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Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 114-1996
August 22, 1996

INQUIRY RE: A decision by the School District No. 31 (Merritt) to withhold correspondence written by third parties and responses to that correspondence

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1. Description of the review

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner (the Office) on May 8, 1996 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review of a decision of the School District No. 31 (Merritt) to withhold a series of records requested by three applicants.

2. Documentation of the inquiry process

Between September 8, 1995 and November 23, 1995 the three applicants requested from the School District copies of all correspondence relating to them written by two third parties (who are known to the applicants) and any responses by the District or its administrative staff to such correspondence. On January 24, 1996 the School District informed the applicants individually that the requested records were being withheld under section 12.1(1)(b) of the Act. It subsequently claimed section 22 as well. Each of the applicants requested a review of the School District's decision. Since the records and issues are the same, I have decided to address all three issues in this inquiry.

3. Issue under review at the inquiry and the burden of proof

The issues under review in this inquiry are whether the records in dispute should be withheld under sections 12.1 and 22 of the Act. The relevant portions of those sections are as follows:

Local public body confidences

12.1(1)The head of a local public body may refuse to disclose to an applicant information that would reveal

...

(b) the substance of deliberations of a meeting of its elected officials or of its governing body or a committee of its governing body, if an Act or a regulation under this Act authorizes the holding of that meeting in the absence of the public.

....

Disclosure harmful to personal privacy

22(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

(2) In determining under subsection (1) or (3) whether a disclosure of personal personal privacy, the head of a public body must consider all the relevant circumstances, including whether

...

(f) the personal information has been supplied in confidence,

....

Section 57 of the Act establishes the burden of proof on the parties in this inquiry. Under section 57(1), where access to information in the record has been refused, it is up to the public body to prove that the applicants have no right of access to the record or part of the record. In this case, the School District must prove that the applicants have no right of access to the records in dispute under section 12.1(1)(b).

Under section 57(2), if a public body has decided to give the applicant access to a record or part which contains personal information that relates to a third party, it is up to the applicant to prove that the disclosure would not be an unreasonable invasion of the third party's personal privacy under section 22 of the Act.

4. The records in dispute

The records in dispute consist of approximately 45 pages of correspondence and related documentation between the School District and third parties from 1993 to 1995 about the three applicants, a complaining parent, and other staff and officials of the School District.

5. The applicants' case

The three applicants, who made a joint submission, are seeking access to any correspondence about them, individually, written by either of two specific persons and the

responses of the School District or any of its administrative staff. I have presented below their specific submissions on the application of sections of the Act.

6. The School District's case

The School District states that the correspondence requested by the applicants was submitted by the third parties to senior administration and to the School Board. I have presented below the School District's arguments on specific sections of the Act.

7. The third parties' case

Both third parties do not want their correspondence released to the applicants.

8. Discussion

Context for this Inquiry

School District No. 31 has brought thirteen requests for review to my Office in the 1995-96 fiscal year, which is a statistically significant number. Order No. 106-1996, May 28, 1996 originated with the same series of events which are continued, with elaborations, in this inquiry.

In the present case the applicants are three teachers who have evidently been the subject of complaints by a parent about their treatment of his wife, who is also a teacher, as well as their treatment of his daughter, a student in the same school as the teachers. My general approach to the disposition of such matters is to disclose to the applicants the information which is specifically about them in the records in dispute.

Section 12.1(1)(b): local public body confidences

The applicants emphasize that they are not requesting access to "the substance of deliberations of a meeting ... held in the absence of the public." They only want copies of the correspondence that may or may not have been the subject of deliberations by the District.

The School District's argument is that the correspondence in dispute was "the subject of deliberations" by the Board at various *in camera* meetings, resulting in decisions conveyed to appropriate personnel.

In evaluating the application of this section in this inquiry, I find it highly relevant to quote the following admission by the School District:

> The correspondence from the third parties and responses from the School Board do not reveal the actual discussions of the Board. The substance of the actual discussions is contained in the Special Minutes of the Board meetings... In summary, the correspondence does contain the information discussed by the Board, but does not contain information regarding the discussions of the Board.

It is my view that the School District's candid statement aptly captures the essence of section 12.1, which is to protect what was said at a meeting about controversial matters, not the material which stimulated the discussion or the outcomes of deliberations in the form of written decisions. Even in its reply submission, the District reiterated that "the subject of deliberations of a meeting" is not contained in the disputed information.

I find that section 12.1 does not apply to the records in dispute.

Section 22: Disclosure harmful to personal privacy of third parties

The applicants argue that they are only seeking information about each of them separately that appears in the correspondence and records in dispute: "It was not our intention to have access to the private information of a third party, whether it be the authors of the correspondence or other persons mentioned in the same letter." They expect the School District to sever those parts of such material as affect the privacy rights of others: "We see no harm to anyone else in having our own information released to each of us separately." In its reply submission, the School District essentially conceded this essential point to the applicants: "Information released to each of the applicants would contain only relevant portions of the document that are applicable to them and would not affect the privacy of other applicants or others mentioned in the letter."

Section 22(2)(f): the personal information has been supplied in confidence,

The School District is seeking to apply this section as an exception to the records in dispute because of the manner in which the correspondence was dealt with by the Board at *in camera* meetings. However, the "relevant circumstance" that it must consider here is whether the information was *supplied* in confidence, not whether it was treated that way. I see no evidence on the face of the records in dispute to support such an assertion, nor has the Board submitted such evidence or advanced such an argument to me. Thus I conclude that this section is not a relevant circumstance in this case, and that disclosure of the personal information about each individual to him or her would not be an unreasonable invasion of the personal privacy of the third parties. These applicants are not seeking information about each other.

Review of the records in dispute

Most of the correspondence and related documentation at stake in this inquiry originated in 1995. There are four additional letters from 1993 and one from 1994, mostly between the complainant parent or his wife and school authorities.

There are about sixteen separate letters in the documentation submitted to me but seven of them duplicate one another and refer to more than one of the applicants. Almost all of the 1995 letters are from the complainant parent to the School Superintendent or the School Trustees. One has a twenty-one page "chronology" attached to it in order to document the case against one of the applicants.

I am of the view that each of the applicants should receive the specific personal information that pertains to them in the letters written by the complaining parent. None of the letters from school authorities to the parent contains any specific information about the applicants, so they should not be disclosed in response to this application.

9. Order

I find that the head of School District No. 31 is not authorized to refuse access to the information in the records under section 12.1 of the Act, and further is not required to refuse access under section 22. Under section 58(2)(a), I require the head of School District No. 31 to give each applicant access to his or her personal information in the records in dispute. For this purpose, I have prepared a severed copy for release.

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David H. Flaherty
Commissioner

August 22, 1996