Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER PO-2672

Appeal PA-040158-1

Ontario Realty Corporation

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BACKGROUND AND NATURE OF THE APPEAL:

The requester submitted a request to the Ontario Realty Corporation (the ORC) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to:

- the [ORC's] total expenses from each entity it used in a specified civil action; and
- a copy of the final [named chartered accountant firm] audit report prepared for the government relating to that action.

The ORC issued a decision letter, granting the requester access to the individual and total amounts for three invoices from the named chartered accountant firm dating from the year 2000. These figures had previously been disclosed. The ORC explained that the total figure represents a portion of the total costs relating to the services of the named chartered accountant firm reflected in the accounting record. With respect to the remaining information, the ORC stated that it had located two records responsive to the request and denied access to them pursuant to the exemptions found under sections 14(1)(f) (right to a fair trial), 17(1)(a) and (c) (third party information), 18 (economic and other interests) and 19 (solicitor client privilege) of the *Act*. The ORC subsequently clarified that with respect to the section 18 exemption, it is relying on sections 18(1)(c), (d) and (e).

In addition, a portion of the above request regarding legal costs relating to the civil action and the connected forensic review was transferred by the ORC to Management Board of Cabinet (MBC).

MBC located one record responsive to the request and issued a decision letter stating that in addition to the outside legal consultants hired, MBC had also hired an external accountant in relation to the relevant matter and that costs relating to that service had also been calculated to form part of the record. MBC denied access to the information pursuant to the exemptions found under sections 17(1)(a) and (c) (third party information) and 19 (solicitor client privilege) of the *Act*.

The appellant appealed both decisions. Appeal PA-040158-1 was opened to address the issues pertaining to the decision made by ORC and PA-040159-1 was opened to deal with the MBC decision. During the processing of these two appeals, discussions and correspondence at times dealt with each one separately and at times dealt with both appeals. This order will address only the issues raised in Appeal PA-040158-1.

PROCESS DURING THE MEDIATION AND ADJUDICATION STAGES

Mediation did not resolve the issues on appeal, and the file was transferred to the inquiry stage of the appeal process.

This office sent a Notice of Inquiry to the ORC, initially, seeking its representations. A copy of the Notice was also sent to seven parties (the affected parties) that might have an interest in the disclosure of the records.

The ORC made submissions in response to the Notice. None of the affected parties made representations. This office then sent the Notice to the appellant, inviting representations and

enclosing a copy of the entire representations submitted by the ORC.

After this office sent out the Notice to the appellant, the ORC and MBC submitted joint supplementary representations. These were also sent to the appellant in their entirety. The appellant then provided this office with submissions jointly referencing the two appeals and attached a number of court decisions to support his submissions.

This office sought representations in reply from the ORC, and provided the non-confidential portions of the appellant's representations to it. The ORC provided additional submissions by way of reply, which were then shared with the appellant, who submitted further representations by way of sur-reply to this office.

Following the rendering of a significant decision by the Court of Appeal in *Ontario (Attorney General) v. Ontario (Assistant Information and Privacy Commissioner)* [2005] O.J. No. 941 (C.A.), the parties to the appeal were again invited to provide this office with additional submissions regarding the impact the decision might have on the outcome of the present appeal. The ORC and MBC submitted joint representations in response to this invitation.

This office later issued Orders PO-2483 and PO-2484 which applied the approach from the *Attorney General* case to records containing information relating to legal accounts. The parties were invited to make submissions on the relevance of these orders. Again, both the ORC and MBC provided this office with additional representations.

RECORDS:

There are two records at issue in this appeal:

> Record 1 is a one-page document entitled "Ontario Realty Corporation, Details of Costs – Forensic, Environmental Review and Civil Litigation – From March 2000 to March 9, 2004" which lists the total payments made to a law firm, four accounting firms and two consulting firms. The ORC is claiming the application of the exemptions in sections 17(1)(a) and (c) and 19 of the *Act* to this record.
>
> Record 2 is a five-page document, dated August 2001, prepared by an accounting firm and addressed to General Counsel at the ORC and Senior Legal Counsel at Management Board Secretariat. The ORC is claiming the application of the exemptions in sections 14(1)(f), 17(1)(c), 18(1)(c), (d) and (e) and 19 of the *Act* for this record.

DISCUSSION:

SOLICITOR CLIENT PRIVILEGE

The ORC has claimed the application of the discretionary exemption at section 19 for both of the

records at issue in this appeal. At the time of the request, section 19 read as follows:

> 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.

