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INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Order 01-30

UNIVERSITY OF BRITISH COLUMBIA

David Loukidelis, Information and Privacy Commissioner
July 3, 2001

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Summary: Applicant, who is one subject of a letter written to UBC by another student, is entitled to access to more information than UBC disclosed. Section 19(1)(a) does not apply to information withheld by UBC, including the applicant's own personal information, but s. 22(1) requires UBC to withhold third parties' personal information.

Key Words: threaten harm to safety or mental or physical health – reasonable expectation – personal information – educational history – opinions about someone else – unreasonable invasion of personal privacy.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 19(1)(a), 22(1), 22(3)(f), (d) and (g).

Authorities Considered: B.C.: Order 00-01, [2000] B.C.I.P.C.D. No. 1; Order 01-15, [2001] B.C.I.P.C.D. No. 16; Order 00-02, [2000] B.C.I.P.C.D. No. 2; Order 00-28, [2000] B.C.I.P.C.D. No. 31; Order No. 323-1999, [1999] B.C.I.P.C.D. No. 36.

1.0 INTRODUCTION

[1] The origins of this case lie in a dispute between the applicant, who is a UBC student, and one of her instructors, who she believed was treating her unfairly and was unfriendly towards her. At a time of some friction between the applicant and the instructor, it is alleged that the applicant said something that another student took to be a threat of violence against the instructor.

[2] Around that time, the author of the record in dispute here, who was in the same class as the applicant, wrote a letter to a senior member of the relevant UBC faculty. The letter was largely concerned with defending the instructor against what the letter's author considered to be unfair criticisms and complaints by the applicant and two other students. (I refer in this order to the letter's author as the "author".) The letter also described the substance of the applicant's alleged threat against the instructor, which the author had not witnessed, but had heard about second-hand. The letter was brought to the applicant's attention by UBC faculty, one of whom read the letter aloud to the applicant, and she later requested access to it under the *Freedom of Information and Protection of Privacy Act* ("Act"), on November 8, 1999.

[3] UBC responded, on February 21, 2000, by disclosing only the name of the author. According to the Portfolio Officer's Fact Report, UBC decided, during mediation, to disclose some information about the applicant from the letter, but to continue to withhold the rest under ss. 19(1) and 22(1) of the Act. On June 6, 2000, the author requested a review of UBC's decision to disclose more of the letter. On September 29, 2000, the applicant, confirming that she wished to obtain the rest of the letter, asked that the matter proceed to inquiry. I then held a written inquiry under s. 56 of the Act. In the inquiry, I received submissions from UBC, the applicant, the author and the instructor. The applicant was represented by legal counsel, as was UBC.

2.0 ISSUES

[4] The issues in this inquiry are as follows:

1. Is UBC authorized by s. 19(1)(a) or (b) of the Act to refuse to disclose information to the applicant?
2. Is UBC required by s. 22(1) of the Act to refuse to disclose personal information to the applicant?

[5] Under s. 57(1) of the Act, UBC bears the burden of proof regarding the first issue, while the applicant bears the burden, under s. 57(2) of the Act, respecting the second issue.

3.0 DISCUSSION

[6] **3.1 Description of the Letter** – The letter and the events surrounding it have been the focus of much concern and attention. Given the chain of events the letter has triggered, it is worth describing its contents here in general terms.

[7] The letter, which is almost five pages long, contains a good deal of personal information of a variety of individuals. It contains the author's personal information, the applicant's personal information and the personal information of other individuals,

including the instructor and two other students. Just over two pages concern the applicant. The rest of it consists of the author's observations about, or assessments of, the personal qualities and academic abilities and performances of other individuals. The portions which relate to the applicant also touch on the instructor. Much of this material conveys the author's understanding of the dealings between the applicant and the instructor. It also sets out the substance of the author's understanding of a threat the applicant allegedly made against the instructor. Three paragraphs of the letter describe the author's interactions with, and perceptions of, the applicant's behaviour and character. This includes the author's perceptions of the applicant's behaviour towards the instructor and the author. These paragraphs, in other words, contain the author's opinions about the applicant's character and personality.

