of showing that the personal information to which section 17(1) applies should be disclosed. The Applicant did not provide arguments regarding the Public Body's application of section 17(1). Nothing in the materials provided by the Applicant relates to personal information of third parties in the records, or to circumstances that would weigh in favour of

disclosing the personal information (for example, that disclosure is necessary for public scrutiny, per section 17(5)(a)).

[para 41] Given the above, there are no factors weighing in favour of disclosing information to which section 17(1) applies. As at least one presumption applies to weigh against disclosure, I find that the Public Body is required to continue to withhold that information. I do not need to consider whether the other factors discussed in the Public Body's submissions also weigh against disclosure.

[para 42] This finding does not apply to the information to which I found section 17(1) cannot apply.

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

[para 43] The Public Body applied section 24(1) to the same records over which it claimed privilege under section 27(1)(a). For the reasons discussed in the relevant section of this Order, I find that section 27(1)(a) applies to those records. Therefore, I do not need to decide if section 24(1) also applies.

3. Did the Public Body properly apply section 25(1) (disclosure harmful to economic and other interests of a public body) to the information in the records?

[para 44] The Public Body applied section 25(1) to the numbers appearing at the bottom of a cheque from the County of Grande Prairie.

[para 45] Section 25(1) states:

> *25(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to harm the economic interest of a public body or the Government of Alberta or the ability of the Government to manage the economy, including the following information:*
>
> *(a) trade secrets of a public body or the Government of Alberta;*
>
> *(b) financial, commercial, scientific, technical or other information in which a public body or the Government of Alberta has a proprietary interest or a right of use and that has, or is reasonably likely to have, monetary value;*
>
> *(c) information the disclosure of which could reasonably be expected to*
>
> *(i) result in financial loss to,*
>
> *(ii) prejudice the competitive position of, or*
>
> *(iii) interfere with contractual or other negotiations of,*
>
> *the Government of Alberta or a public body;*

> *(d) information obtained through research by an employee of a public body, the disclosure of which could reasonably be expected to deprive the employee or the public body of priority of publication.*

[para 46] The Supreme Court of Canada has clearly enunciated the test to be used in access-to-information legislation wherever the phrase "could reasonably be expected to" is found (such as in section 18(1)(a)). In *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII), the Court stated:

> Given that the statutory tests are expressed in identical language in provincial and federal access to information statutes, it is preferable to have only one further elaboration of that language; *Merck Frosst*, at para. 195:
>
> > I am not persuaded that we should change the way this test has been expressed by the Federal Courts for such an extended period of time. Such a change would also affect other provisions because similar language to that in s. 20(1)(c) is employed in several other exemptions under the Act, including those relating to federal-provincial affairs (s. 14), international affairs and defence (s. 15), law enforcement and investigations (s. 16), safety of individuals (s. 17), and economic interests of Canada (s. 18). In addition, as the respondent points out, the "reasonable expectation of probable harm" test has been followed with respect to a number of similarly worded provincial access to information statutes. Accordingly, the legislative interpretation of this expression is of importance both to the application of many exemptions in the federal Act and to similarly worded provisions in various provincial statutes. [Emphasis added.]
>
> This Court in *Merck Frosst* adopted the "reasonable expectation of probable harm" formulation and it should be used wherever the "could reasonably be expected to" language is used in access to information statutes. As the Court in *Merck Frosst* emphasized, the statute tries to mark out a middle ground between that which is probable and that which is merely possible. An institution must provide evidence "well beyond" or "considerably above" a mere possibility of harm in order to reach that middle ground: paras. 197 and 199. This inquiry of course is contextual and how much evidence and the quality of evidence needed to meet this standard will ultimately depend on the nature of the issue and "inherent probabilities or improbabilities or the seriousness of the allegations or consequences": *Merck Frosst*, at para. 94, citing *F.H. v. McDougall*, 2008 SCC 53 (CanLII), [2008] 3 S.C.R. 41, at para. 40.

[para 47] The Supreme Court of Canada has made it clear that there is one evidentiary standard to be used wherever the phrase "could reasonably be expected to" appears in access-to-information legislation. There must be a reasonable expectation of probable harm, and the Public Body must provide sufficient evidence to show that the likelihood of any of the above scenarios is "considerably above" a mere possibility.

