

**Office of the Information and Privacy Commissioner  
Province of British Columbia  
Order No. 17-1994  
July 11, 1994**

**INQUIRY RE: A Decision to Release Records of the Ministry of Education**

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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 in Victoria, British Columbia on July 7, 1994 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act) concerning a request for records in the custody or under the control of the Ministry of Education (the Ministry). The request was made by a former teacher (the applicant).

The applicant wrote to the Ministry on August 31, 1993 to request a copy of her Ministry files. The Ministry processed the request in the spirit of the Act and, on November 16, 1993, provided her with access to all of her records except a letter written in 1973 by the third parties in this case, the parents of a student taught by the applicant. The Ministry withheld this letter under section 22 of the Act on the grounds that it had been supplied in confidence by the third parties.

The applicant then requested a review of the Ministry's refusal to provide her with a copy of the letter, and the Ministry sent a notice to the third parties requesting their views on the release of the letter. The third parties responded by objecting to its release in hard copy form, although they agreed to the letter being read to the applicant (which has apparently not occurred).

Having considered the third parties' views, the Ministry decided to disclose the letter to the applicant subject to certain severances. The third parties requested a review of this decision by the Office of the Information and Privacy Commissioner (the Office). The 90-day investigation period began on April 19, 1994, and the Office issued a notice of inquiry on June 13, 1994.

## **2. Documentation of the Inquiry Process**

Under sections 56(3) and 56(4) of the Act, the Office invited written representations from the applicant; the third parties; the Ministry; the British Columbia School Trustees Association (BCSTA), prepared by Judith A. Clark, Director, Legal and Legislative Services; the Superintendent of a School District (the applicant's former employer); the British Columbia Teachers' Federation (BCTF), prepared by David Yorke, Federation Legal Counsel; the British Columbia College of Teachers, prepared by W. Douglas Smart, Registrar; and the B.C. Confederation of Parent Advisory Councils. All parties made written representations, with the exception of the last noted organization.

The Office of the Information and Privacy Commissioner provided all parties involved in the inquiry with a two-page statement of facts (the fact report), which was accepted by all parties as accurate for purposes of conducting the inquiry.

## **3. Issue under Review**

The issue to be decided in this inquiry is whether the applicant's right of access to the personal information about herself in the 1973 letter outweighs the third parties' right to the protection of their privacy under section 22(1) of the Act.

Under section 57(3)(a) of the Act, at an inquiry into a decision to give an applicant access to all or part of a record containing personal information of a third party, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's privacy. Thus the burden of proof in this case rests with the applicant.

## **4. The Record in Dispute**

The record is a five-page, typewritten letter that the third parties (husband and wife) wrote after November 5, 1973 to the District Superintendent of Schools in which they described a meeting among themselves, the applicant, and another school official.

## **5. The Applicant's Case**

The applicant was a school teacher in 1973 in the community where she still resides (as do the authors of the letter). She has wondered for more than twenty years why she did not receive a copy of the letter to the district superintendent of schools at the time in order to respond to the concerns contained in it. She says that she has no intention of resurrecting this old misunderstanding, beyond offering a belated apology to the parents if it is important to them.

The applicant wants access to the record in question because, unless it contains information listed under section 22(3) of the Act, "which I doubt, there is no unreasonable invasion of a third party's personal privacy. This letter is about me, my conduct at the

meeting, my character, my believes. It is not behoove a democratic society to collect information about its citizens in secrecy."

## **6. The Ministry's Case**

The Ministry of Education had originally decided not to release the record in question because it was impossible to conceal who had written it. It subsequently learned that the applicant already knew who had written the letter. The Ministry then decided to release the letter after severing all personal information regarding the third parties.

The Ministry further explained that it has custody of certain files for every certified teacher in the province prior to the creation of the College of Teachers in 1987, because the Ministry was responsible for the certification of teachers. The record at issue in this review comes from a Ministry of Education teacher certification file, not a personnel file resident in a school district.

