

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 76-1996
January 5, 1996**

INQUIRY RE: A decision by the Ministry of Skills, Training and Labour to release a severed version of a letter of complaint against Malaspina University College, despite the objections of the third party who had written it

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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 on October 18, 1995 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 by the Ministry of Skills, Training and Labour to release a severed version of a letter to both Malaspina University College (applicant 1) and Ms X (applicant 2), despite the objections of its author, the third party (Ms Y).

2. Issue

The issue to be resolved in this case is whether all or part of the record in dispute should be withheld under section 22 of the Act. This section reads in appropriate part as follows:

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 information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

- (a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,
 - ...
 - (c) the personal information is relevant to a fair determination of the applicant's rights,
 - ...
 - (e) the third party will be exposed unfairly to financial or other harm,
 - (f) the personal information has been supplied in confidence,
 - (g) the personal information is likely to be inaccurate or unreliable, and
 - (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.
- (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
- ...
 - (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation,
 - ...
 - (d) the personal information relates to employment, occupational or educational history,
 - (g) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations about the third party,
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3. The record in dispute and the burden of proof

The record in dispute is a handwritten letter to the Deputy Minister of Skills, Training and Labour. It reports a complaint against Malaspina University College for alleged fraud committed by one of its employees. The Ministry proposes to release a typed version of the letter, minus details that would identify the complainant and another person identified in the letter. The excepted material is about a dozen words plus several names, an address, and a telephone number.

At an inquiry into a decision to give or refuse an applicant access to all or part of a record containing personal information that relates to a third party, it is up to the applicant to prove that disclosure of the personal information would not be an unreasonable invasion of the third party's personal privacy (sections 57(2) and (3)(a)). Thus, in this review, Malaspina University College

and the second applicant must prove that disclosure of the requested personal information will not unreasonably invade the privacy of the third party.

4. Malaspina University College's case

Malaspina University College wants a full copy of the letter in dispute, including the name of the complainant. It gave me various reasons in support of this request on an *in camera* basis, because of an ongoing grievance.

Malaspina believes that there are no privacy grounds under section 22 of the Act to prevent disclosure of the letter. Furthermore, refusal to disclose it will cause harm to the College in the proper execution of its duties.

5. The second applicant's case (Ms X)

This applicant also made a detailed *in camera* submission, which again I cannot summarize without revealing private information.

6. The Ministry of Skills, Training and Labour's case

The Ministry's only action in this case was to submit a typed copy of the letter in dispute with the severances it has proposed and the reasons under section 22 of the Act for proposing them: "The Ministry continues to support this version of the severed document, since it provides the requesters with access to all the essential information while acknowledging the core privacy rights of third parties."

7. The third party's case (Ms Y)

The third party also made an *in camera* submission, arguing that disclosure of the letter would be harmful to her privacy and to her other interests. She further states that she was given assurances of confidentiality by the Ministry.

8. Discussion

To provide some context for this review, an external audit of Malaspina University College by the Ministry concluded that the allegations in the letter of complaint were well intended, but the irregularities did not appear to be material, nor was there an indication that the Ministry had been defrauded, or that Malaspina or its Financial Aid Office received any benefit.

The identity of the complainant

Malaspina University College and the second applicant want confirmation of the identity of the complainant, which the Ministry did not intend to disclose. One difficulty that I have in discussing this matter is that I cannot engage in a candid analysis without disclosing information submitted to me *in camera*.

I can say that the conditions of this request for access are quite comparable to my decision in favour of disclosure in a Saturna Island inquiry, which also involved allegations to a Ministry that proved unfounded. See Order No. 36-1995, March 31, 1995. I ordered disclosure of the identity of the complainant in that case, and I conclude that I should do so again here. I note, in particular, that the Ministry provided no evidence that the letter was received from the third party in confidence.

Both the applicants make a case, on equitable grounds, for the disclosure of the identity of the complainant. They seek openness and accountability, which is in accord with the fundamental goals of the *Freedom of Information and Protection of Privacy Act*. The premise that those accused should have the right to face their accuser is also a basic principle of the Anglo-Canadian criminal justice system. The fact that an allegation proves to be false, and an applicant's belief that a complaint was malicious, are worthy of careful consideration.

In my view, disclosure of the identity of the complainant will not be an unreasonable invasion of the subject's privacy under sections 22(1) or 22(3). Although the third party argued that section 22(3)(b) (and numerous other subsections) applied to prevent disclosure, this presumption is rebutted, in my view, by the circumstances outlined in section 22(2)(c): disclosure is relevant to a fair determination of the rights of both applicants. In my judgment, one possible consequence of making what proves to be a false accusation in connection with an administrative and non-criminal proceeding may be public scrutiny by those who perceive themselves to be falsely accused.

I am of the view that both applicants have met the burden of proof in this case.

9. Order

I find that disclosure of the record, severing only the reference to another third party and the address and telephone number of the complainant, would not be an unreasonable invasion of the third party's personal privacy under section 22 of the Act. Therefore, I have determined that the Ministry of Skills, Training and Labour is not required to refuse access to the record in dispute with the exception of these noted severances.

Under section 58(2)(a) of the Act, I require the head of the Ministry of Skills, Training and Labour to disclose the record in dispute to the applicants, severing only those portions of the record described above.

David H. Flaherty
Commissioner

January 5, 1995