[para 48] The Public Body applied section 25(1) to bank account information of another public body, found on a copy of a cheque (in Document 8). The Public Body argues (initial submission, at paras. 20-22, footnotes omitted):

> 20. The OIPC has previously agreed that information including such things as a public body's credit card numbers, bank authorization codes, internal accounting codes, internal cost centre numbers, general ledger codes, account information and bank account numbers may be withheld under section 25(1) of the *Act*.
>
> 21. The redacted portion of Document 8 is the bank account and branch information at ATB Financial for the County of Grande Prairie No. 1. This is the financial information of a public body that, if disclosed, could reasonably be expected to be harmful to that public body.
>
> 22. The banking information is clearly the financial information of the County of Grande Prairie No. 1. There is a potential that such financial information could be utilized to obtain access to the public body's financial accounts. The disclosure of this information could reasonably be expected to result in financial loss to the public body. For instance, void cheques are often provided for the purposes of direct deposits and withdrawals. Such information is treated as confidential, is not publically available, and this information should not be disclosed to the public.

[para 49] In Order F2019-17, I followed Order MO-2070 of the Ontario Information and Privacy Commissioner's Office, which found that cheques are a common method of payment that generally does not carry any expectations of confidentiality. I noted further that this reasoning was followed in Alberta Order F2007-032 (at para. 56).

[para 50] In Order F2003-015, former Commissioner Work accepted that section 25(1)(c) applied to a public body's account and credit information with a courier company. He found that such information needs to be kept confidential "to avoid other persons charging courier services on its account" (at para. 61).

[para 51] In Order F2021-38, the adjudicator accepted that credit card numbers, bank account numbers and internal financial codes could be used to harm the Public Body financially if the information were to become public.

[para 52] I agree that credit card numbers and other account numbers could cause harm if disclosed. However, the nature of a cheque is that it is provided by a payer to a payee without an expectation of confidentiality. It may be that chequing account numbers are distinguishable from other bank account numbers for this reason; in other words, it may be that section 25(1)(c) can apply to other bank account numbers, but not to chequing account numbers where they appear on copies of cheques that have been provided to another party.

[para 53] Given the context in which the account numbers appear, I find that section 25(1) cannot apply.

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

[para 54] The Public Body applied section 27(1)(a) to information in Documents 40, 56, 58, 91, 92, 100, 101, 103, 108, 116, and 122. The Public Body provided me with copies of these records.

[para 55] 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 56] 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 57] 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.

Section 27(1)(a) – Solicitor-client privilege

[para 58] The test to establish whether communications are subject to solicitor-client privilege is set out by the Supreme Court of Canada in *Canada v. Solosky*, [1980] 1 S.C.R. 821. The Court said:

> … privilege can only be claimed document by document, with each document being required to meet the criteria for the privilege--(i) a communication between solicitor and client; (ii) which entails the seeking or giving of legal advice; and (iii) which is intended to be confidential by the parties.

[para 59] The requirements of this privilege are met if information is a communication between a solicitor and a client, which was made for the purpose of seeking or giving of legal advice and intended to be kept confidential by the parties.

[para 60] Solicitor-client privilege can also extend past the immediate communication between a solicitor and client. In *Blood Tribe v. Canada (Attorney General)*, 2010 ABCA 112 (CanLII), the Alberta Court of Appeal stated (at para 26):

> 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 61] In Order F2015-22, the adjudicator summarized the above, concluding that "communications between a solicitor and a client that are part of the necessary exchange of information between them so that legal advice may be provided, but which do not actually contain legal advice, may fall within the scope of solicitor-client privilege" (at para. 76). I believe this is a well-established extension of the privilege.

