



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-1001

Appeal M-9700146

City of Elliot Lake



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NATURE OF THE APPEAL:

The City of Elliot Lake (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to a copy of a specific legal opinion provided to the City by its solicitors. The City denied access to the two-page report with attachments on the basis of the following exemption:

- solicitor-client privilege - section 12.

The requester appealed the decision to deny access to the record.

This office provided a Notice of Inquiry to the City and the appellant. Representations were received from both parties.

DISCUSSION:

SOLICITOR-CLIENT PRIVILEGE

Section 12 of the Act states:

A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation.

This section consists of two branches, which provide a head with the discretion to refuse to disclose:

1. a record that is subject to the common law solicitor-client privilege (Branch 1);
and
2. a record which was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation (Branch 2).

The City relies on Branch 1 of the exemption.

In order for the record to be subject to the common law solicitor-client privilege (Branch 1), the City must provide evidence that the record satisfies either of the following tests:

1. (a) there is a written or oral communication, **and**
(b) the communication must be of a confidential nature, **and**
(c) the communication must be between a client (or his agent) and a legal advisor, **and**

[IPC Order M-1001/September 12, 1997]

- (d) the communication must be directly related to seeking, formulating or giving legal advice;

OR

- 2. the record was created or obtained especially for the lawyer's brief for existing or contemplated litigation.

[Orders 49, M-2 and M-19]

The City states that the record consists of a letter containing legal advice from its solicitors. The City submits that the written advice was provided in confidence, was treated by the City as a "confidential privileged communication" and was never made part of the City's public record. The City states that the record contains an interpretation of a statute and therefore, relates directly to the giving of legal advice.

The appellant argues that in referring to the legal opinion in public, the City has waived the solicitor-client privilege. In my view, reference by the City to the fact that legal advice was obtained, does not, in any way, compromise the solicitor-client relationship. Nor does it convey an intent to waive the solicitor-client privilege.

The appellant states that access to the record should be granted as there is a high degree of community interest. The appellant has therefore, indirectly raised the possible application of the public interest override in section 16 of the Act. However, section 12 is not included among the exemptions listed in section 16 and therefore, section 16 does not apply.

I have carefully reviewed the record in conjunction with the representations of the parties. I am satisfied that the record is a written communication of a confidential nature prepared by the City's legal advisors and that the contents of the letter relate directly to the giving of legal advice. I find, therefore, that the record is subject to the common law solicitor-client privilege and is exempt under Branch 1 of the section 12 exemption.

ORDER:

I uphold the decision of the City.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ September 12, 1997