[8] **3.2 Personal Privacy Issues** – It is convenient, in this case, to deal first with the personal privacy issues raised by the letter.

[9] UBC cited ss. 22(1) and 22(2)(f) of the Act in refusing to disclose certain portions of the letter and the parties' submissions raise other aspects of s. 22. The relevant portions of that section read 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

...

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

(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,

...

(g) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations about the third party,

[10] UBC's entire argument regarding s. 22 is found in its initial submission, as follows:

- 4.1 UBC has severed certain portions of the document in question on the basis that such disclosure would be an unreasonable invasion of the third party's personal privacy. With respect to section 22(2)(f) UBC submits that the In Camera evidence supports the contention that the personal information was supplied in confidence and that the document itself was drafted for restricted circulation.
- 4.2 UBC recognizes, however, that the personal information of an individual as defined by the Act includes anyone else's opinions about that individual. Consequently, ss. 22(1) and (2) do not require UBC to refuse disclosure of the Third Party's personal views or opinions if they are about others. UBC relies on s. 19 of the Act as grounds for refusing to disclose such information. In its *in camera* submission, UBC concedes that s. 22 does not require it to refuse to disclose the Third Party's personal views or opinions about the applicant. UBC also argues that, to the extent the letter expresses the applicant's views about the instructor, those views are the instructor's personal information and not the applicant's.

[11] The applicant argues that UBC's s. 22 argument turns on the letter having been supplied in confidence. She says that, since the letter's contents were disclosed to her when it was read aloud, the s. 22 argument falls away.

Educational History

[12] The letter contains personal information of two students, other than the applicant and the author, who are mentioned in the letter. It consists of the author's assessments of the students' past behaviour and performance as students and includes fairly specific judgements of their academic performance. That information falls under the presumed unreasonable invasion of personal privacy created by s. 22(3)(d).

Opinions About Others

[13] The letter also expresses the author's opinions about the two students and the applicant. The letter also expresses opinions about the instructor's character and behaviour. Although I do not consider these opinions to amount to personal evaluations within the meaning of s. 22(3)(g) of the Act, they clearly constitute the personal information of those individuals. Paragraph (h) of the Act's definition of "personal information" provides that one person's views about an individual are that individual's personal information.

Author's Own Personal Information

[14] The letter also contains the author's assessment of her own personal situation and feelings, including her own academic performance. This information qualifies as the

author's own personal information. Portions of it fall under s. 22(3)(d), while other parts are simply the author's opinions, or assessments, about herself.

Supply In Confidence

[15] On the question of whether the personal information in the letter was supplied to UBC in confidence, the author's evidence is that she delivered the letter to its addressee "accompanied by verbal instructions that the content was confidential". The applicant, by contrast, contends that the personal information was not supplied in confidence because its contents were verbally disclosed to the applicant and to other students. She deposed that she and two other students were called to a meeting with UBC officials on November 4, 1999 and that, at that meeting, one of the UBC officials asked her if she "was going to bring a gun" to shoot the instructor. The relevant part of para. 5 of the applicant's affidavit reads as follows:

... I was shocked at this question. I immediately denied making any statement of the kind and stated to ... [the UBC official] that not only had I never said this, I'd never thought this nor would I ever do this. I have never been involved in any violent activity of any kind in my life. If anything, I am a pacifist and I was extremely upset about the question put to me as I thought that they insinuated that I was a violent person. I have no history of any criminal or violent behaviour of any kind. ... [The UBC official] then read a letter written by ... [the author], another student in my class to somebody at U.B.C., to all of us at this meeting, portions of the letter relating to the two other students present at the meeting, ... [two names deleted]. Although I do not remember in detail all the contents of the letter, ... [the author] stated that I had told her that I had a gun and was going to bring it to shoot ... [the instructor]. There were other serious allegations against ... [the other two students] including an allegation that they were guilty of plagiarism. I have never owned a gun, nor would I ever think of owning a gun. I have never made such a statement to ... [the author] or anybody.

