



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1475**

**Appeal MA-000375-1**

**Dufferin-Peel Catholic District School Board**



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## **NATURE OF THE APPEAL:**

This is an appeal under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from a decision of the Dufferin-Peel Catholic District School Board (the Board), for access to information. The requester, now the appellant, specifically sought access to any correspondence from individuals who were in his employ at the time his contract with the Board was terminated.

The Board located nine responsive records, identified as records A1 through to A9, and granted partial access to them. It denied access to records A5 and A7, in their entirety, relying on the exemptions at sections 14 and 38(b) (invasion of personal privacy) and section 12 (solicitor-client privilege).

During mediation of this appeal, the Board agreed to release record A8 and page 2 of record A7. The appellant also agreed that he is no longer seeking access to page 1 of record A7. Records A8 and A7 are no longer at issue.

Mediation of this appeal was not successful. I sent a Notice of Inquiry to the Board, initially, summarizing the facts and issues of this appeal. The Board returned representations. I then sent a Notice to the appellant, together with a copy of the Board's complete representations. Notices were also sent to several individuals (affected persons), two of which were returned as "undeliverable". Neither the appellant nor any of the affected persons returned submissions.

## **RECORD:**

There is one record at issue in this appeal, record A5, which consists of a two-page letter to the Board.

## **DISCUSSION:**

### **SOLICITOR-CLIENT PRIVILEGE**

#### **Introduction**

The Board claims that the section 12 exemption applies to record A5. This section reads:

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

Section 12 encompasses two heads of privilege, as derived from the common law: (i) solicitor-client communication privilege; and (ii) litigation privilege. In order for section 12 to apply, the institution must establish that one or the other, or both, of these heads of privilege apply to the records at issue [Order PO-1879].

While the Board provided no response to this issue in its representations, the materials before me suggest the application of solicitor-client communication privilege.

## **Solicitor-Client Communication Privilege**

### ***Introduction***

Solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining professional legal advice. The rationale for this privilege is to ensure that a client may confide in his or her lawyer on a legal matter without reservation [Order P-1551].

This privilege has been described by the Supreme Court of Canada as follows:

... all information which a person must provide in order to obtain legal advice and which is given in confidence for that purpose enjoys the privileges attaching to confidentiality. This confidentiality attaches to all communications made within the framework of the solicitor-client relationship ... [*Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 at 618, cited in Order P-1409]

The privilege has been found to apply to “a continuum of communications” between a solicitor and client:

. . . the test is whether the communication or document was made confidentially for the purposes of legal advice. Those purposes have to be construed broadly. 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 communications and meetings between the solicitor and client ... 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 [*Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.), cited in Order P-1409].

I have reviewed record A5 and it is a letter to the Board signed by several of the appellant's former employees. The materials before me indicate that the Board faxed a copy of this letter to its legal counsel, together with a request for legal advice. The Board's legal counsel subsequently notified the appellant, in writing, that the information contained in record A5 was relied upon to terminate his contract.

Based on the foregoing, I am satisfied that the information contained in record A5 constitutes direct communication of a confidential nature between a solicitor and client for the purpose of obtaining professional legal advice.

I find that record A5 qualifies for exemption under section 12 of the *Act*.

**ORDER:**

I uphold the Board's decision.

Original Signed By: \_\_\_\_\_ October 12, 2001 \_\_\_\_\_  
Dora Nipp  
Adjudicator