

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER PO-3245

Appeal PA11-454

Ministry of Community Safety and Correctional Services

August 28, 2013

Summary: The appellant requested records relating to the monies paid by the ministry to a named solicitor for representing two named individuals, including any invoices for such payments. In response to the request, the ministry created a record which summarized the payment information, and included a list of specific payments, as well as the total amount of the payments. The ministry denied access to the record on the basis of the exemptions in section 19 (solicitor-client privilege) and 21(1) (personal privacy). This order finds that the itemized information in the record is presumptively privileged, and qualifies for exemption under section 19, but that the total amount does not qualify for exemption, and is to be disclosed.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of "personal information") and 19.

Orders and Investigation Reports Considered: PO-1922, PO-2484, PO-3207.

Cases Considered: *Maranda v. Richer*, [2003] 3 S.C.R. 193; *Ontario (Ministry of the Attorney General) v. Ontario (Information and Privacy Commissioner)* [2007] O.J. No. 2769 (Div. Ct.); *Ontario (Ministry of the Attorney General) v. Ontario (Information and Privacy Commissioner)* [2007] O.J. No. 2769.

OVERVIEW:

[1] The Ministry of Community Safety and Correctional Services (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records of the "monies paid to [a named solicitor] for performing his role as defence lawyer for [two named individuals]." The request also stated:

Records sought include invoices, the number assigned to it, and amount of money associated with each invoice. If possible, could the date of invoice be included or, in default, the date range from first to last invoice. ... In addition, if provided different set of invoices, records showing how much [the named solicitor] was paid to argue the Judicial Review....

[2] The ministry notified certain parties whose interests may be affected by disclosure (the affected parties) of the request, as required by section 28 of the *Act*. One of the affected parties provided submissions (on its own behalf and on behalf of the other two affected parties) in support of the position that certain exemptions in the *Act* applied to the records.

[3] After receiving the affected party's submissions, the ministry issued a decision denying access to the requested information pursuant to sections 19 (solicitor-client privilege) and 21(1) (personal privacy), with reference to the factor in section 21(2)(f) and the presumption in section 21(3)(b) of the *Act*.

[4] The appellant appealed the ministry's decision.

[5] During mediation, the ministry provided this office with a record it created in response to the request, which consists of a single page listing the dates and the amount of the payments made to a named law firm, along with a brief, general description of the payments. The record also identifies the total amount paid to the law firm. The appellant indicated that access to this created record would satisfy his request.

[6] Mediation did not resolve this appeal, and it was transferred to the inquiry stage of the appeal process. I sent a Notice of Inquiry to the ministry and the affected parties, initially.

[7] The ministry provided representations in response to the Notice of Inquiry. The affected parties did not provide representations.

[8] I then sent the Notice of Inquiry, along with a copy of the non-confidential portions of the ministry's representations, to the appellant. The appellant provided representations in response.

Preliminary matter

[9] In this appeal, the record at issue was created by the ministry, and is titled "Payments to [a named law firm] by [the ministry] for the [identified proceedings]." It consists of a single page listing the dates and the amount of the payments made to a named law firm, along with a general description for each payment. It also includes an amount identifying the total payment made.

[10] Because the request in this appeal included a request for the invoices for the payments made to the law firm, and because the ministry created this record as a result of this request, I will consider the listed payments made to the identified law firm as a summary of the information taken from the legal invoices. In these circumstances, I find that this information constitutes legal billing information.

[11] Furthermore, although the affected parties did not provide representations in response to the Notice of Inquiry, one of the affected parties did provide submissions to the ministry (on its own behalf and on behalf of the other two affected parties) at the request stage. I note that in those submissions, the affected party appears to suggest that some of the information in the record might not be responsive to the request. However, in the absence of any additional representations, and based on the ministry's actions in creating the responsive record and with the appellant's agreement, I will consider the identified record as the record responsive to the request.

RECORDS:

[12] The record at issue is a single page listing the dates and the amounts of the payments made to a named law firm, along with a general description for each payment. It also includes an amount identifying the total payment made.