## **7. The Third Parties' Case**

The third parties submitted fourteen pages of letters and, especially, documentation of their case for refusing disclosure of the record. The latter included newspaper clippings from the 1970s and recent years about the travails of the applicant with the local school board. They are concerned about releasing a hard copy of their letter to the applicant, because "it would be an invasion of our privacy, by quoting out of context passages or even showing it in its entirety to people, who have no business to see it at all ...." They fear that the applicant will attempt to use the record in her efforts to secure reinstatement to her teaching job (which she lost in June 1974). The parties all live in the same "small town," and the third parties fear the consequences of disclosure of the record for their family.

The third parties submitted a copy of the letter they received in 1973 from the District Superintendent of Schools, which described how the situation regarding their daughter and her teacher was being resolved and also apologized for the problem they had encountered as parents.

The third parties acknowledge that the applicant already knows what is in their letter "because she was present at the meeting the letter gives account of." In fact, they had written the letter, after the meeting, at the request of the school principal who had been present.

## **8. The British Columbia Teachers' Federation's (BCTF) Submission**

The British Columbia Teachers' Federation takes the position that "in the absence of there being some quite unexpected and misplaced non-severable personal information about the third parties in the third parties' letter, a document of the type described should

regularly be disclosed to an applicant." Like the other intervenors, the BCTF prepared its submission without benefit of viewing the record at issue.

BCTF submitted that "the purpose and intent of the Act, as well as its specific provisions, favour disclosure of this kind of record. Indeed, it would be surprising if comments/complaints made available to a public body about an applicant, which could have (or may have had) a great impact on employment and related rights of the applicant vis-à-vis the public body, were not available to an applicant. To hold otherwise would mean that applicant employees of public bodies may be prejudiced by complaints and/or erroneous information contained in their files in public bodies, of which they have no knowledge and no means of responding, by reason only that the third party supplier of the information wishes to conceal his/her/their identity."

In interpreting section 22(1) of the Act (disclosure harmful to the personal privacy of third parties), BCTF pointed out that "the personal information protected is personal information about the third party; not about the applicant. Disclosing personal information about the applicant to the applicant does no harm to the privacy of any third party; .... a complaint, opinion, personal view, or critical information supplied by a third party about the applicant is not personal information about the third party; it is personal information about the applicant."

BCTF also provided a commentary on section 22(3)(g.1) of the Act, which deals with disclosures that are presumed to be an unreasonable invasion of a third party's personal privacy, including one that "could reasonably be expected to reveal that the third party supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation." Counsel for BCTF suggested that the record at issue does not appear to be covered by this provision, which "deals with a formal and objective conclusion about the standard of performance or the personal characteristics of an individual from a person situated in a position to provide such an assessment, who is requested to supply an assessment, and who supplies that assessment with the mutual understanding (as between the writer of the assessment and the public body) that the fact of the provision of the recommendation, evaluation, or reference will be confidential .... Section 22(3)(g.1) is not and ought not be a charter for anonymous complaints or misstatements which are on file to the prejudice of the employee, and about which there is no avenue of knowledge or reply."

## **9. The School District's Submissions**

The School District that had employed the applicant made a submission to oppose the release of the record in question under section 22(3)(g.1), which has been discussed above. It also urged me to follow the wishes of the third parties as a matter of "common sense."

Furthermore, the School District argued that the letter in dispute is a labour relations matter under section 21 of the Act: "Release of the letter could lead to parents or

others hesitating to write a letter to a School Board, complaining about the conduct of a teacher. Surely this is not in the best interests of students and education."

## **10. The British Columbia School Trustees Association's (BCSTA) Submissions**

The submission of BCSTA largely dealt with the difficult time lines that we operate under with requests for review under this Act, a practice that was established by a unanimous legislature. This was also a concern of the school district.

