



**Office of the Information and Privacy Commissioner for Nova Scotia
Report of the Commissioner (Review Officer)
Tricia Ralph**

REVIEW REPORT 21-17

December 30, 2021

Town of New Glasgow

Summary: The applicant requested access to records relating to a communication he received from the Town of New Glasgow (Town). The Town withheld information under s. 476 (solicitor-client privilege) of the *Municipal Government Act (MGA)*. The Commissioner finds that s. 476 does not apply to the redacted information and recommends that the Town release the information to the applicant.

INTRODUCTION:

[1] The applicant was a frequent poster about issues related to northern Nova Scotia on the social media platform, Twitter. In 2016, an unsigned direct message was sent to his Twitter direct message feature from the official Twitter account of the Town of New Glasgow (Town). The applicant then made a request for access to all documents about him held by the Town in relation to the Town's unsigned direct message, and in relation to his personal social media campaign.

[2] The Town disclosed one document to the applicant and withheld all other documents from the responsive records in full as being subject to solicitor-client privilege (s. 476) under the *Municipal Government Act (MGA)*.¹

[3] The applicant objected to the response and filed a request for review with this office.

[4] Through the informal resolution process with this office, the Town released the majority of the responsive records to the applicant but continued to withhold 15 pages of records pursuant to s. 476 of the *MGA*.

ISSUE:

[5] Was the Town authorized to refuse access to information under s. 476 of the *MGA* because the information is subject to solicitor-client privilege?

¹ *Municipal Government Act*, SNS 1998, c. 18.

DISCUSSION:

Burden of proof

[6] The Town bears the burden of proving that the applicant has no right of access to the record or part of the record, pursuant to s. 498(1) of the *MGA*.

Was the Town authorized to refuse access to information under s. 476 of the *MGA* because it is subject to solicitor-client privilege?

[7] The Town relied on s. 476 to withhold some of the responsive records. Section 476 gives the Town discretion to withhold information if the information is subject to solicitor-client privilege. For the reasons set out below, I find that s. 476 of the *MGA* does not apply to the withheld information and so it should be disclosed to the applicant.

[8] In order to decide if solicitor-client privilege applies, the records at issue must satisfy the following test:

1. There must be a communication, whether oral or written;
2. The communication must be of a confidential nature;
3. The communication must be between a client (or his agent) and a legal advisor; and
4. The communication must be directly related to the seeking, formulating or giving of legal advice.²

Part 1: Is there a communication?

[9] It is clear that the documents are communications.

Part 2: Is the communication confidential?

[10] None of the documents were marked confidential, and the contents of the documents do not in any way suggest that they are confidential in nature. The Town did not provide any arguments or evidence in its representations as to how these communications were meant to be of a confidential nature.

Part 3: Is the communication between a client and a legal advisor?

[11] The communications are between a client and a solicitor.

[12] The Town argued that the email exchanges were sent to the solicitor for the purpose of obtaining *personal* advice. I believe this was an attempt to suggest the records were not subject to the *MGA*, although the representations were not clear on this point. If so, I reject this argument for the following reasons:

- The *MGA* applies to all records in the custody or control of the Town and these records were within the Town's email system.

² This test has consistently been applied in s. 16 of the *Freedom of Information and Protection of Privacy Act* (*FOIPOP*) analyses by this office. Section 16 of *FOIPOP* mirrors s. 476 of the *MGA*. See for example: *NS Review Report 21-10, Department of Justice (Re)*, [2021 NSOIPC 10 \(CanLII\)](#), at para. 7; and *NS Review Report 18-09, Nova Scotia (Department of Justice) (Re)*, [2018 NSOIPC 9 \(CanLII\)](#), at paras. 13-26.

- Each email was sent using a Town of New Glasgow email account and with the author's official signature block.
- Throughout the review, these records were referred to by the Town as "disclosed to the Town solicitor" and sent "to our solicitor", indicating they were municipal records, not personal records.
- The Town did not cite s. 480³ of the *MGA* or provide arguments indicating these records were required to be withheld under s. 480.

Part 4: Is the communication directly related to the seeking, formulating or giving of legal advice?

[13] None of the information withheld contains any words to request, formulate or give legal advice. The Town appeared to be simply sharing information that has been collected by one person with another person. The Town did not provide any representations to explain how the information withheld is directly related to the seeking, formulating or giving of legal advice.

[14] I find that the withheld information is not subject to solicitor-client privilege and therefore cannot be withheld under s. 476 of the *MGA*.

Exercise of discretion

[15] Because I have found that the exemption does not apply to the information, it is unnecessary for me to consider this step. However, it is worth noting that the Town provided no representations on how it exercised discretion in making its decision in response to the applicant's access to information request.

FINDINGS & RECOMMENDATIONS:

[16] I find that:

1. Section 476 of the *MGA* does not apply to the withheld information.

[17] I recommend that:

1. The Town disclose the information it withheld under s. 476 of the *MGA* to the applicant within 45 days of receipt of this review report.

December 30, 2021

Tricia Ralph
Information and Privacy Commissioner for Nova Scotia

OIPC File: 16-00208

³ Section 480 of the *MGA* requires the Town to withhold personal information if the disclosure would be an unreasonable invasion of a third party's personal privacy.