ISSUES:

- A. Does the solicitor-client privilege exemption in section 19 apply to the withheld information?
- B. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- C. If the record contains personal information, would disclosure constitute an unjustified invasion of privacy pursuant to section 21(1) of the *Act*?

DISCUSSION:

Issue A. Does the solicitor-client privilege exemption in section 19 apply to the withheld information?

[13] Section 19 of the *Act* states as follows:

A head may refuse to disclose a record,

(a) that is subject to solicitor-client privilege;

(b) that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation; or

(c) that was prepared by or for counsel employed or retained by an educational institution for use in giving legal advice or in contemplation of or for use in litigation.

[14] Section 19 contains two branches as described below. Branch 1 arises from the common law and section 19(a). Branch 2 is a statutory privilege and arises from section 19(b), or in the case of an educational institution, from section 19(c). The institution must establish that at least one branch applies.

Branch 1: common law privilege

[15] 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.¹

Solicitor-client communication privilege

[16] 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.²

[17] The rationale for this privilege is to ensure that a client may confide in his or her lawyer on a legal matter without reservation.³

¹ Order PO-2538-R; *Blank v. Canada (Minister of Justice)* [2006] S.C.J. No. 39.

² *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).

³ Orders PO-2441, MO-2166 and MO-1925.

[18] 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.⁴

[19] The privilege may also apply to the legal advisor’s working papers directly related to seeking, formulating or giving legal advice.⁵

[20] 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.⁶

Litigation privilege

[21] Litigation privilege protects records created for the dominant purpose of litigation, actual or reasonably contemplated.⁷

[22] In *Solicitor-Client Privilege in Canadian Law*,⁸ 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. ...

⁴ *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.).

⁵ *Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27.

⁶ *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.).

⁷ Order MO-1337-I; *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); see also *Blank v. Canada (Minister of Justice)* (cited above).

⁸ Ronald D. Manes and Michael P. Silver, (Butterworth’s: Toronto, 1993), pages 93-94.

[For this privilege to apply], there must be more than a vague or general apprehension of litigation.

Legal fees and billing information

[23] The question of whether legal billing information, including legal fees, is subject to solicitor-client privilege at common law has been the subject of many recent judicial decisions. The Supreme Court of Canada dealt with the issue in *Maranda v. Richer*,⁹ (*Maranda*) which found this information to be presumptively privileged unless it can be characterized as “neutral.”

[24] In determining whether or not the presumption of privilege 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.¹⁰

[25] The parties were asked to address the question of whether the presumption of privilege in relation to legal billing information has been rebutted in this case.

Representations

[26] The ministry begins its representations by confirming that the request relates to the amount that was paid by the ministry to the named law firm in relation to the named counsel’s representation of two identified individuals in certain specified legal proceedings. It then identifies the nature of the legal proceedings, and confirms that, during the course of the proceedings, certain motions were made to the courts, some of which resulted in cost orders in favour of the two individuals. The ministry confirms that the proceedings have ended.

[27] The ministry also states that, for the purposes of the request, it created the record which the requester confirmed was responsive to his request, and this became the responsive record for the purposes of this appeal. The ministry states:

⁹ [2003] 3 S.C.R. 193.

¹⁰ Order PO-2484, upheld on judicial review in *Ontario (Ministry of the Attorney General) v. Ontario (Information and Privacy Commissioner)* [2007] O.J. No. 2769 (Div. Ct.). See also *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 941 (C.A.); *Waterloo (City) v. Copley* 2010 ONSC 6522.

That record is a single page document including a chart which sets out the date, amount and general description of the payments made to the law firm by the Ministry in relation to the legal proceedings that are the subject of the access request. The chart also sets out a total amount paid by the Ministry to the law firm in relation to the legal proceedings in question. ...

There are four items listed in the chart setting out the monies paid by the Ministry to the law firm, along with a total amount. ...

[28] The ministry takes the position that the release of the information in the record would breach solicitor-client privilege. It states that the current law in Canada with respect to legal billing information is that it is "presumptively privileged" under branch 1 of section 19 unless the information is "neutral." In the confidential portions of its representations the ministry reviews the nature of the payments made to the law firm, and argues that disclosure of each of these payments, including the "general description" of the payments, would reveal solicitor-client privileged information, as this information is covered by the litigation privilege.

[29] The ministry also submits that legal billing information, including legal fees, is subject to solicitor-client privilege at common law. It states:

In *Maranda*,¹¹ the court found that billing amounts are presumptively privileged but that the presumption can be rebutted if it can be shown that no privileged information could be discerned from the billing information at issue.

[30] The ministry then refers to the specific record at issue, and states:

As previously noted, the responsive record is a record that was created by the Ministry for the purposes of the request. The record includes a chart that sets out certain payments that were made to the law firm in question as well as the total payment made. Disclosure of the total amount ... would enable the requester to subtract those publicly available ... payments from the total and determine the remaining amount, which as submitted above, is an amount to which section 19 applies. As such, disclosure of the total amount paid would have the effect of indirectly providing the requester with information that is protected pursuant to section 19. It is the Ministry's submission that the presumption that billing amounts are privileged has not been rebutted in this case.

¹¹ Cited above.

[31] In the confidential portions of its representations, the ministry refers to the specified amounts and the descriptions contained in the record, in support of its position that disclosure would reveal solicitor-client privileged information.

[32] The appellant's representations focus on the fact that the amounts paid to legal counsel in this appeal were paid from public funds. He also refers in some detail to four specific examples of situations where amounts invoiced and paid to lawyers by institutions were disclosed, and argues that the amounts at issue in this appeal ought to be disclosed as well. However, the appellant does not directly address the issue of whether the information about the dates of the invoices is "neutral" information, or whether the presumption of privilege is rebutted for any of the information in the record.

Analysis and findings

[33] I have carefully reviewed the record created by the ministry in this appeal, which consists of four identified payments, including the dates and a general description for each payment, as well as a total amount paid. Because of the nature of this information, and because it was compiled from legal invoices, I find that it constitutes legal billing information.

[34] As noted above, the question of whether legal billing information, including legal fees, is subject to solicitor-client privilege at common law has been the subject of many recent judicial decisions. The Supreme Court of Canada dealt with the issue in *Maranda*, which found this information to be presumptively privileged unless the information is "neutral."

[35] In Order PO-2484, Senior Adjudicator John Higgins had to determine whether the total dollar figure on nine separate legal invoices (with all other information, including the dates and number of hours, severed) qualified for exemption under section 19. Senior Adjudicator Higgins examined in considerable detail the decision in *Maranda* as it applied to lawyers' account and billing information. He confirmed that the principles established in that case regarding legal billing information applied in the civil law context, and found that they applied to the fees at issue in his appeal. As a result, he found that the total figure in each of the nine invoices was "neutral information" and ought to be disclosed, but that the other information on the invoices (including the dates of the invoices) was exempt under branch 1 of section 19.

[36] The ministry sought judicial review of Order PO-2484. In *Ontario (Ministry of the Attorney General) v. Ontario (Information and Privacy Commissioner)* [2007] O.J. No. 2769, the Ontario Divisional Court reviewed both Order PO-2484 and another similar order, and upheld both decisions. In doing so, the Court stated:

The Requesters asked only for the total amount of fees and did not seek any account details that would permit a deduction of privileged information. The IPC adjudicators clearly considered that the Requesters and counsel were “assiduous” and “knowledgeable” and stated that they were satisfied that the information sought would not result in their being able to discern information relating to litigation strategies pursued by the [Ministry of the Attorney General] or any other type of information that may be subject to privilege. *Redaction of the dates from the records was expressly designed to avoid any prospect of disclosing privileged information about legal strategies or the progress of the litigation.* Thus, the only information that was ordered disclosed consists of amounts with no corresponding dates or descriptive information. [emphasis added]

[37] I adopt the approach taken by Senior Adjudicator Higgins in Order PO-2484 and upheld by the Divisional Court, and apply it to the information at issue in this appeal.

[38] On my review of the information in the record at issue in this appeal, I find that the descriptors, dates, and amounts for each of the four identified payments is presumptively privileged information. Furthermore, based primarily on the information in the withheld portions of the ministry’s representations, I am not satisfied that the presumption of privilege which applies to this information has been rebutted. Applying the approach taken in Order PO-2484 to the descriptors, dates, and amounts at issue, I find that this information is solicitor-client privileged information and qualifies for exemption under branch 1 of section 19.

[39] However, I make a different finding for the total amount contained in the record. As identified by the ministry, this amount represents the total payment made to the named law firm for its work in representing the two named individuals. After removing the dates, descriptors and breakdowns of the payments from the record, the only portion of the record remaining at issue is the total amount paid by the ministry. Although the ministry argues that disclosure of the total amount would enable the requester to subtract certain publicly available payments from the total, based on the information provided, I am not satisfied that this is possible. I acknowledge that some information about payments to the named law firm may be publically available; however, in the absence of additional information, I find that disclosing only the total amount of the payments would result in the disclosure of “neutral” information only, and would not reveal any solicitor-client privileged information.

[40] Accordingly, I find that the total amount contained in the record at issue does not qualify for exemption under section 19, but that the other information in the record is solicitor-client privileged information, and is exempt under section 19 of the *Act*.

Exercise of Discretion

[41] As noted, section 19 is a discretionary exemption. When a discretionary exemption has been claimed, an institution must exercise its discretion in deciding whether or not to disclose the records. On appeal, this office may determine whether the institution failed to do so.

[42] A finding may be made 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

[43] In such a case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.¹² This office may not, however, substitute its own discretion for that of the institution.¹³

[44] The ministry states that, during its consideration of whether to apply the section 19 exemption, it took into account "the relevant factors and no irrelevant factors," and that it ultimately decided to apply the section 19 exemption.

[45] As set out above, the appellant's representations focus on the public interest that exists in the disclosure of records relating to payments made by government institutions.

[46] On my review of all of the circumstances surrounding this appeal, I am satisfied that the ministry has not erred in the exercise of its discretion to apply section 19 to the withheld information which I have found qualifies for exemption under section 19. In addition, my finding that section 19 does not apply to the total amount addresses many of the concerns identified by the appellant regarding accountability and public expenditures. I have found the remaining information to be presumptively privileged, and I am satisfied that the ministry properly exercised its discretion to apply the section 19 exemption to that information.

[47] In summary, I find that the dates, descriptions and itemized amounts of the payments contained in the record at issue qualify for exemption under section 19, but that the total amount contained in the record does not. As a result, I will review whether the total amount qualifies for exemption under section 21(1) of the *Act*.

¹² Order MO-1573.

¹³ See section 43(2) of the *Act*.

Issue B: Does the record contain “personal information” as defined in section 2(1) and, if so, to whom does it relate?

[48] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains “personal information” and, if so, to whom it relates. That term 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 if 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 where 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;

[49] 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.¹⁴

[50] Sections 2(3) and (4) also relate to the definition of personal information. Those sections state:

(3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[51] 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.¹⁵

[52] 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.¹⁶

Is the total amount the "personal information" of the two named individuals?

[53] The ministry takes the position that the information in the record contains "personal information" within the meaning of subsection 2(1) of the *Act*, and that the information relates to the two named individuals who were represented by the law firm. The ministry states:

... While the legal proceedings that gave rise to the legal fees that are the subject of this access request arose in the employment context, they are proceedings that relate to [these two individuals] in a personal capacity. They relate to them in a personal capacity because they were dealing with allegations of misconducts by [them] that resulted in prosecutions against them under the [identified legislation]. Substantiated misconduct allegations under [the identified legislation] can result in discipline up to and including dismissal. It is the Ministry submission that such proceedings are inherently personal.

¹⁴ Order 11.

¹⁵ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

¹⁶ Orders P-1409, R-980015, PO-2225 and MO-2344.

The payments listed in the responsive record reflect the costs that were incurred by these two [individuals] in responding to the disciplinary charges against them. Employment disciplinary proceedings are inherently personal as are the financial liabilities one incurs when you hire a lawyer to represent you in such legal proceedings. As previously noted, in this particular case, [the individuals] had retained the named counsel to represent them in the proceedings.

Finally, the very nature of the request means that the individuals to whom the information relates are identifiable. The requester is asking for the monies paid to the lawyer representing two named [individuals].

[54] Although the affected parties did not provide representations in response to the Notice of Inquiry, the earlier submissions made to the ministry in response to the section 28 notification at the request stage argue that the information constitutes the personal information of the two named individuals under paragraph 2(1)(b) of the definition, because the records reflect a liability that the individuals owe to the solicitor, and therefore contain "information relating to financial transactions in which the individual(s) have been involved."

Analysis and findings

[55] I accept the ministry's position that, because of the nature of the request, the two individuals who were represented by the law firm are identifiable. However, in my view, the total amount of money paid by the ministry to the law firm to represent the two individuals does not constitute the personal information of those two individuals.

[56] The fact that the two individuals were involved in these proceedings, and that the ministry paid for legal invoices for these proceedings, is already known. The only issue before me is whether the disclosure of the total amount paid by the ministry to the lawyer for representing the two individuals would constitute the personal information of those two individuals.

[57] I note that the total amount identified in the record was incurred in the context of defending proceedings concerning employment-related matters. Even if I were to accept the ministry's position that the allegations that resulted in these proceedings were inherently personal, I am not satisfied that disclosure of the total amount can be linked specifically to either of these two individuals. I note that, in Order PO-1922,¹⁷

¹⁷ This decision was upheld on judicial review. See *Ontario (Attorney General) v. Ontario (Assistant Information and Privacy Commissioner)*, [2005] O.J. No. 941, 251 D.L.R. (4th) 65, 197 O.A.C. 278, Tor. Doc. C42504 (C.A.); affirming [2004] O.J. No. 1494, 70 O.R. (3d) 779, 239 D.L.R. (4th) 704, 185 O.A.C. 71, Tor. Docs. 545/01 and 677/01 (Div. Ct.).

former Assistant Commissioner Mitchinson addressed a similar request for a record containing the total amount of legal fees paid to represent two individuals. He stated:

... I find that the record does not contain the personal information of either of Persons A or B, the two clients represented by [the lawyers]. These individuals are not identified by name on this record. Although their identities could perhaps be determined by other means, the actual record at issue in this appeal does not contain any information that can be linked specifically to either Person A or Person B, nor would its disclosure provide any increased likelihood that accurate inferences to be drawn in this regard. As stated earlier, the dollar figure contained in the record is an aggregate amount, and the content of the record does not permit the figure to be broken out so as to identify the breakdown of fees paid in relation to legal services provided to each of the two individual clients. Accordingly, I find that the record does not contain information about any identifiable individual, and specifically does not include any personal information of either Persons A or B.

[58] Applying this approach to the record at issue in this appeal, which relates to the total amounts paid for representation of two individuals, I find that the record does not contain the personal information of either of the two named individuals represented by the law firm.

Is the total amount the "personal information" of the named solicitor?

[59] The ministry has not provided representations in support of the position that the total amount identified in the responsive record is the personal information of the named solicitor.

[60] Although the affected parties did not provide representations in response to the Notice of Inquiry, in the earlier submissions made to the ministry in this appeal, one of the affected parties argues that the information constitutes the personal information of the solicitor. The affected party makes this argument on the basis of the wording of the request, which refers to the solicitor by name.

Analysis and findings

[61] In a recent order of this office, Senior Adjudicator Sherry Liang directly addressed the issue of whether the amount paid to a lawyer constituted the "lawyer's personal information."¹⁸ She reviewed this office's approach to the definition of "personal information" when an individual is engaged in a business activity, as stated by former Assistant Commissioner Tom Mitchinson in PO-2225 as follows:

¹⁸ Order PO-3207.

Previous decisions of this office have drawn a distinction between an individual's personal and professional or official government capacity, and found that in some circumstances, information associated with a person in a professional or official government capacity will not be considered to be "about the individual" within the meaning of the section 2(1) definition of "personal information" (Orders P-257, P-427, P-1412, P-1621). While many of these orders deal with individuals acting as employees or representatives of organizations (Orders 80, P-257, P-427, P-1412), other orders have described the distinction more generally as one between individuals acting in a personal or business capacity...

Based on the principles expressed in these orders, the first question to ask in a case such as this is: "*in what context do the names of the individuals appear*"? Is it a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere? ...

The analysis does not end here. I must go on to ask: "*is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual*"? Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?

[62] Senior Adjudicator Liang then stated:

I find the reasoning in the above order to be applicable to the circumstances before me. The information at issue arises out of the appellant's professional activities as a lawyer. If the appellant had chosen to incorporate his law practice and the legal fees were paid to the corporation, there is no question the amount of those fees would not be personal information. The same would apply if the appellant had entered into a partnership that received the fees. The appellant states that he carries on his profession in his "personal capacity" but it is more accurate to describe his choice of business structure as a sole proprietorship, in which payments to the appellant are made in the name of his sole proprietorship.

The fact that the appellant carries out his law practice through a sole proprietorship, instead of through another business framework, does not alter the nature of his activities. In all cases, it is the same professional services as a lawyer that gives rise to the fees paid.

In answer to the first question posed in Order PO-2225 (in what context does the name of the individual appear), therefore, the appellant's name (or, to be more precise, the eponymous name of the appellant's law practice) appears in a business or professional context.

The second question is whether there is something about the information at issue that, if disclosed, would reveal something of a personal nature about the appellant. Here, the appellant suggests that the information would disclose information about his personal income.

I do not agree. There may be differences in the income distribution resulting from the payment of legal fees depending on the nature of the business structure, but whether the fees are paid to a corporation or to the appellant directly, there is no direct correlation between those fees and the amount of net personal income the appellant ultimately derives from those fees. Again, if the legal fees were paid to a corporation or a partnership in which the appellant has a stake, the fact that the appellant may ultimately receive some personal income attributable in some part to those fees does not reveal anything personal about the appellant. The same holds true for the legal fees paid to the appellant's law practice some portion of which, and it is not clear how much, may result in net personal income.

My conclusions on this are consistent with other decisions of this office in which information about the amounts paid to consultants for professional services was found not to be the personal information of those consultants: see Orders PO-2435, MO-2363. Also, in Order PO-2568, the adjudicator rejected the submission that the amount of legal fees paid to a lawyer's firm on account of work done by a lawyer was the personal information of ... the lawyer

[63] I adopt the approach to this issue as set out in Order PO-3207.

[64] Applying the above analysis to the amount at issue in this appeal, I find that the total amount at issue does not contain the personal information of the solicitor as defined by section 2(1) of the *Act*. The solicitor's name in the request appears in a business or professional context. In addition, the record created by the ministry in response to the request identifies the total "payments to [a named law firm]." In these circumstances, as was found in Order PO-3207, there is no direct correlation between the total amount paid and the amount of net personal income the solicitor may ultimately derive from that amount.

[65] As a result, I find that the information at issue does not constitute the personal information of the named solicitor for the purpose of section 2(1) of the *Act*.

[66] Because I have found that the record does not contain the personal information of any identifiable individual, it is not necessary to review whether the record is exempt under section 21(1) of the *Act*, because only information that qualifies as "personal information" can be exempt under section 21(1).

ORDER:

1. I order the ministry to disclose the total amount contained in the record to the appellant by **October 3, 2013** but not before **September 27, 2013**.
2. I uphold the ministry's decision to deny access to the other information contained in the record on the basis of the exemption in section 19 of the *Act*.

Original signed by: _____
Frank DeVries
Adjudicator

_____ August 28, 2013