But BCSTA did point out that a "decision which gave access to a letter from parents, contrary to their wishes, when the highest assurances of confidentiality were given at the time, could have serious repercussions on the willingness of parents to communicate with boards in writing on personnel issues."

Counsel for BCSTA also suggested as a factor to consider in this case, "the practice with respect to confidentiality of such letters in effect in the school district and in the Ministry of Education at the time the letter was written, in other words the legitimate expectations of privacy that the third parties would have held at the time the letter was written." BCSTA argues that "in this situation, the fact that the information was supplied in confidence should be given a great deal of weight."

In its final submission, BCSTA simply disagreed with a number of points (noted above) made by the BCTF with respect to the appropriate interpretation of sections 22(1) and 22(3)(g.1) of the Act with respect to the present case.

## **11. The British Columbia College of Teachers' Submission**

Although the College of Teachers did not wish to make any specific comments on the current case, it urged me (as did BCSTA) to restrict the scope of my order to the specifics of the case under review "that will not be used as guidance in future cases of this kind," since many other issues have to be considered in deciding whether to grant access to letters of complaint from members of the public about employees or members of public bodies or self-regulated professions. I note that I have already discussed some aspects of this matter in my Order No. 14-1994.

## **12. Discussion**

It is obvious that the letter at issue in this request for review continues to have considerable significance for the applicant. She knows the letter exists, saw copies in more than one place (from a distance) twenty years ago, and has recently again brought the matter to the attention of the media in the small city in which she continues to live. She clearly associates the letter with her being expelled from the B.C. Teachers' Federation, which meant that she could not keep her teaching job. Even when she was reinstated, the local school board did not rehire her.

I have received no evidence, but only allegations, that the 1973 letter was supplied in confidence. The letter is not marked confidential in the copy supplied to me. While the third parties may have had expectations of confidentiality for their letter in the context of 1973 (as the BCSTA suggested above), I do not find this a compelling point more than twenty years later, especially given the other circumstances associated with the letter that I discuss below. Moreover, the third parties themselves did not argue this point.

I cannot find grounds to justify a refusal to disclose the contents of a letter which largely reflects the "minutes" (to quote the third parties) of a meeting that the applicant attended except for a brief period of time. Ironically, the press clippings submitted by the third parties suggest that the applicant has been trying to obtain a copy of this letter almost since the time it was written.

With respect to the analysis of section 22 of the Act, as it applies to the current case, I fully agree with the submission of the B.C. Teachers' Federation that I have cited above, especially with respect to section 22(3)(g.1) of the Act. In my judgement, the disclosure of most of the letter to the applicant would not result in an unreasonable invasion of the privacy of the third parties.

In my order on police complaints (Order No. 14-1994), I ordered the disclosure of complaint letters about police to the news media, subject to standard severance of unique identifiers. The present case is different from that situation, because the record is largely about the applicant.

The third parties and the British Columbia School Trustees Association raised the issue of the third parties' fear of harassment if the letter in question is released. Section 19 of the Act covers situations where disclosure could reasonably be expected to result in harm to someone's physical or mental health. In order to determine if this section applies, I need evidence, not vague assertions. I did not receive such evidence.

I am sensible of the fact that the applicant has the burden of proof in this case, yet she has not been able to review the record. In my judgement, an applicant can only assert generally that disclosure would not be harmful to the privacy interests of third parties; it is then my role to review the record, as I have done in the present case, and decide where the balance of competing interests lies.

While issues of fairness and due process are not the primary concern of the *Freedom of Information and Protection of Privacy Act*, I note in passing that, whatever the standards of the particular school district in 1973, the idea that persons complained against should not receive copies of written allegations made against them does not accord with the standards of the 1990s.

## 12. Order

Under section 58(2)(b) of the Act, I confirm the decision of the Ministry of Education to disclose the November 1973 letter to the applicant, subject to the appropriate severances.

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David H. Flaherty  
Commissioner

July 11, 1994