[para 62] The Public Body also argued that lawyers' bill of account are presumptively privileged. In *Ontario (Ministry of the Attorney General) v. Ontario (Assistant Information and Privacy Commissioner)*, 2005 CanLII 6045 (ON CA), the Ontario Court of Appeal addressed the presumption of privilege with respect to bills of account as follows (at para 12):

> … In determining whether disclosure of the amount paid could compromise the communications protected by the privilege, we adopt the approach in *Legal Services Society v. Information and Privacy Commissioner of British Columbia* (2003), 2003 BCCA 278 (CanLII), 226 D.L.R. (4th) 20 at 43-44 (B.C.C.A.). If there is a reasonable possibility that the assiduous inquirer, aware of background information available to the public, could use the information requested concerning the amount of fees paid to deduce or otherwise acquire communications protected by the privilege, then the information is protected by the client/solicitor privilege and cannot be disclosed. If the requester satisfies the IPC that no such reasonable possibility exists, information as to the amount of fees paid is properly characterized as neutral and disclosable without impinging on the client/solicitor privilege. Whether it is ultimately disclosed by the IPC will, of course, depend on the operation of the entire Act.

[para 63] More recently in *University of Calgary v. Alberta (Information and Privacy Commissioner)*, 2019 ABQB 950, the Court confirmed that a lawyer's

bill of account is presumptively privileged, and the onus is on the requestor to rebut the presumption.

[para 64] The Public Body states (initial submission, at para. 35):

> It is submitted that the records to which section 27(1)(a) has been applied by the Public Body (as noted in the Index of Records provided to the OIPC):
>
> a. consist of communications between the Public Body and its legal counsel;
>
> b. entail communications pursuant to which the Public Body is providing relevant background information and seeking legal advice or the Public Body's legal counsel is providing legal advice; and
>
> c. are intended to be and have been treated as confidential.

[para 65] The Public Body also provided an affidavit sworn by its Deputy Chief Administrative Officer, confirming that the information to which privilege has been claimed continues to be treated as confidential.

[para 66] The Public Body's initial submission specifically addresses records over which privilege has been claimed that do not explicitly contain the seeking or giving of legal advice, stating (initial submission, at para. 36):

> To the extent that any records do not specifically contain legal advice or do not include an explicit reference to a request for legal advice, those communications are part of the necessary exchange of information between the Public Body and its legal counsel so that legal advice may be provided. These communications also reveal the identity of the person providing advice. Moreover, as noted above, the "legal advice" is not confined to telling the client the law; it includes what should be done in the relevant context.

[para 67] Having reviewed the records, I can confirm that Documents 40, 56, 91, 92, 101, 108, 116 and 122 contain communications between the Public Body and its lawyers relating to the giving or seeking of legal advice and/or is a continuum of such communications.

[para 68] Document 58 is described in the Public Body's initial submission as a communication between the Public Body's former Chief Administrative Officer and former Mayor, discussing legal advice that had been provided to the Public Body. It is clear from the record that these parties are in a position to make recommendations and decisions about the legal advice received. I agree that this information falls within the continuum of communications such that privilege applies.

[para 69] The Public Body states it claimed privilege over portions of legal invoices in Documents 100 and 103. In these records, the Public Body has disclosed disbursements and fees, but withheld information that details the services provided. I agree that the withheld information is privileged.

[para 70] I find that the Public Body properly applied section 27(1)(a) to the information in the records.

Section 27(1)(a) – Exercise of discretion

[para 71] Past Orders of this Office have found that once solicitor-client privilege has been established, withholding the information is usually justified for that reason alone (see Orders F2007-014, F2010-007, F2010-036, and F2012-08 citing *Ontario (Public Safety and Security) v. Criminal Lawyers' Association* (cited above, at para. 71).

V. ORDER

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

[para 73] I find that section 17(1) does not apply to the information described at paragraphs 27-29 and 34. I order the Public Body to disclose this information to the Applicant.

[para 74] I find that the Public Body properly withheld personal information to which section 17(1) applies.

[para 75] I find that section 25(1) does not apply to the information in Document 8. I order the Public Body to disclose this information to the Applicant.

[para 76] I find that section 27(1)(a) applies to the information withheld under that provision. Given this finding, I do not need to consider the Public Body's application of section 24 to the same information.

[para 77] In order to allow the Applicant to understand the references in this Order to the various records at issue, under section 72(4) I direct the Public Body to provide a new copy of the records indicating the document/record number, as set out at paragraph 11 of this Order.

[para 78] I further order the Public Body to notify me and the Applicant in writing, within 50 days of receiving a copy of this Order, that it has complied with the Order.

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Amanda Swanek
Adjudicator