General principles

Section 19 contains two branches as described below. The institution must establish that one or the other (or both) branches apply.

Branch 1: common law privilege

Branch 1 of the section 19 exemption encompasses two heads of privilege, as derived from the common law: (i) solicitor-client communication privilege; and (ii) litigation privilege. In order for branch 1 of section 19 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-2538-R; *Blank v. Canada (Minister of Justice)* (2006), 270 D.L.R. (4th) 257 (S.C.C.) (also reported at [2006] S.C.J. No. 39)].

Solicitor-client communication privilege

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 or giving professional legal advice [*Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.)].

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].

The privilege applies to "a continuum of communications" between a 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 [*Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.)].

The privilege may also apply to the legal advisor's working papers directly related to seeking, formulating or giving legal advice [*Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27].

Confidentiality is an essential component of the privilege. Therefore, the institution must demonstrate that the communication was made in confidence, either expressly or by implication [*General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.)].

Litigation privilege

Litigation privilege protects records created for the dominant purpose of existing or reasonably contemplated litigation [Order MO-1337-I; *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); see also *Blank* (cited above)].

In *Solicitor-Client Privilege in Canadian Law* by Ronald D. Manes and Michael P. Silver, (Butterworth's: Toronto, 1993), pages 93-94, the authors offer some assistance in applying the dominant purpose test, as follows:

> The "dominant purpose" test was enunciated [in *Waugh* v. *British Railways Board*, [1979] 2 All E.R. 1169] as follows:
>
> > A document which was produced or brought into existence either with the dominant purpose of its author, or of the person or authority under whose direction, whether particular or general, it was produced or brought into existence, of using it or its contents in order to obtain legal advice or to conduct or aid in the conduct of litigation, at the time of its production in reasonable prospect, should be privileged and excluded from inspection.
>
> It is crucial to note that the "dominant purpose" can exist in the mind of either the author or the person ordering the document's production, but it does not have to be both.
>
> . . . . .
>
> [For this privilege to apply], there must be more than a vague or general apprehension of litigation.

Branch 2: statutory privileges

Branch 2 is a statutory exemption that is available in the context of counsel employed or retained by an institution giving legal advice or conducting litigation. The statutory exemption and common law privileges, although not necessarily identical, exist for similar reasons.

Statutory solicitor-client communication privilege

Branch 2 applies to a record that was "prepared by or for Crown counsel for use in legal advice."

Statutory litigation privilege

Branch 2 applies to a record that was prepared by or for Crown counsel "in contemplation of or

for use in litigation."

Application of section 19 to Record 2

Representations of the parties

The ORC takes the position that the report which comprises Record 2 is exempt under the litigation privilege aspect of Branch 2 of section 19. It argues that the report was prepared as a forensic accounting report that was supplied to litigation counsel for the ORC and MBS for the purpose of assisting legal counsel in providing legal advice in the course of litigation involving the ORC and MBS. The ORC relies on the decision of the Divisional Court in *Ontario (Attorney General) v. Donald Hale et al.,* (1995) 85 O.A.C. 229 (Div. Ct.) where a forensic accounting report was found to fall within the ambit of Branch 2 of section 19 on the basis that it had been prepared for Crown counsel for use in giving legal advice and for use in litigation.

The appellant argues that the ORC has failed to provide sufficiently detailed and convincing evidence to demonstrate that the forensic report was prepared for the dominant purpose of litigation that was either existing at the time or reasonably contemplated. The appellant submits that the ORC has not specified when the record was originally prepared, as opposed to the date it was provided to, counsel for the ORC and MBS. He goes on to argue that there is no evidence to establish that the dominant purpose behind the creation of the forensic report was litigation, as opposed to simply establishing "what happened?"

The ORC counters these arguments in reply by arguing that the test under Branch 2 of section 19 does not include reference to the "dominant purpose" for the creation of the record, as would be required under common-law litigation privilege as contemplated in Branch 1. Rather, the statutory exemption in Branch 2 exists in addition to the common law privilege articulated in Branch 1 and that it is significantly wider in scope.

In its sur-reply submissions, the appellant maintains that the appropriate test for litigation privilege under Branch 2 continues to include the requirement that the dominant purpose for which the record was created be examined in order to determine whether it falls within the scope of the provision.

Findings with respect to Record 2

Branch 2 arises from the latter part of section 19, and in particular, the reference to a record "…that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation." It is a statutory exemption that is available in the context of Crown counsel giving legal advice or conducting litigation. As is clear from the statutory text, Branch 2 does *not* incorporate the common law "dominant purpose" test for litigation privilege.

