



**Report of Findings: 24/25-AP-009**  
**Village of Belledune**  
**May 22, 2025**

**Citation:** Village of Belledune (Re), 2025 NBOMBUD 1

**Summary:** The Applicant asked the Village of Belledune for information about expropriation, development, access roads, and other information about a named road. The Village gave the Applicant partial access, initially refusing access to some information under s. 27 (legal privilege) and explaining that other records did not exist. The Village later raised s. 25 (local public body confidences) and 26 (advice to a public body) to refuse access to some of the information involved.

The Ombud found that the Village had in large part met the Applicant's access rights but disagreed that it could refuse access to an agreement between the Village and a third party. The Ombud recommended that the Village disclose this information to the Applicant, with redactions to protect the personal information of third parties under s. 21(1) (unreasonable invasion of third-party privacy).

**Statutes Considered:** [Right to Information and Protection of Privacy Act](#), SNB 2009, c. R-10.6, sections 25(1)(b), 26(1)(a), 26(1)(b), 27(a), 27(b), 27(c); [Local Governance Act](#), SNB 2017, c 18, sections 68(1)(f), 68(2); [Limitation of Actions Act](#), SNB 2009, c L-8.5.

**Authorities Considered:** [Town of Heron Bay, \(Re\)](#), 2024 NBOMBUD 4 (CanLII), [Harbour Station Commission \(Re\)](#), 2020 NBOMB 2 (CanLII).

## INTRODUCTION

[1] The Applicant made an access request under the *Right to Information and Protection of Privacy Act* (“the *Act*”) to the Village of Belledune for information about expropriation, development, access roads, and other information about a named road over a ten-year period.

[2] In response, the Village gave the Applicant partial access, initially refusing some information under s. 27 (legal privilege) and explaining that other records did not exist. The Village also transferred part of the request to another public body for response, which is not part of this complaint.

[3] Unhappy with the Village’s response, the Applicant made a complaint to this office.

[4] While informal resolution efforts made by my office were partly successful, I decided to conduct a formal investigation under subsection 68(3) of the *Act* to examine the remaining issues.

## APPLICANT’S REPRESENTATIONS

[5] At the end of the informal resolution efforts, the Applicant continued to have concerns that the Village had not provided all the information required under the *Act*.

[6] The Applicant disagreed with the Village’s position to refuse to fully disclose a settlement agreement between the Village and a third party on the grounds of solicitor-client privilege. The Applicant submitted that while solicitor-client privilege protects communications between lawyers and clients, it does not protect concluded settlement agreements. The Applicant’s position is that settlement privilege may apply to this information, but the *Act* does not allow public bodies to refuse access on this basis.

[7] The Applicant noted that the redacted copy of the letter that the Village provided on this point stated that the details set out in the letter needed “council approval at a public meeting”. The Applicant submitted that there is no information about this public meeting and that any such details would be relevant to this request and should be provided.

[8] Further, the Applicant submitted that the Village should have a larger legal file that contains additional information that should be disclosed.

[9] The Applicant also disagreed with the Village’s refusal to provide the quoted amounts provided by an external consulting company for possible road upgrades. The

Applicant questioned why the amounts were withheld and submitted that they were improperly redacted, given that the Village provided the rest of the document, including details about the scope of work.

[10] Finally, the Applicant believed the Village should have additional internal correspondence about a quarry in this area, as the project has been ongoing for several years.

## **VILLAGE'S REPRESENTATIONS**

[11] During the formal investigation, the Village maintained that it had provided the Applicant with all the information it was required to disclose under the *Act* and was not amenable to providing any further information.

[12] The Village maintained that the settlement agreement between it and the third party was protected under s. 25(1)(b) (local public body confidences) and s. 27(a) (legal privilege). The Village submitted that the matter was discussed at a closed council meeting, as permitted by s. 68(1)(f) of the *Local Governance Act*, following which the Village, through external counsel, sent a letter to the third party setting out the terms of the agreement.

[13] The Village explained that the matter was raised at a public meeting for approval on February 21, 2023 and provided this office with a copy of the meeting minutes. The matter was considered jointly with another issue, resulting in council approving a certain payout amount to collectively settle both matters.

[14] The Village was not amenable to disclosing any further details and submitted that doing so would breach the confidentiality of closed meeting council discussions and that the remaining withheld details have not been made public.

[15] The Village submitted that one of the withheld details relates to a matter that is publicly known but has not yet been finalized. The Village stated that the matter is still in progress and that it will release further details to the public once the ongoing work is complete by bringing it before council at a public meeting.

[16] The Village also objected to any further disclosure as the settlement agreement was signed between the parties with an assumption of confidentiality.

[17] The Village maintained that the remaining withheld information about the settlement agreement was also protected under s. 27 (solicitor-client privilege). In support of this position, the Village explained that the *Limitation of Actions Act* sets out

between two and 15 years as the limitation period for all claims and the Village is relying on this to prevent disclosure until the ability to sue has expired.

[18] Finally on this point, the Village submitted that while it has other records, including communications leading up to the concluded settlement agreement with the third party, these are protected as solicitor-client privilege and the Village is not amenable to disclosing them.

[19] As for the redacted quotes in the consultant's invoice, which was otherwise disclosed to the Applicant, the Village explained that it asked the consultant to provide these details to understand the potential costs involved in having this work be done but has not acted further and has not actually incurred any such costs. The Village submits that the redacted quoted amounts are protected under s. 25(1)(b) (local public body confidences) as they were discussed in a closed council meeting and were not actioned or made public. The Village also refused access under s. 26(1)(a) and 26(1)(b) (advice to a public body), as the quoted amounts were related to the Village's negotiations with the third party.

[20] As for the Applicant's concern about the seeming lack of internal correspondence in relation to a quarry in this area, the Village maintained that it had no further records. The Village provided this office with details of the efforts made to conduct searches of its records and explanations as to why this did not identify any further relevant information on this point.

## ISSUES

[21] The issues before me are:

- a) Did the Village properly refuse access to the withheld information about the concluded agreement with the third party?
- b) Did the Village properly refuse access to the quote amounts in the consultant's invoice?
- c) Does the Village have any further records in relation to this request?

[22] The Village has the burden of proof to show why it could lawfully deny access to the requested information under ss. 84(1) of the *Act*.

## ANALYSIS AND FINDINGS

### A. Did the Village properly refuse access to the withheld information about the concluded agreement with the third party?

[23] The Village raised several grounds to refuse access to the withheld details of the settlement agreement with the third party:

- local public body confidences (s. 25(1)(b));
- solicitor-client privilege (s. 27), as well as the limitation periods for potential legal action under the *Limitation of Actions Act*; and
- the confidentiality expectations of the parties.

#### ***Section 25(1)(b): Local public body confidences***

[24] This is a discretionary exception to disclosure that allows local public bodies, such as the Village, the option to protect information where disclosure could reasonably be expected to divulge details about closed deliberative processes of council and/or its committees:

25(1) The head of a local public body may refuse to disclose information to an applicant if disclosure could reasonably be expected to reveal

(...)

(b) the substance of deliberations of a meeting of the elected officials of the local public body or of its governing body or a committee of its elected officials or governing body if the public is excluded from the meeting.

[25] The ability of a local public body to rely on this exception is limited by s. 25(2)(b), which states that the exception does not apply if “the substance of deliberations... has been considered in a meeting open to the public.”

[26] To properly rely on this exception and refuse to disclose the information, a local public body must show the following:

- elected officials or the governing body, or one of their committees, held a meeting;
- a statute or law authorizes a closed meeting, i.e., in the absence of the public;
- disclosure of the information would reveal the actual substance of the meeting deliberations; and

- the substance of the deliberations have not been considered in an open meeting where members of the public can be present.

[27] This is a discretionary exception to disclosure, which means that where it applies, a local public body has the option to either grant or refuse access. But a local public body must show that the information in question falls within the scope of the exception and that the local public body exercised its discretion in deciding to refuse access.

[28] In reviewing the exercise of discretion, I may find that the local public body erred in exercising its discretion where, for example, it did so in bad faith or for an improper purpose, it took into account irrelevant considerations, or it failed to take into account relevant considerations. Where this is the case, I can ask the local public body to reconsider its position and exercise of discretion; however, I cannot substitute my own discretion for that of the local public body.

[29] In this case, I find that the Village has demonstrated that council held a closed meeting to discuss this matter on January 30, 2023.

[30] I also find that the Village was authorized to hold a closed meeting to discuss this matter under s. 68(1)(f) of the *Local Governance Act*, which allows local public bodies to hold meetings without the public to discuss “information concerning legal opinions or advice provided to the local government by its solicitor or privileged communications between solicitor and client in a matter of local government business”. The Village has provided sufficient details for me to agree that this was the purpose of the discussion of this matter at the closed meeting.

[31] As for whether disclosing the remaining details about the settlement agreement would reveal the actual substance of the meeting deliberations, I note that s. 68(2) of the *Local Governance Act* sets limits on what actions can be taken at meetings where the public is excluded:

68(2) If a meeting is closed to the public under subsection (1), no decision shall be made at the meeting except for decisions related to the following matters:

- (a) procedural matters;
- (b) directions to an officer or employee of the local government;
- (c) directions to a solicitor for the local government.

[32] The issue with the Village’s position on this point is that the settlement agreement that followed the closed meeting is the result of a council decision that could not be made a closed meeting. The settlement agreement is not a council decision on

procedural matters or directions to Village staff or legal counsel, rather it is the outcome of and an actionable item that resulted from the decision made in the closed meeting.

[33] My finding on this point is supported by the Village's own communication to the third party on the terms of the settlement agreement, which stated that these would need "council approval at a public meeting."

[34] While it may well be the case that the Village has not made the remaining withheld details of the settlement agreement public to date, this in and of itself is not sufficient to meet the requirements of this exception.

[35] As a result, I find that the Village cannot rely on s. 25(1)(b) to refuse access to the withheld details of the settlement agreement.

### ***Section 27: Legal privilege and the Limitation of Actions Act***

[36] The Village also relied on s. 27 of the *Act* to refuse access to the withheld details of the settlement agreement, as well as related records leading up to the settlement agreement with the third party:

27 Subject to paragraph 4(b) and section 22.1, the head of a public body may refuse to disclose to an applicant

- (a) information that is subject to solicitor-client privilege,
- (b) information prepared by or for an agent or lawyer of the Office of the Attorney General or the public body in relation to a matter involving the provision of legal advice or legal services or in relation to the investigation or prosecution of an offence, or
- (c) information in a communication between an agent or lawyer of the Office of the Attorney General or the public body and any other person in relation to a matter involving the provision of legal advice or legal services or in relation to the investigation or prosecution of an offence.

[37] The purpose of this exception is to recognize and protect the privileged communications that take place between solicitors and their clients when legal advice is sought and received.

[38] Section 27 is also a discretionary exception to disclosure, which means that a public body can choose to either grant or refuse access. This is consistent with the fact that solicitor-client privilege belongs to the client. Where the public body is the holder of the privilege, it is the public body's right to decide whether it wishes to waive privilege and disclose information to an applicant or maintain the privilege and protect the information.

[39] Having reviewed the information at issue, I am satisfied that the Village could rely on the solicitor-client privilege exception to refuse access to many of the records leading up to the final settlement agreement. The Village retained counsel to provide advice and assistance in dealing with this situation and these communications fall within the scope of the privilege.

[40] While this is a discretionary exception and the Village has the option of disclosure, it is not amenable to doing so under the circumstances.

[41] That being said, I do not find that the same considerations apply to the withheld portions of the settlement agreement concluded between the Village and the third party.

[42] While the Village retained the services of external counsel, who extended the proposed settlement agreement that was accepted by the third party to resolve the underlying legal dispute, the concluded settlement agreement is not in and of itself a communication between a solicitor and client, nor does it contain any legal advice.

[43] As for the Village's assertion that the withheld details of the agreement should continue to be protected until the limitation period for potential legal action expires, which the Village submitted would range between two and 15 years, I am not prepared to accept this position.

[44] If I were to do so, this argument could be used by any public body to avoid disclosing virtually any agreement or contract on principle, which is not in keeping with the overarching obligation on public bodies to be open and transparent about their public business.

[45] I find that the withheld portions of the agreement cannot be protected as solicitor-client privileged information under s. 27 of the *Act* or the *Limitation of Actions Act*.

### ***Confidentiality expectations of the parties***

[46] The Village submitted that the agreement was signed under an assumption of confidentiality. I also note that one of the withheld portions of the agreement includes a confidentiality clause stating that it is to be held in confidence and can only be disclosed for certain limited purposes.

[47] Confidentiality clauses in a contract or agreement are not necessarily determinative of access rights under the *Act*. If the terms of a contract run counter to or are incompatible with the transparency requirements of the *Act*, then disclosure requirements under the *Act* prevail.



[48] Public bodies cannot exempt themselves from the statutory obligation to be open and transparent about their business dealings simply by including confidentiality clauses in contractual agreements. Although confidentiality clauses may reflect the parties' intention to keep certain details confidential, public bodies cannot use contractual means to circumvent their transparency and accountability obligations under the *Act*.<sup>1</sup>

[49] As the *Act* does not have a standalone exception to refuse information on the basis of confidentiality, I find that the Village cannot refuse access for this reason alone. That being said, having reviewed the settlement agreement documents, I find that the full and final release document contains some personal information, such as names, addresses, and signatures, that may be an unreasonable invasion of privacy if disclosed and the Village can protect these details under s. 21(1) (unreasonable invasion of third-party privacy).