[16] In para. 8 of her affidavit, the applicant deposed that she had "heard from many of the students in my class that they are all aware of the contents of the letter" and that, as far as she can tell, the "letter contains false and malicious statements about me."

[17] It does not, in my view, follow from the fact that the letter was read aloud to the applicant and others that the personal information it contains was not "supplied in confidence" within the meaning of s. 22(2)(f) of the Act. To the contrary, the evidence suggests that the personal information was supplied in confidence, but that the quality of confidentiality was later diminished, if not lost. I accept that the personal information contained in the letter was "supplied in confidence" to UBC within the meaning of s. 22(2)(f). This does not, of course, mean that the personal information must be withheld from the applicant. It is merely one relevant circumstance that, in this case, favours withholding the personal information from the applicant.

[18] I should say here that the personal privacy interests of third parties are not defeated simply because the letter was read aloud to the applicant. Depending on the circumstances, a previous disclosure of personal information, whether verbal or written,

does not necessarily mean that later disclosure of the same personal information, in

response to an access request, will not unreasonably invade personal privacy. It all depends on the circumstances. The earlier disclosure will be a relevant circumstance to consider, under s. 22(2), in deciding whether the personal information can be disclosed in response to the later access request.

Is the Applicant Entitled to Access?

[19] The applicant has not persuaded me that the personal information of the two students can be disclosed to her without unreasonably invading their personal privacy. The personal information was supplied in confidence and the fact that it was disclosed verbally to the applicant (and the two students) at one stage does not, in this case, vitiate the s. 22(2)(f) relevant circumstance. The s. 22(3)(d) presumed unreasonable invasion of personal privacy is not rebutted as regards the educational history of the two students. I have also concluded that s. 22(1) requires the author's opinions about those individuals, and about the instructor, to be withheld. The same conclusion applies to the author's own personal information. I note that all of this third-party personal information is, in any event, clearly irrelevant to the issues between the author and the applicant.

[20] Of course, the letter contains the applicant's personal information, including in the form of the author's opinions about her. There is nothing before me to suggest that s. 22 requires UBC to deny the applicant access to her own personal information in order to protect the privacy of any other individuals (including the author), a conclusion that is acknowledged in para. 4.2 of UBC's initial submission. That personal information consists of the author's opinions, or views, about the applicant, including as to the applicant's behaviour in the academic setting. A good deal of it is laudatory, but some is not. None of it can be withheld under s. 22(1) and I find that UBC is not required by s. 22(1) to refuse to disclose the applicant's own personal information to her.

[21] **3.3 Personal Safety Issues** – The Notice of Written Inquiry that this Office issued to the parties says that ss. 19(1)(a) and (b) are in issue. In its initial submission, UBC says that ss. 19(1) and (2) are raised. UBC's public and *in camera* submissions and evidence address s. 19(1)(a) and (b) of the Act. Section 19(2), the merits of which were not addressed by anyone in the inquiry, is not properly before me, since it is not specified as an issue in the Notice of Written Inquiry.

[22] Section 19(1)(a) provides that a public body may refuse to disclose information to an applicant, including "personal information about the applicant", if the disclosure could reasonably be expected to "threaten anyone else's safety or mental or physical health". In Order 01-15, [2001] B.C.I.P.C.D. No. 16, I confirmed the test to be applied in cases involving s. 19(1)(a) cases as follows, at para. 60:

As these passages indicate, s. 19(1)(a) is triggered only where there is a reasonable expectation that disclosure of information could threaten the safety or mental or physical health of someone other than the applicant. There must be a rational connection between the disclosure and the feared harm – speculation will not suffice.

[23] See, also, Order 00-02, [2000] B.C.I.P.C.D. No. 2, and Order 00-28, [2000] B.C.I.P.C.D. No. 31.

