



**Information and Privacy
Commissioner/Ontario**

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

INTERIM ORDER MO-2346-I

Appeal MA07-253

Town of Erin



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NATURE OF THE APPEAL:

The Town of Erin (the Town) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

...all files, financial expenses incurred, and records pertaining to [the requester] and the property located at [requester's address] Erin from the Town (Township) of Erin and its agents. These are to include all costing incurred and moneys paid for:

- legal,
- Adjusters Canada [named individual],
- Triton Engineering [named individual],
- Land Surveyor [named individual],
- Staff hours,
- Litigation with Justice [name], Ontario Superior Court of Justice [date] (Court File [#]),
- Frank Cowan Insurance,
- and any and all agents used by the Town of Erin.

The Town located responsive records and denied access to them pursuant to section 12 (solicitor-client privilege) of the *Act*.

The requester, now the appellant, appealed the Town's decision.

During the course of mediation, the Town issued a revised decision letter granting partial access to the responsive records. The Town provided a List of Documents, listing the exemptions and severances. In this list, the Town claimed the application of the following exemptions to the undisclosed records:

- section 7(1) (advice to government),
- section 10(1) (third party information),
- section 11 (economic or other interests),
- section 12 (solicitor-client privilege),
- sections 38(a), (b), (c), (c.1) (discretion to deny access to requester's personal information).

The appellant advised the mediator that he did not wish to pursue access to the severed portions of the records that contain names of employees. Accordingly, the portions of records containing the names of employees are no longer at issue in this appeal. However, the appellant wished to pursue access to all other severed portions of the responsive records.

The appellant also advised the mediator that he is of the view that additional records exist in response to his request including, but not limited to:

- records dating back to 1988;

- additional invoices from Adjusters Canada, Crawford Adjusters, Aviva Canada, and Frank Cowan;
- records in relation to the litigation, the land surveyor;
- reports to the Town from insurance providers; and,
- costs associated with the defense of the Town's position and for the Ontario Court.

As mediation was not successful in resolving the issues in this appeal, the file was transferred to me to conduct an inquiry. I sent a Notice of Inquiry, setting out the facts and issues in this appeal to the Town, initially, seeking its representations. The Town then provided the appellant with a supplemental decision letter and additional disclosure, stating in its decision letter that the appellant had clarified his request to include records that consisted only of invoices. In a subsequent letter, it also claimed that it had now disclosed to the appellant all of the records that are responsive to his request as clarified, save and except for those records claimed to be exempt under section 12 of the *Act*.

The appellant responded to the Town's supplemental decision and follow-up letters and disputed the Town's claim that he clarified his request to include only invoices. He continued to seek disclosure of the information severed from the records, except for employee names, and also disagreed with the Town's claim that he had been provided with all responsive records. As a result, I sent a Supplementary Notice of Inquiry to the Town seeking its representations on the scope of the appellant's request, the reasonableness of the Town's search for records and the applicability of section 38(a) in conjunction with the section 12 exemption to the information severed from the records. I received representations from the Town, a complete copy of which was sent to the appellant, along with a Notice of Inquiry. I received representations from the appellant in response.

RECORDS:

The records at issue consist of:

- ten invoices from a law firm to the Town. The severed information consists of the description of legal services provided and the hourly breakdown for these services; and,
- one cheque payable to the Town in the amount of \$658.51. The undisclosed information consists of the identifying numbers, the bank, the date of the cheque and the reason the cheque was issued.

In addition, the appellant claims that additional responsive records exist.

DISCUSSION:

SCOPE OF THE REQUEST

I will first determine the scope of the appellant's request.

Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
 - (a) make a request in writing to the institution that the person believes has custody or control of the record;
 - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and

.

- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour [Orders P-134, P-880].

The Town submits that:

On June 14, 2007 [the appellant] verbally clarified his request with [the Town Clerk] and with the Town Manager - that he was only seeking copies of invoices paid by the municipality relating to his legal dispute with the Town relating to [appellant's address] and, more specifically, invoices relating to Adjusters Canada, Triton Engineering, [named] Land Surveyor and Frank Cowan Insurance. This clarification was subsequently confirmed in the Town's letter [to the appellant]...

In response, the appellant submits that additional records exist and that he is not in agreement with the Town regarding a verbal agreement altering his request under the *Act*. He continues to request any and all documentation regarding his name and his property, as outlined in the original request.

