

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 59-1995
October 25, 1995**

INQUIRY RE: A request by the media to the Vancouver School Board for performance evaluations of the Vancouver School Board Superintendent

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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) in Victoria on Thursday, August 10, 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 submitted to this Office on May 17, 1995 by reporter Russ Francis of the Kitsilano News (the applicant). On May 15, 1995 the applicant requested from the Vancouver School Board (the public body) information held by the public body concerning performance evaluations of the Superintendent of the Vancouver School Board (the third party).

The public body, by way of letter May 17, 1995, denied access to the information requested and took the position that the performance evaluations of the third party were protected by the privacy protection provisions of the Act and, in particular, sections 22(3)(d) and (g).

2. Documentation of the inquiry process

A Notice of Inquiry was issued to the parties to this inquiry July 7, 1995. A Portfolio Officer's fact report (a concise statement of the essential facts of the case) was provided to the parties with the Notice of Inquiry. The inquiry process began July 28, 1995 and concluded August 10, 1995. The applicant did not make a primary submission; this is a critical consideration to which I will return later in this order.

3. The records in dispute

The records in dispute consist of performance evaluations of the Superintendent of the Vancouver School Board, who is the third party in this inquiry.

4. Issue under review at the inquiry

The issue originally under review at this inquiry was whether the records in dispute are protected from disclosure by section 22 of the Act.

5. Discussion

Under section 57(2) of the Act, the applicant bears the burden of proof to establish that disclosure of the information sought would not be an unreasonable invasion of the third party's personal privacy. The applicant was informed of this fact in a Notice of Inquiry sent to him on July 7, 1995.

The initial submissions in this matter were due at my Office on July 28, 1995 and final reply submissions on August 10, 1995. As of August 10, 1995, I had not received any submissions from the applicant. I did forward the initial submission of the public body to him. However, as the applicant had the burden of proof and did not file a submission, I decided under section 56(4)(b) of the Act that he was not entitled to submit any material in response to the public body's representations. I informed the applicant of that fact in writing on August 10, 1995.

6. Order

I find that the applicant in this case has failed to meet the burden of proof imposed by section 57(2). I accordingly confirm the decision of the Vancouver School Board to withhold the records requested by the applicant.

October 25, 1995

David H. Flaherty
Commissioner