

RECEIVED EYE

DEC 4 1989

STATE OF NEW YORK

SUPREME COURT : COUNTY OF STEUBEN

In the Matter of the Application of

PATRICIA L. KNAPP,

Petitioner

D E C I S I O N

-against-

Index No.: 63341

THE BOARD OF EDUCATION, CANISTEO
CENTRAL SCHOOL DISTRICT and CHARLES
CARLTON, its Superintendent of Schools,

Respondents

APPEARANCES: Robert D. Clearfield, Esq., Janet Axelrod of counsel,
Attorney for Petitioner
Harris, Beach and Wilcox, Susan N. Burgess of counsel,
Attorneys for Respondents

Petitioner has brought this proceeding pursuant to CPLR Article 78 seeking access to certain records under the Freedom of Information Law (Public Officers Law Section 84-et seq.) Respondents have filed an answer to the petition and have asserted six affirmative defenses.

Petitioner seeks access to billing statements for legal services provided to Respondent by the law firm of Harris, Beach and Wilcox for the time period commencing January, 1988 and ending December 15, 1989. This request was made in a letter dated December 14, 1989, but was similar to requests previously made by the Petitioner beginning in May of 1989. In response to Petitioner's request, Respondents provided redacted copies of the billing statements and copies of cancelled checks showing payment of the bills. The statements provided to Petitioner list only the time period

covered and the total amount owed for services and disbursements. No other identifying information has been provided to Petitioner.

Respondents maintain that all other information on the billing statement is protected by the attorney client privilege and therefore exempt from disclosure under Public Officers Law Section 87(2). Petitioner recognizes that, under limited circumstances, identifying information may be confidential. However, Petitioner maintains that she is entitled to that billing information which would detail the fee, the type of matter for which the legal services were rendered and the names of the parties to any current litigation.

In adopting the Freedom of Information Law, the New York State Legislature established a general policy in favor of public disclosure of government records. (Matter of Farbman & Sons v. New York City Health and Hospitals Corp., 62 NY2d 75.) When a public agency resists disclosure, it has the burden of justifying its refusal to disclose based upon the very limited exemptions created by Public Officers Law Section 87(2). (Matter of Farbman & Sons v. New York City Health and Hospitals Corp., *supra*; Matter of Fink v. Lefkowitz, 47 NY2d 567.) The agency must articulate a particularized and specific justification for denying access. (Matter of Capital Newspapers v. Burns, 67 NY2d 562, 566.)

Respondents maintain that releasing any additional information on the billing statement would jeopardize the client confidentiality protected by CPLR 4503(a) and would require the School District to effectively create a new document in order to shield confidential information. Although Respondents provide general examples of how confidentiality might be jeopardized, they have chosen not to supply any of the documents in issue for in camera inspection.

The difficulty of defining the limits of the attorney client privilege has been recognized by the New York State Court of Appeals. (Matter of Priest v. Hennessy, 51 NY2d 62, 68.) Nevertheless, the Court has ruled that this privilege is not limitless and generally does not extend to the fee arrangements between an attorney and client. (Matter of Priest v. Hennessy, supra.) As a communication regarding a fee has no direct relevance to the legal advice actually given, the fee arrangement is not privileged. (Matter of Priest v. Hennessy, supra. at 69.)

There appear to be no New York cases which specifically address how much of a fee arrangement must be revealed beyond the name of the client, the amount billed and the terms of the agreement. However, the United States Court of Appeals, in interpreting federal law, has found that questions pertaining to the date and general nature of legal services performed were not violative of client confidentiality. (Cotton v. United States, 306 F.2d 633.) In that Court's analysis such information did not involve the substance of the matters being communicated and, consequently, was not privileged.

Respondents are not required to create a new document to fill a request under the Freedom of Information Law. (Gannett Co. v. County of Monroe, 59 AD2d 309, 313, aff. 45 NY2d 954; Matter of Gannett v. James, 86 AD2d 744, lv denied 56 NY2d 502.) Nevertheless, Respondents have not justified their refusal to obliterate any and all information which would reveal the date, general nature of service rendered and time spent. While the Court can understand that in a few limited instances the substance of a legal communication might be revealed in a billing statement, Respondents have failed to come forward with proof that such information is

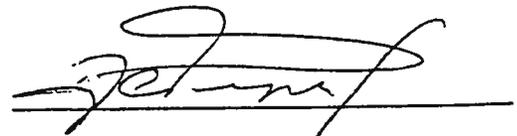
contained in each and every document so as to justify a blanket denial of disclosure. Conclusory characterizations are insufficient to support a claim of privilege. (Church of Scientology v. State of New York, 46 NY2d 906, 908.) Respondents were given the opportunity to provide copies of the documents for in camera inspection, but declined. Absent proof of this nature, the Court lacks any factual basis upon which to uphold Respondents' refusal to disclose. (Church of Scientology v. State of New York, supra.) Therefore, Petitioner's request for disclosure of the fee, type of matter and names of parties to pending litigation on each billing statement must be granted.

Petitioner is not entitled to records covering the entire period requested. The records covering the period from January, 1988 through September 10, 1989, were the subject of earlier requests by Petitioner and Respondent's response to those requests was not objected to. Therefore, Petitioner is precluded by the four month statute of limitations from attacking the sufficiency of those documents. As the records from September 11, 1989 through December 15, 1989 were not the subject of an earlier request, and Petitioner timely raised her objections to the School District's response, access to those records is not barred by the statute of limitations. The remaining affirmative defenses raised by Respondent do not raise sufficient grounds to deny the petition.

Based upon the above, Petitioner's application is granted for those billing statements received by Respondent for the period commencing September 11, 1989 and ending December 15, 1989.

Submit Judgment

Dated: November 23, 1990



HON. DONALD G. PURPLE, JR.
Acting Supreme Court Justice