Analysis/Findings

The appellant submitted his request by means of a letter to the Town Clerk dated June 5, 2007. In this letter, the appellant stated that he is “requesting direction from the Town Clerk [name], as to the protocol for obtaining this information and the timelines required by the *Act* for compliance.” I have set out the request in detail above.

On June 19, 2007, the Town Clerk responded in writing as follows:

In response to your request under the [*Act*] for access to records relating to your property located at [address].

Access has been denied due to solicitor-client privilege and the pending litigation...

In July 2007, the appellant filed an appeal with this office. To his appeal form, he attached a copy of his June 5, 2007 request letter and stated in this form the following concerning how he believed the appeal could be resolved:

- that the [Town] disclose all the information requested in the June 5, 2007 letter...

On September 28, 2007, the Town issued another decision letter granting the appellant partial access to 36 records along with an index to these records. These records included not only invoices, but also an activity detail report, an adjuster’s payment worksheet, five letters, a copy of one cheque, one handwritten note and one receipt.

On November 14, 2007, I sent the Notice of Inquiry in this appeal to the Town. Thereafter, on November 30, 2007, the Town wrote the appellant and for the first time in writing stated that the appellant had verbally clarified his request with the Town to include invoices only. The appellant has since that time consistently denied that he narrowed his request in this way.

Taking into account the correspondence and records identified thus far in this appeal, along with the parties’ representations, I find that I have insufficient evidence to conclude that the appellant’s request was narrowed to include only invoices. Therefore, I conclude that the appellant’s request encompasses the following information (without the inclusion of employee names):

...all files, financial expenses incurred, and records pertaining to [the appellant] and the property located at [appellant’s address] Erin from the Town (Township) of Erin and its agents. These are to include all costing incurred and moneys paid for:

- legal,
- Adjusters Canada [named individual],

- Triton Engineering [named individual],
- Land Surveyor [named individual],
- Staff hours,
- Litigation with Justice [name], Ontario Superior Court of Justice [date] (Court File [#]),
- Frank Cowan Insurance,
- and any and all agents used by the Town of Erin.

SEARCH FOR RESPONSIVE RECORDS

I will now determine whether the Town conducted a reasonable search for records responsive to the full request.

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17 [Orders P-85, P-221, PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624].

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

The Town was asked to provide a written summary of all steps taken in response to the request. In particular, the Town was asked to respond to the following, preferably in affidavit form:

1. Did the institution contact the requester for additional clarification of the request? If so, please provide details including a summary of any further information the requester provided.
2. If the institution did not contact the requester to clarify the request, did it:
 - (a) choose to respond literally to the request?
 - (b) choose to define the scope of the request unilaterally? If so, did the institution outline the limits of the scope of the request to the requester? If yes, for what reasons was the scope of the request defined this way? When and how did the institution inform the requester of this decision? Did

the institution explain to the requester why it was narrowing the scope of the request?

3. Please provide details of any searches carried out including: by whom were they conducted, what places were searched, who was contacted in the course of the search, what types of files were searched and finally, what were the results of the searches? Please include details of any searches carried out to respond to the request.
4. Is it possible that such records existed but no longer exist? If so please provide details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.

If the Town provides an affidavit it should be from the person or persons who conducted the actual search and it should be signed and sworn or affirmed before a person authorized to administer oaths or affirmations.

In response, the Town provided statutory declarations from its Town Manager, Clerk, Deputy Treasurer and Director of Finance/Treasurer. It summarized the searches outlined in these declarations, as follows:

Deputy Treasurer: reviewed the Town's records to verify that there were not any additional invoices relating to this matter.

Director of Finance/Treasurer: reviewed the work undertaken by the Deputy Treasurer; conducted searches to identify whether any other responsive records existed; and reviewed the Town's insurance files and audit reports.

Town Manager: searched her own files to locate any responsive records.

Clerk: reviewed the Town Manager's and Building Department files to identify any responsive records. In addition, contacted Triton Engineering and requested them to review their records. Their review of their records did not provide any additional invoices. Also contacted the Town's insurance adjusters and asked them to review their files.... [Named individual of] Crawford Adjusters, then referred to as Adjusters Canada, advised that he was unable to check their records because they would have been destroyed. He also advised that he could not recall any situation where their firm would have invoiced the Town for any services in relation to this matter and that if any information about the costs of the litigation had been provided to the Town that it would have come directly from the insurer, Frank Cowan & Company, and not from the adjusters.

