

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4692

Appeal PA20-00492

Sheridan College Institute of Technology and Advanced Learning

July 30, 2025

Summary: The college denied access to three email chains on the basis that they are communications between the college and legal counsel about a dispute involving the appellant. The adjudicator finds the emails are communications that are solicitor-client privileged. She finds that, because they contain the appellant's personal information, they are exempt under section 49(a) (right to refuse access to requester's own personal information), read with section 19 (solicitor-client privilege). She upholds the college's decision and dismisses the appeal.

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"), 19(a) and 49(a).

Cases Considered: *Descôteaux v Mierzewski*, [1982] 1 S.C.R. 860.

OVERVIEW:

[1] Sheridan College Institute of Technology and Advanced Learning (the college) received a request from the appellant for access under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to information relating to a matter between himself and the college. The request was for:

...all records relating to all steps and other appropriate action, including but not limited to, emails, letters, communications, correspondences, memos, briefing notes, meetings, taken by Sheridan College in contacting any third-party, including but not limited to [third party name], and [appellant's

name] and/or relating to [the appellant] for the period from 01 November 2018 to present.

[2] The college issued a decision stating that it had conducted a search but had not located any responsive records.

[3] The appellant appealed the college's decision to the Information and Privacy Commissioner of Ontario (IPC).

[4] After the appeal was filed, the college conducted another search. It located four records and issued a decision granting the appellant partial access to record 1. The college denied access to records 2, 3, and 4, claiming them to be communications between it and legal counsel, and therefore exempt under section 19(a) (solicitor-client privilege), or section 49(a) (right to refuse requester's own information) read with section 19(a).

[5] The appellant informed the IPC that he wished to appeal the revised decision. The parties participated in mediation, but the appeal was not resolved. It was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct a written inquiry. I conducted an inquiry, during which I received representations from both the appellant and the college.

[6] In this order, I find that the records contain the appellant's personal information, but that they are solicitor-client privileged communications and therefore exempt under section 49(a) read with section 19(a). I uphold the college's exercise of discretion to deny access and I dismiss the appeal.

RECORDS:

[7] There are three records at issue. They are records 2, 3 and 4, as numbered by the college. All three consist of email chains.

[8] The college claims that record 2 is exempt under section 19(a), while records 3 and 4 are exempt under section 49(a) read with section 19(a) because records 3 and 4 contain the appellant's personal information.

[9] The college did not provide copies of the records to the IPC. Instead, the college submitted an affidavit sworn by its associate general counsel, in accordance with the IPC's *Protocol for Appeals Involving Solicitor-Client Privilege Claims* where the institution does not provide copies of the records at issue to the IPC.¹

¹ Issued June 2020.

DISCUSSION:

[10] The sole issue in this decision is whether the records are exempt under section 49(a) read with section 19.

The records contain the appellant's personal information

[11] After reviewing the college's affidavit and its description of the records, I am satisfied that all three records at issue contain the appellant's personal information. Section 2(1) of the *Act* defines "personal information" as recorded information about an identifiable individual. Paragraph (h) of that section includes a person's name when it appears with other personal information relating to them, or when disclosing their name would reveal other personal information about them. The appellant's request is for access to information about himself. The college's affidavit indicates that the records contain his name and information relating to a legal issue. Based on the request and the college's affidavit, I find that each of the three records contains the appellant's personal information. Because the records name the appellant, their disclosure would, at a minimum, reveal the nature of the appellant's relationship with the college, and the existence and nature of a legal issue between them. I therefore find that this qualifies as the appellant's personal information as defined in paragraph (h) of section 2(1).

[12] Accordingly, because the records contain the appellant's personal information, I will consider whether they are privileged and therefore exempt under section 49(a) read with section 19(a).

Does the discretionary exemption at section 49(a), allowing an institution to refuse access to a requester's own personal information, read with section 19(a) (solicitor-client privilege), apply to the records?

[13] Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49, however, provides some exemptions from this general right of access to one's own personal information.

[14] Section 49(a) states, in part, that:

49. A head may refuse to disclose to the individual to whom the information relates personal information,

(a) where section...19...would apply to the disclosure of that personal information.

[15] Section 19 exempts certain records from disclosure, either because they are subject to solicitor-client privilege, or because they were prepared by or for legal counsel

for an institution.² Section 19 contains three different exemptions, which the IPC has referred to in past decisions as making up two “branches.” The branch on which the college relies – branch 1 found in section 19(a) (“subject to solicitor-client privilege”) – is based on common law solicitor-client privilege.

[16] Section 19(a), states:

A head may refuse to disclose a record,

(a) That is subject to solicitor-client privilege[.]

[17] At common law, solicitor-client privilege itself contains two types of privilege: solicitor-client communication privilege, and litigation privilege. The college relies on the first type of privilege, solicitor-client communication privilege.³

[18] The rationale for the common law solicitor-client communication privilege is to ensure that a client may freely confide in their lawyer on a legal matter.⁴ This privilege protects direct communications of a confidential nature between lawyer and client, or their agents or employees, made for the purpose of obtaining or giving legal advice.⁵ The privilege covers not only the request for legal advice and the advice itself, but also communications between the lawyer and client aimed at keeping both informed so that advice can be sought and given.⁶ Confidentiality is an essential component of solicitor-client communication privilege. The institution must demonstrate that the communication was made in confidence, either expressly or by implication.⁷

[19] Under common law, a client may waive privilege. An express waiver of privilege happens where the client knows of the existence of the privilege and voluntarily demonstrates an intention to waive it.⁸ There may also be an implied waiver of solicitor-client privilege where fairness requires it, and where some form of voluntary conduct by

² See section 19(c). Section 19(c) is a statutory privilege (for records created “by or for counsel employed by an educational institution or hospital for use in giving legal advice or in contemplation of or for use in litigation.”) that covers records prepared by or for in-house counsel. Where a record does not meet the common law definition of privilege (as claimed in this case by the college), it may still be exempt if it was produced by in-house counsel for a relevant legal purpose. The college does not rely on section 19(c), and I do not consider it in this order.

³ The second type of common law privilege – litigation privilege – protects records created for the dominant purpose of litigation and is based on the need to protect the adversarial process by ensuring that a party’s legal counsel has a “zone of privacy” in which to investigate and prepare a case for trial. (See *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)).

⁴ Orders PO-2441, MO-2166, and MO-1925.

⁵ *Descôteaux v Mierzwinski*, (1982), 141 D.L.R. (3d) 590 (S.C.C.).

⁶ *Balabel v Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.); *Canada (Ministry of Public Safety and Emergency Preparedness) v Canada (Information Commissioner)*, 2013 FCA 104.

⁷ *General Accident Assurance Co. v Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); Order MO-2936.

⁸ *S. & K. Processors Ltd. v Campbell Avenue Herring Producers Ltd.* (1983), 45 B.C.L.R. 218 (C.A.)

the client supports a finding of an implied or objective intention to waive it.⁹

Summary of parties' representations

[20] The college submits that the records consist of communications between it and legal counsel concerning the appellant and a related legal matter. The college states that it has not waived privilege, either explicitly or implicitly, and that the communications remained confidential among the individuals included in the email chains. Identifying the records' authors by name and role, the college submits that the records were prepared by college staff, including its general counsel, and by external legal counsel, and that both its general and external counsel were acting in their capacity as legal advisors to the college. According to the college, some of the records are explicitly marked as privileged, and all of them document its efforts to seek legal advice and plans of action based on that advice.

[21] The appellant submits that the records at issue are communications sent by the college's general counsel to third parties about the matter involving the appellant, and that they include communications concerning steps for the college to take in pursuing a remedy. The appellant submits he has a right to access his own personal information, including where it was sent to a third party or parties.

[22] The appellant's representations also raise other concerns not directly related to access to the withheld records – for example, requests for confirmation of actions the college may or may not have taken involving certain third parties. I have limited my summary of the appellant's representations here to those that relate to the exemptions claimed by the college and the issues in this appeal.

Analysis and findings

[23] Based on the request, the appellant's description of the underlying legal issue, and the evidence set out in the college's affidavit, I am satisfied that records 2, 3 and 4 are confidential communications between the college and its internal and external legal counsel. I am satisfied that the records include legal advice and requests for legal advice, discussion of legal strategy and options for the college's consideration.

[24] The appellant does not dispute that the records relate to a legal matter involving him. His representations describe the dispute and refer to the underlying issues. However, even though the records relate to the appellant, this does not displace the solicitor-client privilege that protects the communications themselves as confidential communications exchanged between the college and its lawyers.

[25] The Supreme Court of Canada in *Descôteaux v Mierzwinski*¹⁰ established that

⁹ *R. v. Youvarajah*, 2011 ONCA 654 (CanLII) and Order MO-2945-I.

¹⁰ [1982] 1 S.C.R. 860 at 888, and *Pritchard v Ontario (Human Rights Commission)*, [2004] 1 S.C.R. 809 at paragraph 15, and *Solosky v The Queen*, [1980] 1 S.C.R. 821.

solicitor-client communication privilege applies where the communication is: (1) between a solicitor and client, (2) made for the purpose of seeking or giving of legal advice, and (3) intended to be confidential. I find that all three of these elements are satisfied in this case. The college's affidavit reflects the college being made aware of an issue, communicating with legal counsel, providing information to counsel, and receiving legal advice in return. I am satisfied that records 2, 3 and 4 are communications between the college and its legal counsel that were intended to be confidential and that were aimed at keeping the college and its counsel informed so that advice could be effectively sought and given.

[26] I also find that there is no evidence to suggest that the college has either explicitly or implicitly waived its privilege with respect to any of the records. I therefore find that all three records are exempt under section 49(a), read with section 19(a).

The college exercised its discretion properly

[27] The section 49(a) exemption is discretionary and permits the college to disclose information even though it could withhold it. The college must exercise its discretion when determining whether to disclose information in response to a request. On appeal, although the IPC cannot substitute its discretion for the college's, if the IPC determines that the college erred in its exercise of discretion, it may send the matter back for an exercise of discretion based on proper considerations.¹¹

[28] In this case, I am satisfied that the college properly exercised its discretion to deny access to the records on the basis that they are solicitor-client privileged. The college's representations indicate that it considered that the records contained the appellant's personal information, and the confidentiality of solicitor-client privileged communications. There is no evidence before me that the college exercised its discretion for an improper purpose, in bad faith, or that it failed to consider relevant considerations.

[29] I therefore uphold the college's exercise of discretion under section 49(a).

[30] For these reasons, I find that records 2, 3 and 4 are exempt under section 49(a), read with section 19(a). I uphold the college's decision to deny access to them and dismiss this appeal.

ORDER:

This appeal is dismissed.

Original Signed by:

Jessica Kowalski

July 30, 2025

¹¹ Order MO-1573.

Adjudicator