[24] In the nine cases in which I have had to deal with s. 19(1)(a), I have upheld the public body's application of that section in all but two instances. One of those cases, Order No. 323-1999, [1999] B.C.I.P.C.D. No. 36, involved purely statistical information. The second case, Order 01-15, is the only one in which information associated with identifiable individuals was involved and in which I found the section did not apply. In all other cases involving information of or pertaining to third parties, I have upheld the public body's application of the section. In this case, I have decided, after careful consideration, that s. 19(1)(a) was not appropriately applied. The reasons for this conclusion follow.

The Parties' Arguments

[25] Para. 3.1 of UBC's public initial submission reads as follows:

Disclosure harmful to individual and public safety [*sic*] protects individuals against threats to their mental or physical health and protects the public from interference with their safety in general. In order to receive the protection of section 19(1)(a), UBC must provide sufficient evidence to support a rational connection between the disclosure of the information and the threat to an individual's safety or mental or physical health. [Order No. 323-1999]

[26] In its *in camera* initial submission, UBC says it relies on two letters written by the author to UBC in 2000, apparently in order to make representations to UBC respecting the applicant's access request. UBC also relies on what it describes as "the hearsay evidence", contained in the letter itself, respecting the threat that was allegedly made by the applicant. This refers to the contents of the letter itself, which UBC says serves as evidence going to the s. 19(1)(a) issue. It argues that it can base its s. 19(1) decision on such evidence, citing Order 00-01, [2000] B.C.I.P.C.D. No. 1. Last, although it does not formally adopt the evidence and argument of the author respecting s. 19(1)(a), UBC's initial *in camera* submission indicates that it "expects" the author will "provide a more detailed Affidavit supporting the protection of s. 19 of the Act."

[27] The author provided me with a letter combining her arguments with evidence in support of her case. She asked that portions of her submission be received *in camera*, which I have done. I cannot, therefore, disclose those arguments. I can, however, say that the author fears reprisal of some unknown kind from the applicant if the letter is disclosed to her and says that the disclosure would cause her mental harm.

[28] The author also refers to complaints the applicant and two other students made against the instructor, which were found to be without merit by a lawyer retained by UBC. She says these complaints and the outcome of the investigation illustrate "the tenacity and unreasonableness of the applicant in pursuing what are unreasonable and

potentially damaging agendas.” She says that she fears the applicant’s behaviour suggests disclosure of the letter “could result in comparable actions being taken against me” or “in further action being taken against” the instructor. She refers here, clearly, to complaints that might be made by the applicant, not to unspecified other “actions”.

[29] The instructor’s submission was delivered partly on an *in camera* basis. I have decided it is properly received *in camera*. I note, first, that the instructor’s cover letter for his submission sets out his “claim” that the applicant is “given to making exaggerated claims about wrong-doing and the behaviour of others” and that she is “capable of considerable mischief” of some kind. He says that the release of any of the letter “is likely to result in more of the same” mischief. In para. 3 of his submission, the instructor describes the letter as having been

... written in my defence by the third party in response to accusations being made about my teaching and classroom behaviour by three students.

[30] The applicant was one of the complainants. The instructor says, at para. 7, that he is “very familiar with the applicant as she was a student in my class”. He refers to the complaints against him, which were later dismissed by UBC, and expresses concern that, if the rest of the letter is disclosed, the applicant may affect the author in a similar way, by making a complaint against her or otherwise (he does not say how).

[31] The instructor offers me his “opinion” about the applicant and her motives in seeking access to the letter. That opinion is, he says, based on his experiences with the applicant, his “knowledge of human behaviour” and his experience as a psychotherapist. I do not propose to recite here the instructor’s opinion of the applicant. It would serve no useful purpose to do so, not least because the instructor’s “opinion” must be treated with considerable caution. He can hardly be seen as impartial in this matter. He was, not long ago, the subject of what turned out to be an unfounded complaint made by the applicant and others and has clearly had difficult dealings with her. His opinions are not, in my view, independent or impartial and are to be given little weight.