Record 2 is a report which summarizes the activities undertaken by a named accounting firm at the request of the ORC and MBS. The report was provided directly to counsel for the ORC and

MBS by the accounting firm and addresses a number of specific issues. The report sets out in detail the chronology of events leading to the retention of the accounting firm and the evolving mandate given to it by the ORC and MBS as its investigations unfolded.

Based on the contents of the record itself, it is clear that the forensic report from the accounting firm was prepared for Crown counsel with both MBS and the ORC to assist them in advising their clients about legal matters relating to various impugned real estate transactions and other issues. The report clearly describes in detail all of the steps taken by the accounting firm to fulfill this mandate and make determinations of fact that would assist counsel in preparing legal advice to their clients about the actions to be taken. In addition, the report describes the conclusions reached by the accounting firm during the course of its investigations and the recommendations it made to counsel about the types of actions they might advise their clients on.

I conclude that Record 2 was prepared for ORC counsel, who I find qualifies as "Crown counsel" for the purposes of section 19, in advising his or her clients as to the manner in which the pending litigation involving the ORC would be conducted. I agree with the ORC that the document was prepared in order to provide counsel with information to assist in the provision of legal advice to his or her clients. Accordingly, based on my review of the contents of the record and the representations of the parties, I find that the forensic accounting report described above as Record 2 falls within the ambit of the litigation privilege aspect of Branch 2 of the section 19 exemption. As a result of this finding, it is not necessary for me to also determine whether this record is subject to the discretionary exemptions in sections 14(1)(f) or 18(1)(c), (d) or (e) or the mandatory exemption in section 17(1)(c).

Application of section 19 to Record 1

As indicated above, Record 1 consists of a list of payments made to a law firm, four accounting firms and two consulting firms. I note that six of the seven amounts listed in Record 1 pertain to payments made by the ORC to accounting firms and consultants, none of whom are legal counsel. Clearly, solicitor client privilege cannot apply to information that relates to payments made to organizations that are not law firms as the privilege only extends to the solicitor-client relationship and not to those involving accountants or consultants and their clients. As a result, the sole amount listed on Record 1 that could be subject to section 19 is that relating to payments made to a law firm.

Representations of the parties

The law firm, though notified by this office and invited to make submissions, declined to do so.

The ORC has provided representations to this office on several occasions when invited to do so. Its position remains the same, arguing that the dollar amount paid by the ORC to the law firm is subject to exemption under section 19. In its original submissions, the ORC acknowledges that "there is jurisprudence which provides that solicitor-client privilege does not apply to legal costs records in relation to completed litigation matters."

However, it then goes on to argue that in situations where litigation is ongoing, "individuals can make repeated access requests under [the *Act*] for an institution's ongoing legal costs and discover information subject to solicitor-client privilege." In support of these arguments, the ORC relies on the decision of the British Columbia Supreme Court in *Municipal Insurance Association of British Columbia v. British Columbia (Information and Privacy Commissioner)* (1996) 143 D.L.R. (4d) 134 and the decision of the Supreme Court of Canada in *Maranda v. Richer* [2003] S.C.R. 193, arguing that the requester bears the onus of satisfying this office that the disclosure of the information in the record would not disclose privileged information.

The ORC also argues that the information in Record 1 is subject to exemption by reason of the application of the litigation privilege aspect of Branches 1 and 2 of section 19. It states that Record 1 "has been provided to counsel for the purpose of providing legal advice relating to the litigation. Accordingly, it forms part of the working papers of counsel in the litigation…"

Findings

In Order MO-2294, Adjudicator Laurel Cropley recently reviewed the current jurisprudence respecting the application of the equivalent provision to section 19 in the *Municipal Freedom of Information and Protection of Privacy Act* to the dollar amounts paid for legal fees by institutions. She reviewed first whether this type of information qualifies for exemption under Branch 1 of the exemption, which covers information that is subject to solicitor-client privilege at common law, finding that:

> At the time I sought supplementary representations from the City and affected parties regarding these two decisions, Order PO-2484 was the subject of a pending application for judicial review (Tor. Doc. 394/06 (Div. Ct.)). Order PO-2483 has not been subject to such an application. On July 16, 2007, the Divisional Court dismissed the Ministry of the Attorney General's application to set aside Order PO-2484 (*Ontario (Ministry of the Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2007] O.J. No. 2769 (Div. Ct.)). The Divisional Court upheld the Senior Adjudicator's decision that the bottom line legal fee amounts appearing on legal accounts were not exempt under the solicitor-client privilege exemption at section 19 (the provincial *Act* equivalent to section 12 of the *Act*).
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> Although they differ in their particulars, Orders PO-2483 and PO-2484 both conclude by requiring disclosure of aggregated fees and disbursements.
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> In Order PO-2483, Senior Adjudicator Higgins carefully described the progression of jurisprudence relating to the application of privilege to information about lawyer's fees. Specifically, he quotes extensively from the decision of the Supreme Court of Canada in *Maranda* and relies on the reasoning contained therein. He states:

Maranda involved the search of a lawyer's office for documents relating to fees and disbursements charged to a client suspected of money laundering. The Supreme Court judgment in *Maranda* sets out a new approach for determining the application of privilege to lawyers' billing information. Unlike previous cases on this subject, the Supreme Court adopts the principle that information about lawyer's fees is presumptively privileged. The presumption of privilege is rebutted where the information is "neutral", i.e. does not disclose, either directly or inferentially, information that is subject to solicitor-client privilege.

In formulating this approach, the Supreme Court rejects the "facts" and "communications" distinction as the sole or primary basis for the rule in relation to privilege as applicable to lawyers' billing information. This distinction had been discussed in the context of legal billing information in *Stevens v. Canada (Privy Council)* (1998), 161 D.L.R. (4th) 85 (F.C.A.) ("*Stevens*", discussed in more detail below), and was also relied on by the Quebec Court of Appeal in that court's *Maranda* decision. The Supreme Court states (at paras. 30-33):

> [The] rule cannot be based on the distinction between facts and communication… The distinction is made in an effort to avoid facts that have an independent existence being inadmissible in evidence. It recognizes that not everything that happens in the solicitor-client relationship falls within the ambit of privileged communications…
>
> However, *the distinction does not justify entirely separating the payment of a lawyer's bill of account, which is characterized as a fact, from acts of communication, which are regarded as the only real subject of the privilege*.
>
> *The existence of the fact consisting of the bill of account and its payment arises out of the solicitor-client relationship and of what transpires within it. That fact is connected to that relationship, and must be regarded, as a general rule, as one of its elements*.

> Because of the difficulties inherent in determining the extent to which the information contained in lawyers' bills of account is neutral information, and the importance of the constitutional values that disclosing it would endanger, recognizing a presumption that such information falls *prima facie* within the privileged category will better ensure that the objectives of this time-honoured privilege are achieved. That presumption is also more consistent with the aim of keeping impairments of solicitor-client privilege to a minimum.… [emphases added]

The decision goes on to find that the approach set forth in *Maranda* applies in both the criminal and the civil context, in accordance with the approach taken by the Court of Appeal in *Attorney General*. In that decision, the Court of Appeal set out the test for rebuttal of the presumption of privilege as follows:

> The presumption will be rebutted if there is no reasonable possibility that disclosure of the amount of the fees paid will directly or indirectly reveal any communication protected by the privilege. 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), 226 D.L.R. (4^{th}) 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.

In Order PO-2483, Senior Adjudicator Higgins summarized the above-noted approach as follows:

> Accordingly, in determining whether or not the presumption has been rebutted, the following questions will be of assistance: (1) is there any reasonable possibility that disclosure of the amount of the fees paid will directly or indirectly reveal any communication protected by the privilege? (2) Could an assiduous inquirer, aware

> of background information, use the information requested to deduce or otherwise acquire privileged communications? If the information is neutral, then the presumption is rebutted. If the information reveals or permits solicitor-client communications to be deduced, then the privilege remains.

I agree with this analysis. Applying this approach to my consideration of the application of the solicitor-client communication privilege aspect of Branch 1 of section 19 to the dollar figure for legal fees contained in Record 1, I come to a similar conclusion. While each case must be determined on its own merits, I conclude that the present facts support a finding that the presumption against disclosure has been rebutted. In my view, the dollar figure for legal fees must be characterized as "neutral" information, thereby rebutting the presumption that the information is subject to solicitor-client communication privilege either at common law or in the context of communication privilege in Branch 1 of section 19. I find that the disclosure of this information cannot reasonably lead to the revealing of any solicitor-client communication, nor would it reveal any "strategic" information that falls within the ambit of a privileged communication to anyone, even the most assiduous requester.

In addition, I find that the ORC has failed to provide me with sufficient evidence to enable me to make a finding that Record 1 was provided to counsel "for the purpose of providing legal advice relating to the litigation." The record consists of a short list of accounting and law firm names along with dollar amounts. In my view, it defies logic to argue that such information could be used by counsel to provide legal advice. I find that the ORC has not provided me with sufficient evidence to establish the existence of a connection between this information and any legal advice the may have been tendered by the solicitor to his or her client. As a result, I find that the communication privilege aspect of Branch 2 of section 19 also has no application to the information in Record 1.

Similarly, I find that I have not been provided with sufficient evidence to support a finding that Record 1 was prepared by or for Crown counsel "in contemplation of or for use in litigation", as is required under the litigation privilege aspect of Branches 1 or 2 of section 19. The information does not relate to, nor was it created to aid in the conduct of the litigation. Accordingly, the information does not qualify under the litigation privilege aspect of section 19.

I conclude that the dollar value of legal fees contained in Record 1 is not exempt from disclosure under section 19. As a result, none of the information in Record 1 is subject to the section 19 exemption. I will now examine whether it qualifies under the mandatory exemption in section 17(1), as claimed by the ORC.

THIRD PARTY INFORMATION

The ORC submits that all of Record 1 is subject to the mandatory third party information exemptions in sections 17(1)(a) and (c). These sections state:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

(a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

(c) result in undue loss or gain to any person, group, committee or financial institution or agency;

General principles

Section 17(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions [*Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.)]. Although one of the central purposes of the *Act* is to shed light on the operations of government, section 17(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace [Orders PO-1805, PO-2018, PO-2184, MO-1706].

For section 17(1) to apply, the institution and/or the third party must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and

2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and

3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b), (c) and/or (d) of section 17(1) will occur.

Part 1: type of information

The ORC submits that Record 1 contains information that qualifies as financial and commercial information belonging to the accounting and law firms. It argues that the information relates directly to the value of the services performed by these entities for the ORC.

Commercial information is information that relates solely to the buying, selling or exchange of merchandise or services. This term can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises [Order PO-2010].

The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information [P-1621].

Financial information refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples of this type of information include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs [Order PO-2010].

Based on my review of the information contained in Record 1, I am satisfied that it relates directly to the supply of legal and accounting services to the ORC arising from the commercial relationship that existed between these parties. Accordingly, I find that part one of the test under section 17(1) has been satisfied.

Part 2: supplied in confidence

Supplied

The requirement that it be shown that the information was "supplied" to the institution reflects the purpose in section 17(1) of protecting the informational assets of third parties [Order MO-1706].

Information may qualify as "supplied" if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party [Orders PO-2020, PO-2043].

Based on the context in which these figures appear in Record 1, I am satisfied that the information in this document was supplied by the accounting and law firms to the ORC as it relates directly to the fees charged by these firms to the ORC for their services.

In confidence

In order to satisfy the "in confidence" component of part two, the parties resisting disclosure, in this case the ORC and the accounting and law firms, must establish that the supplier had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was provided. This expectation must have an objective basis [Order PO-2020].

In determining whether an expectation of confidentiality is based on reasonable and objective grounds, it is necessary to consider all the circumstances of the case, including whether the information was

- communicated to the institution on the basis that it was confidential and that it was to be kept confidential

- treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the government organization

- not otherwise disclosed or available from sources to which the public has access

- prepared for a purpose that would not entail disclosure [Order PO-2043]

The accounting and law firms listed in Record 1 were notified of this appeal and chose not to submit representations in response to the Notice of Inquiry.

The ORC submits that there exists an expectation of confidentiality as the amounts listed therein are derived from billings for the supply of litigation support services to the ORC. It has not, however, provided me with any indication of the terms surrounding the retainer of each of these firms upon which an expectation of confidentiality could be based. In my view, the ORC has not provided sufficient evidence to support a finding that the information in Record 1 was provided to the ORC with a reasonably-held expectation that it would be treated confidentially. In the absence of evidence from the accounting and law firms, and owing to the dearth of evidence on this point tendered by the ORC, I find that this part of the three-part test under section 17(1) has not been satisfied.

As all three parts of the test must be met in order for the information to be found to be exempt under section 17(1), I find that this exemption does not apply to Record 1. As no other exemptions have been claimed and none which are mandatory apply, I will order that Record 1 be disclosed to the appellant.

ORDER:

1. I order the ORC to disclose Record 1 to the appellant by providing him with a copy by **June 16, 2008** but not before **June 10, 2008.**

2. I uphold the ORC's decision to deny access to Record 2.

3. In order to verify compliance with Order Provision 1, I reserve the right to require the ORC to provide me with a copy of Record 1.

Original signed by: May 9, 2008
Donald Hale
Adjudicator