## **B. Did the Village properly refuse access to the quote amounts in the consultant's invoice?**

[50] The Village refused access to the quoted amounts in a document prepared by an external consultant that was otherwise disclosed to the Applicant. The Village was not amenable to disclosing these details and relied on s. 25(1)(b) (local public body confidences) and s. 26(1)(a) and (b) (advice to a public body) to refuse access.

[51] The Village's submissions explained that the quotes were requested to provide an estimate of how much the proposed work would cost. The Village submitted that the quotes provided an estimate of costs and did not relate to costs actually incurred by the Village as the proposed work had not yet been done.

[52] Given the underlying situation and the Village's submissions, I accept that the withheld amounts were collected by the Village as an estimate and do not represent costs incurred by the Village. I find that the Village could refuse access as a proposal prepared for the Village under s. 26(1)(a).

[53] As I find this information can be protected under a discretionary exception, I cannot recommend that it be disclosed. I am satisfied that the Village exercised its discretion in making the decision to refuse access to these details, which included weighing the impact of disclosure on the issues involved with the underlying matter.

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<sup>1</sup> [Town of Heron Bay, \(Re\)](#), 2024 NBOMBUD 4 (CanLII), at paras. 19-20; see also [Harbour Station Commission \(Re\)](#), 2020 NBOMB 2 (CanLII), at paras. 17-20.

### **C. Does the Village have any further records in relation to this request?**

#### ***Section 9: Duty to assist***

[54] The duty to assist that applies to all public bodies is set out in section 9:

9 The head of a public body shall make every reasonable effort to assist an applicant, without delay, fully and in an open and accurate manner.

[55] The duty to assist requires public bodies to be helpful to applicants seeking information under the *Act*. This includes having discussions with applicants to make sure the public body understands what information the applicant is looking for, taking appropriate steps to search for relevant records, and giving clear and helpful responses to access requests.

#### **Duty to assist: reasonable search**

[56] As part of this office's review of the Applicant's concerns on this point, the Village provided details of how it conducted searches for records.

[57] In this case, the Village explained that it started its search efforts by checking its records management system, which identified 32 legal files relating to the road specified in the access request. These files were then reviewed and digitized to begin the process of identifying relevant records. The Village also reviewed the wording of the request and came up with several keywords to assist with conducting searches of the Village's electronic records, including the email accounts of those who would have been involved with the underlying situation.

[58] The Village noted that its initial search efforts were impacted by staff changes, including long-term employees who would have had significant historical knowledge of this matter. That being said, staff tasked with addressing this request did their best to use the files and tools available to conduct the search as best they could.

[59] During the informal resolution phase, the Village agreed to conduct additional searches for records to attempt to address the Applicant's continued concerns on this point. The Village's Administrative Assistant undertook a search of her computer, emails, and files, searched the saved emails of the previous Village council dating back to 2016, searched the present Council member's computers, as well as the previous Clerk/Treasurer's computer including files and emails, as well as a final search to verify whether anything had been missed.

[60] The Village submitted that the subsequent search involved nearly 200 hours of work and the Village was of the view that it had accounted for the relevant records in relation to this request to the best of its abilities.

[61] While the Applicant received explanations to this effect during the informal resolution efforts, the Applicant raised concerns about the lack of internal correspondence regarding the quarry in 2017 and expected that the Village would have significantly more internal correspondence given that this project has been ongoing for several years.

[62] Having reviewed the Village's submissions and the Applicant's continued concerns, it has not been established that the Village is withholding a record or that an adequate search was not completed.

[63] I am satisfied that the Village has demonstrated that it took appropriate steps to conduct a reasonable search and does not have any further information to disclose to the Applicant.

[64] The Applicant is free to make a further request to the Village if there are any other specific records they would like to access.

## **RECOMMENDATION**

[65] Based on the above findings, I recommend under section 73(1)(a)(i)(A) of the *Act* that the Village disclose the withheld portions of the settlement agreement to the Applicant, with limited redactions to protect the privacy of the third parties under s. 21(1).

[66] As set out in section 74 of the *Act*, the Village must give written notice of its decision with respect to these recommendations to the Applicant and this Office within 20 business days of receipt of this Report of Findings.

This Report is issued in Fredericton, New Brunswick this 22nd day of May, 2025.

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**Marie-France Pelletier**  
Ombud for New Brunswick