[32] Paragraph 15 of the instructor’s submission alleges that UBC’s administration has been “negligent with regards to these matters”, thus causing the author “considerable harm” and “unnecessary and unwarranted stress.” The instructor does not provide details of, or supporting evidence for, the “considerable harm” or stress supposedly caused to the author by UBC’s neglect. The instructor goes on to say that nothing can be gained “by further compounding her difficulties through release of any part of this letter”. He says it is “regrettable” that UBC “seems unwilling to, or has no means, for dealing with the applicant and her status as a student.” These statements are, like the instructor’s “opinion” of the applicant, to be treated with marked caution, as they are not from a detached source. Nor are they particularly compelling on the s. 19(1) issues at hand.

No Reasonable Expectation of Harm

[33] I have concluded that the material before me – including the contents of the letter – does not establish a reasonable expectation of a threat to anyone’s mental or physical health or safety under s. 19(1)(a). Nor does it establish a reasonable expectation of interference with public safety under s. 19(2).

[34] First, it must be remembered that, although the author disputes the accuracy, in some respects, of the applicant’s memory of the letter’s contents, the applicant is aware of what it says. The applicant knows that the letter alleges she threatened the instructor and she knows the letter was written by the author. This is not a case where the disputed information would identify the author or reveal, for the first time, things she said about the applicant. One would expect that, if the applicant were going to react to the letter’s contents in a manner contemplated by s. 19(1) – or as alleged by the author, UBC and the instructor – she would have done so when the letter was read to her or some time afterward. On this basis alone, it is difficult to find a link between disclosure of the letter’s contents and the harm contemplated by s. 19(1).

[35] Next, I disagree with the author’s contention that the applicant’s behaviour in the wake of the letter was, on the basis that the applicant’s lawyer demanded a retraction of the disputed letter and a written apology, “threatening” within the meaning of s. 19(1)(a). The applicant’s assertion of her legal rights through her lawyer is not, whatever the merits of the assertion, evidence of a threat within the meaning of s. 19(1).

[36] Further, there is no evidence that the applicant has a history of violence or of threatening violence. She adamantly denies making any threat against the instructor. The most anyone can allege is that the applicant has reacted badly, and even become immoderately angry, on certain occasions, at least in matters relating to the author or the instructor.

[37] There has clearly been a lot of tension between the applicant and the instructor. The same is true of relations between the author and the applicant. I accept that all parties – including the applicant – have at various times found the situation to be stressful. I also accept that the applicant has been a source of stress for the author and the instructor, but it is also fair to say the author’s actions have caused the applicant some stress. Disclosure of the letter may, I acknowledge, lead to renewed stress or ill-feeling, although one would hope that reason and maturity might prevail on all sides. But I see nothing in the material before me that supports a reasonable expectation that disclosure of the information in the letter – and the applicant has, despite the author’s contrary contention, a fairly accurate recollection of its contents – could threaten anyone’s physical or mental health or safety or interfere with public safety as contemplated by s. 19(1)(a) and (b). I find, therefore, that UBC is not authorized to refuse disclosure under either s. 19(1)(a) or s. 19(1)(b) of the Act. It is worth observing at this point that, because s. 22(1) prohibits disclosure of third-party personal information (including the author’s personal information), much of the letter must still be withheld by UBC.

4.0 CONCLUSION

[38] For the reasons given above, I make the following orders:

1. Under s. 58(2)(a) of the Act, subject to paragraph 3, below, I require UBC to give the applicant access to the information that UBC withheld under s. 19 of the Act;
2. Under s. 58(2)(a) of the Act, I require UBC to give the applicant access to her own personal information withheld by UBC under s. 22(1) of the Act; and
3. Under s. 58(2)(c) of the Act, I require UBC to refuse to disclose the third party personal information that UBC withheld under s. 22(1) of the Act and that is shown in red text on the copy of the letter delivered to UBC with its copy of this order.

July 3, 2001

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia