

## LEGAL AND REGULATORY NOTES

### *Superior Court Holds Attorney's Fees Must Be Disclosed under Public Records Act*

The Town of Concord has been involved in litigation with William and Rosemary Smith regarding zoning issues. In June 2012, a citizen requested that the Town produce copies of records showing the amounts the Town had paid to its attorney in the litigation. When the Town failed to produce the records, the citizen brought suit to compel their production under the Vermont Public Records Act.

The Town asserted that the records were exempt from disclosure while the Smith litigation was pending, citing attorney-client privilege and the litigation exception to the Public Records Act. The litigation exception protects from disclosure “records which are relevant to litigation to which the public agency is a party of record, provided all such matters shall be available to the public after ruled to be discoverable by the court before which the litigation is pending, but in any event upon final determination of the litigation.” 1 V.S.A. § 316(c)(14).

Judge Robert Bent of the Washington Superior Court ordered the Town to produce a summary of payments made to its attorney. The bills themselves did not have to be produced unless the Town’s summary could not adequately respond to the request. If the bills were produced, the Town could redact descriptions of the services provided. *Kirk Wool v. Town of Concord*, 798-11-12 Wncv.

Judge Bent largely rejected the Town’s arguments regarding attorney-client privilege, noting that “The amount a client pays its attorney, or for that matter, invoices for services (to the extent that the invoice

summarizes the content of the communications) have generally not been held to fall under the [attorney-client] privilege.” However, the privilege would apply to “the description of services provided, to the extent that there is disclosure of the topic of communication.”

With respect to the Public Record Act’s litigation exception, Judge Bent noted that while the amount Concord had paid to its attorney was relevant to the litigation in a broad sense, “Disclosure of billing amounts to a third party during the litigation simply has no potential to put the town at a disadvantage in the litigation.” If any disadvantage did arise, it would be merely political “and something that ‘goes with the territory’ of being a public official.” Thus, the litigation exception would not apply to the records.

The *Wool* decision outlines some important Public Records Act guidance for records custodians around the state. Municipal officials should keep in mind that even while litigation is pending, courts are apt to consider any disadvantage suffered by the municipality from disclosure of its legal fees to be outweighed by the public’s right to know how much the town is spending in litigation. In some circumstance, when presented in the right way, public disclosure of legal fees arising from litigation may actually benefit the town. Often a summary of the amounts paid to the town’s attorney will suffice to fulfill a request, but if actual billing records are produced, custodians may lawfully redact any description of services that would disclose the subjects of

conversation between the town's attorney and local officials.

Although the decision is presently unpublished, it is posted on our website at [www.vlct.org/assets/News/Current/wool\\_vs\\_concord.pdf](http://www.vlct.org/assets/News/Current/wool_vs_concord.pdf).

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