

**Office of the Information and Privacy Commissioner  
Province of British Columbia  
Order No. 269-1998  
November 12, 1998**

**INQUIRY RE: A decision by the University of British Columbia to refuse access to a third party's personal information**

**Fourth Floor  
1675 Douglas Street  
Victoria, B.C. V8V 1X4  
Telephone: 250-387-5629  
Facsimile: 250-387-1696  
Web Site: <http://www.oipcbc.org>**

**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 August 21, 1998 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of two related requests for review concerning the University of British Columbia's (UBC) decision to refuse access to third party personal information in a record, and the adequacy of UBC's search for records in response to the applicant's two access requests.

**2. Documentation of the inquiry process**

On April 1, 1998 the applicant submitted a request to the public body under the Act for copies of all and any records showing how UBC, specifically, the Office of Awards and Financial Aid, obtained information about a third party's current residential address.

UBC responded to the applicant's request on April 6, 1998 by denying access to the information requested as the records fell within the exception provided under section 22(1) of the Act.

On April 15, 1998 the applicant made a request for review to this Office concerning the decision of UBC to refuse him access to certain records under section 22(1) of the Act.

During the mediation process, UBC agreed to the disclosure of information which shows how UBC obtained the third party's current residential address. This information was contained in two pages of notes made by a UBC employee that had been part of a larger number of records disclosed to the applicant on September 8, 1997 in response to an access request. Some personal information about the third party in the two pages of notes was not disclosed. UBC confirmed that, in addition to section 22(1) of the Act, it was also withholding the third party personal information under section 22(2)(f) and (3)(d) and (j).

On June 17, 1998 the applicant confirmed that he wished to proceed to an inquiry because he did not accept that UBC had properly withheld third party personal information in one of the two records under section 22 of the Act, or that an adequate search for records in response to his request had been conducted.

On June 22, 1998 a notice of inquiry was issued for an inquiry to be held on July 14, 1998. On July 6, 1998, in response to a request from the applicant, I granted an extension of the inquiry deadline to July 31, 1998. On July 14, 1998 UBC notified the Office of the Information and Privacy Commissioner that it would no longer be relying on sections 22(2)(f) and 22(3)(j) of the Act concerning its decision to deny the applicant access to the third party personal information.

The applicant had made a new access request to UBC, on June 1, 1998, for all and any records showing information about the applicant and the third party which UBC gave to and received from the Credit Bureau of Vancouver during the period May 1, 1995 to May 29, 1998.

UBC responded to the applicant's request on July 2, 1998 by confirming that all records relevant to the request had been provided to the applicant with the disclosure of records on September 8, 1997.

On July 7, 1998 the applicant submitted a request for review to this Office of UBC's response to his June 1, 1998 request. The applicant did not provide a reason for his request for review.

During the mediation process, it was determined that the issue for review is the adequacy of UBC's search for records in response to the applicant's June 1, 1998 access request.

On July 30, 1998 the applicant confirmed that he would like this matter (his July 7, 1998 request for review) to proceed to an inquiry.

On July 30, 1998 I was informed that both of these requests for review concern access to the same record and the issue of the adequacy of UBC's search for records in response to the applicant's two access requests. As a result, I decided to deal with both requests for review in one inquiry and set a single inquiry date for both matters of

August 21, 1998. Amended notices of inquiry and portfolio officer's fact reports were issued to the parties on July 31, 1998 and August 5, 1998.

### **3. Issues under review and the burden of proof**

In this inquiry, the issues to be reviewed are the public body's application of sections 22(1) and 22(3)(d) of the Act to the one record in dispute, and the application of section 6(1) of the Act to the adequacy of the public body's search for records in response to the applicant's April 1, 1998 and June 1, 1998 requests.

The relevant sections of the Act are:

#### ***Duty to assist applicants***

- 6(1) The head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.

#### ***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.

...

- (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

...

- (d) the personal information relates to employment, occupational or educational history,

....

Section 57 of the Act establishes the burden of proof on the parties in this inquiry.

Under section 57(2), if the record or part that the applicant is refused access to contains personal information about 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 personal privacy.

Section 57 of the Act is silent with respect to a request for review about the issue of adequate search. I decided in Order No. 103-1996, May 23, 1996, that the burden of proof is on the public body.

### **4. The record in dispute**

The one-page record in dispute contains the file notes of a UBC employee in the Office of Awards and Financial Aid. Two sentences concerning a third party's employment were severed.

**5. The applicant's case**

I have carefully reviewed the applicant's submissions in detail and offer relevant comment on them below as I deemed it appropriate to do so.

**6. The University of British Columbia's case**

UBC informs me that the third party is a guarantor of a loan that it provided to the applicant. The information that it is refusing to disclose concerns an attempt by a UBC employee to obtain the third party's current address, since to do so would be an unreasonable invasion of the third party's personal privacy. (Section 22(3)(d))

**8. The third party's case**

The third party did not make a submission in this inquiry.

**9. Discussion**

One of the curiosities of this case is the applicant's contention that UBC disclosed the personal information of the third party to him in contravention of the Act. I regard this as a non-issue, since the third party is the guarantor of the applicant's loan from UBC. One can only assume that the applicant himself supplied this personal information to UBC. If the third party has any concerns about invasion of her privacy, she has the right to complain to my Office. The applicant does not, in my view, have some kind of surrogate role to act for the third party in this manner. (Submission of the Applicant, passim)

***Section 22(3): A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if ... (d) the personal information relates to employment, occupational or educational history,***

UBC is relying on this section to prevent disclosure of the information in dispute, because it is information about the employment history of a third party obtained from sources other than the applicant and, therefore, cannot be released without the third party's consent. Yet UBC acknowledges that the applicant furnished the same information to it.

I think that UBC's application of this section to the information in dispute is confused. The information simply records an action taken by a UBC employee and a note of the current work location of the third party. UBC claims that the work location of the third party is the same information that the applicant in this case earlier furnished to the

University, so I cannot see that any harm can come to the third party from its disclosure to the applicant. Nor can I see any possible invasion of the privacy of the UBC employee who made the note in a file during the course of business.

The applicant claims that he did not give the information in dispute to UBC, but that it obtained the information from a credit bureau. It is clear from the information previously disclosed to the applicant that UBC subsequently obtained information from a credit bureau. It is not clear whether UBC also obtained the third party's work location from that credit bureau, but since it is clear that the applicant provided this very information to UBC in support of his own loan application, the lack of clarity on this point does not affect my finding.

In my view, the record in dispute should be disclosed to the applicant, since its disclosure would not be an unreasonable invasion of the privacy of a third party.

***Section 6(1): The head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.***

UBC submits that the records responsive to the applicant's various requests can only be found in its Awards and Financial Aid Office. Affidavit evidence supports this position. UBC states that:

The Director of the Awards and Financial Aid Office at the University, and her staff, have made a thorough search of the records in their possession and have concluded that they do not have any of [other?] their files with respect to the applicant nor does it have any other records relevant to the Applicant's request, other than those produced to the Applicant.

I am satisfied, based on the information before me, that the University has complied with its duty to assist the applicant under section 6 of the Act in respect of his April 1, 1998 and June 1, 1998 requests.

## **10. Order**

I find that the University of British Columbia complied with its duty to assist the applicant under section 6(1) of the Act with respect to his April 1, 1998 and June 1, 1998 access requests.

I find that the head of the University of British Columbia is not required under section 22 of the Act to refuse access to the part of the record in dispute. Under section 58(2)(a) of the Act, I require the head of the University of British Columbia to give the applicant access to that part of the record.

---

David H. Flaherty  
Commissioner

November 12, 1998