The Town provided me with a copy of its record retention schedule, which is outlined in By-law #06-92 of the former Township of Erin. According to the Town, this by-law only required records to be retained for a period of seven years. The Town submits that records maintained by the former Township, particularly those describing its record-keeping and destruction practices, were not complete. It states that:

Once the appellant commenced his lawsuit against the former Township of Erin in 1998, Frank Cowan Insurance Company assumed complete control of the file. The Town of Erin did not incur costs associated with the defense of that litigation. The insurance provider did not provide the Town with any information or records relating to the costs associated with the defense of the appellant's litigation.

In response to the appellant's statement that the Town did not provide the costs reflected in the Town's Claims Audit reports relating to his property, the Claims Audit report provided by Frank Cowan Company Limited in 1997 did not even identify the subject property as an item in the report and the Claims Audit reports provided by Frank Cowan Company Limited covering the period from 1994 to 2001 had no value identified for the subject property.

In response, the appellant repeated his request and also stated that:

I have also provided a detailed file of records that I faxed to your office that I believe do exist and have not been produced. I have not seen the costs associated with the creation of these records.

My position is that additional records exist. I am not in agreement with the Municipality regarding a verbal agreement altering my request from the Municipality under the *Act*. I have and continue to request any and all documentation regarding our name and our property.

This consistent request to the Town of Erin has not been met. They have not provided the costs incurred and reported to the municipality from the trial. They have established that this is due to client solicitor privilege. It is my position that I am entitled to this information.

This information is reported to the Council on an annual basis. This data is used to set subsequent insurance rates that the Municipality must pay and is the justification for these increases. It seems very reasonable that these records exist...

Analysis/Findings

The appellant's request was for all files, financial expenses incurred, and records pertaining to him and his property.

The Town has specifically searched for responsive invoices. The Town has provided the appellant with the invoices concerning the financial expenses incurred and paid relating to the appellant and his address. Therefore, I find that the Town has satisfied the part of the appellant's request concerning invoices pertaining to the appellant and his address.

However, as I found above, the appellant's request encompasses more than invoices. The appellant's request concerns records that identify the appellant by name or address in the Town's possession. Based on the wording of the appellant's request, and the Town's response to it, including its representations to me, I find that the appellant has not been provided with copies of all of the Town's files and records pertaining to himself and his address. As a result, I will order the Town to conduct another search for these files and records, except for the invoices concerning the appellant or his address.

PERSONAL INFORMATION

I will now determine whether the records contain "personal information" as defined in section 2(1) and, if so, to whom it relates. The term "personal information" is defined in section 2(1) as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

The appellant's request was made on June 5, 2007. Effective April 1, 2007, the *Act* was amended by adding sections 2(3) and 2(4). These amendments apply only to appeals involving requests that were received by institutions after that date. Section 2(3) modifies the definition of the term "personal information" by excluding an individual's name, title, contact information or designation which identifies that individual in a "business, professional or official capacity". Section 2(4) further clarifies that contact information about an individual who carries out business, professional or official responsibilities from their dwelling does not qualify as "personal information" for the purposes of the definition in section 2(1).

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

The Town has severed information from 11 responsive records. Ten of the 11 records are invoices from a law firm to the Town. What has been severed from these invoices is a description of the legal services provided, along with the hourly breakdown for these services. The remaining record is a copy of a cheque to the Town from an insurance company, with the identifying numbers, the bank, the date of the cheque and the reason the cheque was issued severed.

Neither of the parties addressed directly whether the records at issue contain personal information. However, upon my review of the invoices, I find that they contain only the personal information of the appellant. This personal information consists of the appellant's name

which appears with other personal information relating to him, namely, as outlined in the Town's representations, that he was involved in a potential lawsuit in his personal capacity. I find that this qualifies as his personal information under paragraph (h) of the definition of that term in section 2(1).

The Town maintains that it disclosed to the appellant all of the information in the responsive records, which it claimed consisted only of invoices, save and except for the information severed under section 12. In its letters and representations, it did not specifically address the severance of the information in the cheque. A staff member from this office contacted the Town to determine which exemptions applied to the severances in the cheque. The Town advised that it was relying on the exemptions in section 38(b) (personal privacy) and section 38(c.1) (evaluative or opinion material) with respect to the severances made to the cheque and was not able to identify the portions of the cheques to which these exemptions relate. These exemptions had not originally been identified by the Town in any of its decision letters or in its List of Documents as applying to the cheque.

Both sections 38(b) and 38(c.1) are discretionary exemptions that are applicable if a record contains personal information. Upon my review of the cheque, which is part of Document number 13 in the Town's List of Documents, I find that it does not, in fact, contain any personal information whatsoever. As no other exemptions have been claimed for this cheque by the Town in its discussion with the staff member of this office, I will order the Town to disclose this record to the appellant.

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/SOLICITOR-CLIENT PRIVILEGE

In the present appeal, the remaining records at issue identified as responsive to this point consist of ten invoices to the Town for work performed by a law firm with respect to a property grading dispute that the appellant had been having with the Town concerning his home. The appellant has already received the total fees and the disbursements amounts invoiced by the law firm to the City for each invoice, along with the dates of each invoice and the breakdown of dates the work was performed by the law firm.

The records at issue are typical lawyers' invoices or statements of account containing narrative entries in chronological order. What has been severed from the invoices is the description of the services provided, the initials of the individual within the named law firm who provided the services identified in each entry, the number of hours spent, and the fee for each entry. The invoices at issue are dated between May 2005 and May 2007.

I will now determine whether the discretionary exemption at section 38(a) in conjunction with the section 12 exemption apply to the severed information in the ten invoices.

Section 36(1) gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right.

Under section 38(a), an institution has the discretion to deny an individual access to their own personal information where the exemptions in sections 6, 7, 8, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that information.

Section 12 states as follows:

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.

Section 12 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 12 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 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-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)].

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 [Order MO-2190].

These records consist of invoices for legal services that were provided to the Town. The Town indicates that it relies on both the branch 1 common law solicitor-client communication privilege and also that the records were “prepared by or for counsel ... retained by an institution” under branch 2. The Town submits that:

...the appellant and his spouse have been in litigation or anticipated litigation with the Town over issues relating to grading and drainage of their property for many years... All of the invoices provided to the appellant either relate directly to that litigation, preparation leading up to that litigation or matters arising out of the judicial decision in that litigation.

On April 6, 2005, the appellant’s spouse wrote to the Town seeking clearances relating to the grading and drainage of their property, again threatening litigation if the issue was not resolved “as soon as possible”. Over the next two years or more, the Town’s insurance adjuster, the Town’s engineering consultant and the

Town's lawyer were again actively involved in investigating and responding to the appellant's complaints and attempting to settle this threatened pending litigation. The appellant hired legal counsel who represented him from 2005 until July 6, 2007 in settlement discussions which culminated in a settlement that both the appellant's legal counsel and the Town's legal counsel recommended to their respective clients...

The communications are confidential between our solicitor and the Town as they reflect actions and activities undertaken by our solicitor on behalf of the Town in the course of his retainer relating to advising the Town regarding the appellant's threat of further litigation.

The appellant did not address this issue in his representations.

I will begin by considering the application of the branch 1 solicitor-client communication privilege to the information severed from the invoices.

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].

In Orders PO-2483 and PO-2484, Senior Adjudicator John Higgins analyzed in detail the state of the law in relation to the common law solicitor-client communication privilege under branch 1 concerning legal billing information. In particular, these orders address the presumption of privilege as applied to legal billing information in *Maranda v. Richer*, [2003] 3 S.C.R. 193, in which the Supreme Court of Canada found that legal billing information is subject to a rebuttable presumption of solicitor-client communication privilege. This presumption is rebutted where it

can be shown that the legal billing information in question is “neutral”, *i.e.*, it does not disclose confidential solicitor-client communications or other privileged information.

In Order PO-2483, Senior Adjudicator Higgins summarized the criteria to be applied to the issue of whether legal billing information is subject to the presumption of privilege set out in the *Maranda* decision, in the context of the application of common law solicitor-client privilege under branch 1:

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.

Applying these standards to legal statements of account, in Order PO-2483 Senior Adjudicator Higgins agreed that narrative descriptions of services rendered, identifying particular activities and how much time was spent on each, would reveal privileged information.

I adopt this approach for the purposes of the present appeal since the records before me are legal invoices, as was the case in Order PO-2483. Accordingly, I am satisfied that the presumption of privilege applies to them, subject to the question of whether that presumption has been rebutted. As noted above, the following questions will be of assistance in determining whether the presumption rebutted in this case: (1) is there any reasonable possibility that disclosure of the invoices 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?

As noted above, the records at issue in this appeal involve the actual legal bills provided by the Town’s counsel (an outside private law firm) for legal services provided. The undisclosed information includes the line-by-line narrative description of services rendered, and the fees charged for each.

I find the appellant to be an “assiduous” requester with background knowledge that could assist him in inferring information which represents privileged communication in the records, if they were disclosed in their entirety. Disclosing the narrative portions of each invoice accompanied by the number of hours spent by counsel during each period, would allow inferences to be drawn about the nature of the activities and/or strategies employed by the Town’s counsel during the period, particularly if that information is combined with the appellant’s detailed knowledge of the history of the case [see Orders MO-2211, MO-2190, PO-2483 and PO-2484]. In addition, I find that disclosure of the undisclosed information in the invoices would reveal privileged information about the solicitor-client relationship, permitting inferences to be drawn about the

instructions given, as well as revealing or permitting accurate inferences to be drawn about the precise legal services provided. In my view, all this information is subject to the solicitor-client communication privilege at common law. I conclude that branch 1 of section 12 applies to the information at issue in the legal invoices. Having made this finding, it is not necessary from me to consider whether branch 2 of the section 12 exemption also applies to it.

Accordingly, I find that the presumption of privilege is not rebutted for the severed information in the ten legal invoices. This information is, therefore, subject to my discussion below of the Town's exercise of discretion, exempt under section 38(a), in conjunction with section 12.

EXERCISE OF DISCRETION

I will now determine whether the Town exercised its discretion under section 38(a) and, if so, whether I should uphold this exercise of discretion.

The section 38(a) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations

In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 43(2)].

Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant [Orders P-344, MO-1573]:

- the purposes of the *Act*, including the principles that
 - information should be available to the public
 - individuals should have a right of access to their own personal information
 - exemptions from the right of access should be limited and specific

- the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information

The Town submits that:

[It] determined that the severed information was solicitor-client privileged. The Town has provided the appellant with the severed records, including the gross total paid to the solicitor in relation to this matter and a partial detailed breakdown. The release of any further information would provide the appellant with information about the detailed activities of the Town's solicitor in advising the Town in relation to this matter. Such information is properly within the scope of solicitor client privilege and litigation privilege and could potentially prejudice the Town in any future litigation.

The appellant did not address this issue in his representations.

Analysis/Findings

I find that the Town exercised its discretion in a proper manner, taking into account relevant factors and not taking into account irrelevant factors, in denying the appellant access to the information in the ten legal invoices.

Accordingly, I uphold the Town's exercise of discretion and find that the severed information in the ten legal invoices is properly exempt under section 38(a) in conjunction with section 12.

ORDER:

1. I order the Town to disclose to the appellant the undisclosed information in the cheque that is part of Document number 13 by **October 23, 2008**.
2. In order to verify compliance with paragraph 1 of this order, I reserve the right to require the Town to provide me with a copy of the record disclosed to the appellant pursuant to provision 1, only upon request.
3. I uphold the Town's decision to deny access to the severed information in the ten legal invoices.
4. I order the Town to conduct another search for the files and records concerning the appellant or his address, except for the invoices concerning the appellant or his address, up until the date of the appellant's request. I order the Town to provide me with an affidavit sworn by the individual(s) who conducted the search, confirming the nature and extent of the search conducted for the responsive records within 30 days of this interim order. At a minimum the affidavit should include information relating to the following:
 - a) information about the employee(s) swearing the affidavit describing his or her qualifications and responsibilities;
 - b) the date(s) the person conducted the search and the names and positions of any individuals who were consulted;
 - c) information about the type of files searched, the search terms used, the nature and location of the search and the steps taken in conducting the search; and,
 - d) the results of the search.
5. The affidavit referred to above should be sent to my attention, c/o Information and Privacy Commissioner/Ontario, 2 Bloor Street East, Suite 1400, Toronto, Ontario, M4W 1A8. The affidavit provided to me may be shared with the appellant, unless there is an overriding confidentiality concern. The procedure for the submitting and sharing of representations is set out in IPC Practice Direction 7.
6. If, as a result of the further search, the Town identifies any additional records responsive to the request, I order the Town to provide a decision letter to the appellant, with a copy to me, regarding access to these records in accordance with the provisions of the *Act*, considering the date of this order as the date of the request.

7. I remain seized of this appeal in order to deal with any outstanding issues arising from this appeal.

Original signed by: _____

Diane Smith
Adjudicator

September 23, 2008 _____