

ALBERTA

INFORMATION AND PRIVACY COMMISSIONER

ORDER 99-022

August 18, 1999

CALGARY REGIONAL HEALTH AUTHORITY

Review Number 1533

I. BACKGROUND

[para 1.] On October 16, 1998, the Calgary Regional Health Authority (the "Public Body") received the Applicant's request for access to information under the *Freedom of Information and Protection of Privacy Act* (the "Act"). The Applicant asked for:

Information and amount of money paid to [name of lawyer] representing Foothills against termination of [name of Applicant].

[para 2.] The Applicant's request was subsequently revised, as follows:

All the information regarding the amount of time and \$ amount of money paid to Lawyer [name of lawyer] representing the Foothills Hospital against the termination and other actions of [name of Applicant] Employee # [Applicant's employee number] from September 1994 to present.

[para 3.] The Public Body provided the Applicant with copies of the lawyer's statements of account, disclosing the dollar amounts paid for legal services related to the Applicant. However, the Public Body severed information describing those legal services. The Public Body also severed all other information about legal services related to anyone other than the Applicant. The Public Body said that this information was excepted

from disclosure under section 26(1)(a) (solicitor-client privilege) of the Act and section 26(1)(b) (information prepared by a lawyer of a public body in relation to a matter involving the provision of legal services).

[para 4.] Furthermore, the Public Body severed the names and employment duties of its employees, other than the Applicant, about whom the lawyer provided legal services to the Public Body. The Public Body said that this information was excepted from disclosure under section 16(2)(d) (personal information relating to employment or educational history).

[para 5.] The Public Body said that there were no records in its custody or control that detailed the amount of time spent on the termination or other related actions.

[para 6.] On January 11, 1999, the Applicant requested that I review the Public Body's decision to sever the information. Mediation was authorized but was not successful.

[para 7.] The matter was set down for a written inquiry on July 28, 1999. I received the Public Body's written submission on July 16, 1999. As the Applicant did not provide a written submission, the Public Body did not provide a rebuttal submission.

[para 8.] This Order proceeds on the basis of the Act as it existed before the amendments to the Act came into force on May 19, 1999.

II. RECORDS AT ISSUE

[para 9.] The records at issue consist of the Public Body's lawyer's statements of account sent to the Public Body. There are approximately 50 pages of records.

[para 10.] In the Order, I will refer to the lawyer's statements of account as the "Records".

[para 11.] The Public Body provided 49 pages of the Records to the Applicant on November 18, 1999. The Public Body subsequently provided one further page to the Applicant.

III. ISSUES

[para 12.] There are three issues in this inquiry:

A. Did the Public Body correctly apply section 16(2)(d) (personal information relating to employment or educational history)?

B. Did the Public Body correctly apply section 26(1)(b) (information prepared by a lawyer of a public body in relation to a matter involving the provision of legal services)?

C. Did the Public Body correctly apply section 26(1)(a) (solicitor-client privilege)?

IV. DISCUSSION OF THE ISSUES

ISSUE A: Did the Public Body correctly apply section 16(2)(d) (personal information relating to employment or educational history)?

[para 13.] In the Records, the Public Body severed the names and employment duties of its employees, other than the Applicant, about whom the lawyer provided legal services to the Public Body. The Public Body said that this information was excepted from disclosure under section 16(2)(d) (personal information relating to employment or educational history).

[para 14.] However, the Applicant asked only for information about legal services related to the Applicant. Anything else was not responsive to the Applicant's request for access. Consequently, the Public Body could simply have removed the non-responsive information from the Records, without providing a severing notation under section 16(2)(d) or any other section of the Act, leaving the Public Body to consider whether the remaining responsive information could be disclosed to the Applicant.

[para 15.] As the names and employment duties of the Public Body's employees, other than the Applicant, are not responsive to the Applicant's request, that information has properly been removed from the Records. It is not an issue here. Therefore, I do not find it necessary to decide whether the Public Body correctly applied section 16(2)(d) to the names and employment duties of its employees.

[para 16.] In any event, since the Applicant has not asked for access to that non-responsive information, the Public Body does not have to give the Applicant access.

ISSUE B: Did the Public Body correctly apply section 26(1)(b) (information prepared by a lawyer of a public body in relation to a matter involving the provision of legal services)?

[para 17.] In the Records, the Public Body severed information describing the lawyer's legal services provided to the Public Body in relation to the Applicant. The Public Body also severed all other information about the lawyer's legal services provided to the Public Body in relation to the Public Body's employees, other than the Applicant. The Public Body said that this information was excepted from disclosure under section 26(1)(b).

[para 18.] As the information describing the lawyer's legal services related to anything other than the Applicant is also not responsive to the Applicant's request (as discussed above), that information has properly been removed from the Records. It is not an issue here. Therefore, I do not find it necessary to decide whether the Public Body correctly applied section 26(1)(b) to that information.

[para 19.] In any event, since the Applicant has not asked for access to that non-responsive information, the Public Body does not have to give the Applicant access.

[para 20.] I will consider only the information describing the lawyer's legal services related to the Applicant.

[para 21.] Section 26(1)(b) reads:

26(1) The head of a public body may refuse to disclose to an applicant

(b) information prepared by or for an agent or lawyer of the Minister of Justice and Attorney General or a public body in relation to a matter involving the provision of legal services.

[para 22.] The information describing the lawyer's legal services related to the Applicant clearly meets all the criteria of section 26(1)(b), in that it is information prepared by a lawyer of a public body in relation to a matter involving the provision of legal services. Therefore, I find that the Public Body correctly applied section 26(1)(b) to that information.

[para 23.] Section 26(1)(b) is a discretionary ("may") provision in that, even if the section applies, a public body has a choice as to whether to disclose or withhold the information. To exercise its discretion properly,

the Public Body must show that it considered the objects and purposes of the Act (one of which is to allow access to information) and did not exercise its discretion for an improper or irrelevant purpose.

[para 24.] In this case, I find that the Public Body exercised its discretion properly under section 26(1)(b) because it disclosed the dollar amounts to the Applicant, thereby providing the Applicant with some of the information the Applicant requested.

[para 25.] Therefore, I confirm the Public Body's decision to refuse the Applicant access to the information to which the Public Body correctly applied section 26(1)(b).

ISSUE C Did the Public Body correctly apply section 26(1)(a) (solicitor-client privilege)?

[para 26.] As the Public Body correctly applied section 26(1)(b) to the information describing the lawyer's legal services related to the Applicant, I do not find it necessary to decide whether the Public Body also correctly applied section 26(1)(a) (solicitor-client privilege) to that same information.

V. ORDER

[para 27.] I make the following Order under section 68 of the Act.

ISSUE A: Did the Public Body correctly apply section 16(2)(d) (personal information relating to employment or educational history)?

[para 28.] As the names and employment duties of the Public Body's employees, other than the Applicant, are not responsive to the Applicant's request, that information has properly been removed from the Records. Therefore, I do not find it necessary to decide whether the Public Body correctly applied section 16(2)(d) to the names and employment duties of its employees.

[para 29.] In any event, since the Applicant has not asked for access to that non-responsive information, the Public Body does not have to give the Applicant access.

ISSUE B: Did the Public Body correctly apply section 26(1)(b) (information prepared by a lawyer of a public body in relation to a matter involving the provision of legal services)?

[para 30.] As the information describing the lawyer's legal services related to anything other than the Applicant is also not responsive to the Applicant's request, that information has properly been removed from the Records. Therefore, I do not find it necessary to decide whether the Public Body correctly applied section 26(1)(b) to that information.

[para 31.] In any event, since the Applicant has not asked for access to that non-responsive information, the Public Body does not have to give the Applicant access.

[para 32.] The Public Body correctly applied section 26(1)(b) to the information describing the lawyer's legal services related to the Applicant. The Public Body also exercised its discretion properly under section 26(1)(b) in relation to that information.

[para 33.] Therefore, I confirm the Public Body's decision to refuse the Applicant access to the information to which the Public Body correctly applied section 26(1)(b).

ISSUE C Did the Public Body correctly apply section 26(1)(a) (solicitor-client privilege)?

[para 34.] As the Public Body correctly applied section 26(1)(b) to the information describing the lawyer's legal services related to the Applicant, I do not find it necessary to decide whether the Public Body also correctly applied section 26(1)(a) (solicitor-client privilege) to that same information.

Robert C. Clark
Information and Privacy Commissioner