



Office of the Information and Privacy Commissioner for Nova Scotia
Report of the Commissioner (Review Officer)
David Nurse

REVIEW REPORT 26-03

January 16, 2026

Town of Kentville

SUMMARY:

The four-part test for assessing whether a record is subject to solicitor-client privilege is established law. I discussed the test in *Nova Scotia Review Report 25-07*. As the law in this area is settled, and this case is not factually complex, I have prepared an abbreviated review report.

INTRODUCTION:

[1] The applicants made an access to information request under Part XX of the *Municipal Government Act (MGA)* for records including a “legal investigation and final report/legal opinion” prepared by a lawyer regarding an employment law matter.

[2] The Town of Kentville (the municipality) responded with its decision to withhold the record in full, citing section 476 of the *MGA*. The applicants then submitted a request for review of this decision to the Office of the Information and Privacy Commissioner for Nova Scotia (OIPC).

ISSUE:

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

DISCUSSION:

[4] Section 476 of the *MGA* states: “the responsible officer may refuse to disclose to an applicant information that is subject to solicitor-client privilege.”

[5] I have determined that the municipality is authorized to refuse access to the legal opinion because the record is subject to solicitor-client privilege.

[6] For a municipality to be authorized to refuse access to information that it deems subject to solicitor-client privilege, it must satisfy a well-established four-part test. I discussed this four-part test in *Nova Scotia Review Report 25-07*, at paragraph 10:

To invoke legal advice privilege, the record 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.

[7] In the present case, I am satisfied that all four parts of the test have been satisfied. With respect to parts 1 and 3, there is no doubt there was a written communication between the lawyer and the municipality. With respect to part 2, the records provided to the OIPC demonstrate that the communication was of a confidential nature and intended to provide advice on a highly sensitive matter.

[8] With respect to part 4 of the test, the municipality has established that the lawyer was retained specifically in their capacity as an employment lawyer for the purpose of providing legal advice. They were not asked to conduct an investigation into whether certain allegations were true, but rather they were asked to provide a legal opinion, with a particular focus on any recommended human resources policies or training arising out of the information gleaned by conducting staff interviews. In short, the record was directly related to the seeking, formulating and giving of legal advice.

[9] It is important to note that our review did not include a review of the legal opinion itself. The municipality refused to provide the OIPC with a copy of the legal opinion that was the subject of the access request. The municipality further declined to provide our investigator with an affidavit listing the records for which solicitor-client privilege was claimed, along with a description of each record. Nevertheless, the municipality did provide the OIPC with access to other records through the course of our investigation which included an adequate description and summary of the legal opinion in this case. Relying on these records, I was able to fully satisfy myself that all four parts of the test were met and to conclude that the municipality was authorized to refuse access to the record.

OIPC policy to request an affidavit detailing solicitor-client records

[10] Before turning to my finding and recommendation, I will offer a few comments on our investigator's request for an affidavit from the municipality.

[11] In recent years there have been a number of legal decisions limiting Canadian information commissioners' access to solicitor-client records; for example, *Alberta (Information and Privacy Commissioner) v. University of Calgary*, 2016 SCC 53. Canadian information commissioners have been forced to reconcile these decisions with their obligation to conduct independent reviews of the decisions of public bodies.

[12] Requesting an affidavit from a public body or municipality is one way that information commissioners have attempted to put the court's guidance into practice, and is consistent with

the decision of the Supreme Court of Canada in the *University of Calgary* decision, which stated (at para 43), that the party asserting solicitor-client privilege:

...must provide a sufficient description of a record claimed to be privileged to assist other parties in assessing the validity of that claim. From this, it follows that all relevant and material records must be numbered and, at a minimum, briefly described, including those records for which privilege is claimed.

[13] Requesting an affidavit is also consistent with the policies and best practices implemented by the Information Commissioner of Canada and the Information and Privacy Commissioner of Alberta.

[14] In the present case, we had sufficient information to complete our review. However, we will continue, as a matter of policy, to ask for affidavits describing solicitor-client records in a manner that will allow us to assess the validity of any claim of solicitor-client privilege. This investigative approach is reasonable, consistent with the law, and consistent with the best practices implemented by other information commissioners.

FINDING & RECOMMENDATION:

[15] I find that the municipality was authorized to refuse access to the legal opinion under s. 476 of the *MGA* because it is subject to solicitor-client privilege.

[16] I recommend that the municipality continue to withhold the legal opinion.

January 16, 2026

David Nurse
Information and Privacy Commissioner for Nova Scotia