



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER

NEWFOUNDLAND AND LABRADOR

Report A-2021-023

May 27, 2021

Town of St. George's

Summary:

The Complainant made an access to information request under the *Access to Information and Protection of Privacy Act, 2015* (“ATIPPA, 2015” or the “Act”) to the Town of St. George’s (the “Town”) for legal invoices. The Town released the invoices, but redacted much of the information pursuant to section 30 (legal advice). The Complainant filed a complaint with this Office alleging that solicitor-client privilege had been waived and therefore the Town could not rely on section 30. The Commissioner found that the privilege had not been waived and recommended that the Town continue to withhold the information.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 30 and 43.

[Municipalities Act, 1999](#), SNL 1999, c.M-24, section 215.

Authorities Relied On:

NL OIPC Reports [A-2020-027](#), [A-2020-011](#).

I BACKGROUND

- [1] The Town of St. George's (the "Town") received an access to information request under the *Access to Information and Protection of Privacy Act, 2015* ("ATIPPA, 2015" or the "Act") that included a request for copies of legal invoices issued to the Town by the Town's legal counsel with respect to work done in relation to other access to information requests. The Town provided the Applicant with redacted copies of the requested records, disclosing the dates of the invoices and the total legal fees and taxes. The remainder of the information, including descriptions of legal work completed, lawyer names or initials, time keeping details, and file management details were withheld pursuant to section 30 (legal advice).
- [2] The Complainant made a complaint to this Office asking for a review of the redactions to the legal invoices and requested that they be provided with as much detail as possible.
- [3] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

II PUBLIC BODY'S POSITION

- [4] The Town provided copies of the legal invoices to this Office to review. It indicated that legal invoices are presumptively solicitor-client privileged and that the presumption was not, and could not be, rebutted in this case.
- [5] On the issue of waiving solicitor-client privilege, the Town stated that it had not waived its privilege over the documents. In particular, the Town noted that referencing the invoices in an open council meeting did not constitute a waiver of solicitor-client privilege.

III COMPLAINANT'S POSITION

- [6] The Complainant asserts that the legal invoices were referenced in a meeting of the Town's council and that, therefore, they should be entitled to receive unredacted copies of the legal invoices due to section 215(1)(m) of the *Municipalities Act*, which states:

215. (1) *The following documents shall be made available by the council for public inspection during the normal business hours of the council:*
 [...]

 (m) *all other documents tabled or adopted by council at a public meeting.*

IV ISSUES

[7] Did the Town properly apply section 30 of the Act to the legal invoices?

V DECISION

[8] As discussed recently in Report A-2020-027 legal invoices are presumptively solicitor-client privileged. This privilege can be rebutted; however, the threshold to do so is high. The courts have noted that the presumption is not rebutted particularly when the matters are ongoing or the applicant is familiar with the matters to which the legal invoices relate. The Complainant is clearly aware of the nature of the legal work being performed on behalf of the Town or they would not have known to ask specifically for legal invoices related to access to information matters. Given the Complainant's relationship with the Town and Complainant's knowledge of the issues the Town has in relation to access to information requests, the presumption has not been rebutted.

[9] The Complainant argued that section 215 of the *Municipalities Act* means that because the invoice was mentioned in a council meeting, the Town waived its privilege over the invoice. The issue of solicitor-client privileged documents mentioned in council meetings was discussed recently by this Office in Report A-2020-11. That report found that simply referring to a document in a council meeting does not constitute a waiver of solicitor-client privilege. The information that was included in the minutes of the council meeting, being the total amount owed on the invoice, was provided to the Complainant.

[10] Given that the records in question are presumptively solicitor-client privileged, that the presumption has not been rebutted, and we have no evidence that the Town has waived its privilege, the test for withholding records under section 30(1)(a) has been met.

VI RECOMMENDATIONS

- [11] Under the authority of section 47 of *ATIPPA, 2015*, I recommend that the Town of St. George's continue to withhold the records at issue in this complaint.
- [12] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Town of St. George's must give written notice of his or her decision with respect to these recommendations to the Commissioner and any person who was sent a copy of this Report within 10 business days of receiving this Report.
- [13] Dated at St. John's, in the Province of Newfoundland and Labrador, this 27th day of May 2021.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador