OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Order 01-38

THE BOARD OF SCHOOL TRUSTEES OF SCHOOL DISTRICT NO. 44 (NORTH VANCOUVER)

David Loukidelis, Information and Privacy Commissioner
August 10, 2001

Quicklaw Cite: [2001] B.C.I.P.C.D. No. 39
Document URL: http://www.oipcbc.org/orders/Order01-38.html
Office URL: http://www.oipcbc.org
ISSN 1198-6182

Summary: Applicant sought access to letter sent by a principal to a coach at her daughter's school, regarding an incident involving her daughter. NVSD initially refused to disclose any part of the letter but later disclosed some. NVSD is required to withhold coach's personal information consisting of evaluations of, or opinions about, her actions related to the incident. Other information cannot be withheld, either because it is not anyone's personal information or because its disclosure would not unreasonably invade the personal privacy of the coach or other individuals.

Key Words: personal information – unreasonable invasion of personal privacy – opinions – evaluations – submitted in confidence – employment history – public scrutiny – fair determination of rights.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 22(1), 22(2)(a), (c) and (f), 22(3)(d) and (g) and 22(4)(e).

Authorities Considered: B.C.: Order 00-44, [2000] B.C.I.P.C.D. No. 48; Order 01-37, [2001] B.C.I.P.C.D. No. 38.

1.0 INTRODUCTION

[1] The origins of this inquiry are in an access request, under the *Freedom of Information and Protection of Privacy Act* ("Act"), to The Board of School Trustees of School District No. 44 (North Vancouver) ("NVSD") for a copy of a letter sent to a teacher about the applicant's daughter, a student at a secondary school. The letter was

the result of an informal NVSD investigation into a complaint the applicant made that the third party, a teacher at the school and a coach for a sports team ("coach"), had unfairly and arbitrarily dismissed the daughter from tryouts for the team. The school principal had, after the informal investigation, written to the coach. The coach was told to reinstate the daughter on a trial basis, which she did. The coach then resigned her position as coach, although she remained a teacher at the school. This letter from the principal to the coach is at issue in this inquiry.

[2] The NVSD initially refused access to the letter under s. 22 of the Act. The applicant requested a review of this decision and mediation led to the disclosure of the letter in severed form. The applicant was not satisfied with the results of mediation, however, so I held an inquiry under s. 56 of the Act.

[3] The applicant's materials included several references to the content of mediation by this Office. I have ignored them in my deliberations, since they are not properly before me.

2.0 ISSUE

[4] The only issue before me is whether the NVSD was required under s. 22(1) of the Act to refuse access to the severed portions of the letter. Under s. 57(2) of the Act, the applicant has the burden of proof in this inquiry.

3.0 DISCUSSION

[5] **3.1 Outline of Section 22** – I repeated in paras. 14-16 of Order 01-37, [2001] B.C.I.P.C.D. No. 38, the approach to take in applying s. 22. Without again repeating that discussion, I have taken the same approach here.

[6] The portions of s. 22 that the NVSD argued are relevant in this inquiry are 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,

…

(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,

…

(4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

…

(e) the information is about the third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff, … .

[7] **3.2 Is This Personal Information?** – I will first decide whether the disputed information is "personal information" as defined in the Act. The NVSD says paragraphs (g) and (h) of the definition of "personal information" in Schedule 1 of the Act are relevant in this case. The complete definition reads as follows:

"personal information" means recorded information about an identifiable individual, including

(a) the individual's name, address or telephone number,

(b) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations,

(c) the individual's age, sex, sexual orientation, marital status or family status,

(d) an identifying number, symbol or other particular assigned to the individual,

(e) the individual's fingerprints, blood type or inheritable characteristics,

(f) information about the individual's health care history, including a physical or mental disability,

(g) information about the individual's educational, financial, criminal or employment history,

> (h) anyone else's opinions about the individual, and
>
> (i) the individual's personal views or opinions, except if they are about someone else;

[8] It is clear on review of the withheld items – which I have numbered 1-23 in the copy of the letter the NVSD provided to me for the inquiry – that some of the withheld information, namely items 2, 5-7 and 21, is not anyone's "personal information". These items are, rather, a three-word description of the way the letter was delivered, a word used to describe the instruction given in the letter (a word which I note the NVSD uses in its initial submission, as does the coach herself in her resignation letter, a copy of which the applicant attached to her initial submission) and the school's expectations of coaches generally (approximately five and a half lines of text). Because these items of information do not contain personal information, s. 22 does not apply to them. The NVSD must disclose these items of information.

[9] The remaining items of information are, however, personal information of the coach or other individuals. I refer here to items 1, 3, 4, 8-20, 22 and 23. These items include references to the coach, references to others (including those involved in the incident that led to the complaint), comments about the coach's actions or reactions and a reference to a personnel matter. The following discussion addresses the question of whether s. 22(1) requires the NVSD to withhold these items. In that discussion, I refer to these remaining items of personal information as the "withheld information".

[10] **3.3 Presumed Unreasonable Invasions of Personal Privacy** – I will first note that I agree with the NVSD's argument, at para. 30 of its initial submission, that s. 22(4)(e) does not apply to the withheld information. The NVSD goes on to argue that all of the withheld information relates to the coach and falls into ss. 22(3)(d) and (g). I agree with this to a certain extent.

Coach's Employment History

[11] In paras. 21-27 and 31-34 of its initial submission, the NVSD argues that the withheld information, except the coach's name, constitutes the coach's "employment history" under paragraph (g) of the definition of "personal information". It also argues that disclosure of this information would be an unreasonable invasion of the coach's privacy under s. 22(3)(d) of the Act.

[12] The NVSD says that the coach was acting in her capacity as its employee in her actions as coach and that the complaint being investigated was "made with respect to a decision made by [the coach] as an employee of the NVSD". It describes the withheld information as the two investigators' interpretations and opinions of the facts surrounding the daughter's dismissal from the team tryouts, the conclusions of their informal

investigation into the complaint, the NVSD's instructions to the coach to resolve the complaint against her and information regarding the coach's personnel record.

[13] The NVSD argues that the notes, materials, evaluations and conclusions of the two investigators, including the record in dispute, are in the coach's personnel record at the school. The NVSD argues further that "employment history" includes "information relating to an informal investigation into decisions made by an employee by the employer and the reason for an employee resigning from a position." It follows, in the NVSD's view, that disclosure of this "work history" information would be an unreasonable invasion of the coach's privacy. It cites portions of various public and *in camera* affidavits and Order 00-44, [2000] B.C.I.P.C.D. No. 48, as supporting its arguments.

[14] I agree with the NVSD that the coach's name does not fall into "employment history" and that s. 22(3)(d) does not apply to this information (items 1, 3, 12 and 16). This corresponds to my finding in Order 00-44. Section 22(3)(d) does apply, in my view, to certain other references to the coach (items 13, 14 and 18).

[15] I also find, however, that some of the other withheld information is also not the coach's "employment history". Items 9, 10, 15, 19 and 23, for example, relate to people other than the coach. Items 9, 10 and 15 (a total of six words) are general references to others involved in the incident with the student. Item 19 (one word) refers indirectly to the applicant's daughter while item 23 refers to someone who, in an official capacity, received a copy of the letter. Insofar as the coach is concerned, therefore, I find that s. 22(3)(d) does not apply to items 9, 10, 15, 19 and 23.

[16] It is also clear, in my view, that other aspects of the withheld information – *i.e.*, items 4, 8, 17, 20 and 22 – qualify as the coach's employment history. Item 4 (half a sentence) sets out the purpose of the letter. Item 8 (a sentence) is a finding of the investigators regarding the coach's actions respecting the team. In addition, item 17 (two words) and item 20 (one word) are the investigators' conclusions about the coach's decision to dismiss the daughter.

[17] Item 22 contains information which the NVSD describes as regarding the coach's personnel record. I note, for future reference, that item 22 and paras. 10 and 11 of the school principal's open affidavit, which is attached to the NVSD's initial submission, contain most of the same information.

[18] I find that items 4, 8, 11, 17, 20 and 22 are the coach's "employment history" and fall under s. 22(3)(d) of the Act.

Opinions and Personal Evaluations About the Coach

[19] The NVSD says that some of the withheld information is the opinions and evaluations of the two investigators of the coach's decision as coach of the sports team. It is therefore, the NVSD says, the coach's personal information as contemplated by

paragraph (h) of the Act's definition of personal information. It says items 8-20 fall into this category. Disclosure of this information would, the NVSD says, be an unreasonable invasion of the coach's privacy under s. 22(3)(g) of the Act. Again, it cites Order 00-44 as supporting its arguments on this point (paras. 28-29 and 35-38, initial submission).

[20] I agree that items 8, 11, 17 and 20 constitute opinions and evaluations of the coach, of her actions or reactions and of her decision to dismiss the student from the team tryouts. They are therefore opinions about the coach within the meaning of paragraphs (h) and (i) of the personal information definition and they raise the s. 22(3)(g) presumed unreasonable invasion of personal privacy.

[21] **3.4 What Are the Relevant Circumstances?** – The NVSD submits that it considered the relevant circumstances in deciding to sever the letter and withhold information. It argues that s. 22(2)(f) favours withholding the severed information and that ss. 22(2)(a) and (c) are not relevant here.

Confidential Supply

[22] The NVSD discusses the issue of confidential supply in paras. 39-43 of its initial submission. It says that some of the severed information was provided to the two investigators in confidence by the coach and others in the course of the investigation. It says, in particular, that items 8-13 contain information supplied in confidence by the coach and others.

[23] The NVSD argues that it is important to complaint investigations that participants be able to provide information in confidence and that one of the investigators explicitly told the coach that only four elements regarding the investigation of her decision to dismiss the student from the team would be shared with the public, as follows:

- that the school administration had responded to a complaint by a parent of a student regarding her dismissal from team tryouts;
- the school administration undertook an informal investigation and the coach was directed to reinstate the student to the team on a trial basis;
- the coach complied with the directive and then resigned as coach; and
- there was no disciplinary action against the coach as a result of the complaint or informal investigation.

[24] The fact that the coach supplied information in confidence, the NVSD argues, reinforces its point that disclosure of items 8-13 would be an unreasonable invasion of the coach's privacy.

[25] In support of its arguments, the NVSD submitted a public affidavit sworn by the principal of the school, in which he deposed that he had learned that school administrators must "abide by protocols of due fairness, objectivity, respectfulness and confidentiality". He also deposed that confidentiality is an important part of the

investigative process and that interviewees need to feel that they can be frank. He also says that he explicitly assured the coach that, in response to any inquiries, only the four elements noted above would be made public after the investigation (paras. 15-17, principal's public affidavit).

[26] Beyond what I have described above, the NVSD did not supply any other evidence to support its arguments that, at least as far as the coach is concerned, the investigation took place in confidence. Nonetheless, based on the principal's affidavit, the nature of the information and its origins, I find that s. 22(2)(f) is a relevant circumstance that favours non-disclosure in this case.

Fair Determination of Rights and Public Scrutiny of NVSD

[27] The applicant began her initial submission by saying she was relying on this section, although she did not elaborate further on this. The NVSD has not, she argues, supplied its reasons for finding that disclosure of the letter would be an unreasonable invasion of the coach's privacy.

[28] The NVSD submits that the withheld information is not relevant to a fair determination of rights of the applicant or her daughter. Mother and daughter know that the daughter was reinstated as a team member, the NVSD says, and the information they have already received is enough to assure them that the public body properly investigated and resolved the applicant's complaint. The coach's personal employment information is also not necessary to show that the NVSD carried out its obligations of procedural fairness in its investigation, it argues. This latter argument appears directed at s. 22(2)(a), although the NVSD does not say so. The NVSD suggests that the applicant really wants to know what happened during the investigation (paras. 44-45, initial submission). The applicant counters this in the open part of her reply submission by saying that her aim is to see that her daughter and her daughter's teammates were treated fairly.

[29] I first note that it is well established that the rights referred to in s. 22(2)(c) are legal rights. See, for example, Order 01-37, [2001] B.C.I.P.C.D. No. 38. Nothing in the material before me supports the idea that any legal rights of the applicant or her daughter are at issue. I therefore find that s. 22(2)(c) is not a relevant circumstance in this case. I also agree that the applicant and her daughter already know the outcome of the investigation. The withheld information would not further illuminate the NVSD's investigation or resolution of the complaint and I find that s. 22(2)(a) is not a relevant circumstance here.

[30] **3.5 Is the Applicant Entitled to More Information?** – I found earlier that some information was not anyone's personal information and that the NVSD must disclose it. The applicant is therefore entitled to receive this information. I refer here to items 2, 5-7 and 21.

[31] Turning to the withheld personal information (items 1, 3, 4, 8-20, 22 and 23), the NVSD did not attempt to argue that the coach's name fell into one of the presumed invasions of privacy, although it severed this information from the letter under s. 22. As the applicant has pointed out, the NVSD disclosed the coach's name in its response to the applicant's request. The coach's name is also otherwise clearly known to the applicant in the context of this matter and I fail to see how its disclosure in the letter would be an unreasonable invasion of the coach's privacy. The same holds true for other references to the coach. I therefore do not consider it would unreasonably invade the coach's personal privacy for the applicant to receive items 1, 3 12-14, 16 and 18. To hold otherwise would, in my view, result in an absurdity.

[32] Item 4 is a description of the purpose of the letter. Although I have found that it falls under s. 22(3)(d), because the applicant is already aware of the letter's purpose, its disclosure to the applicant would not, in my view, unreasonably invade the coach's privacy.

[33] References to others involved in the incident with the daughter are, to say the least, very general. The others are not even named, raising the question whether these items contain personal information of any "identifiable individual", as required by the Act's definition of personal information. Assuming we are dealing with personal information here, I note that the applicant is, in any case, aware that others were involved. In this light, release of items 9, 10 and 15 would not, in my view, unreasonably invade these individuals' personal privacy. I said earlier that item 19 refers indirectly to the daughter. In this case, it would not unreasonably invade her privacy for the applicant to receive this one word.

[34] Item 23 simply names an individual who, in an official capacity, received a copy of the letter. I do not consider that disclosure of this information to the applicant would be an unreasonable invasion of that person's privacy.

[35] Turning to the remaining items, the circumstance in s. 22(2)(f) in these cases weighs in favour of non-disclosure. The applicant has not convinced me that she is entitled to information related to evaluations and opinions of the coach's actions. I therefore find that the NVSD is required to withhold items 8, 11, 17 and 20.

[36] If the NVSD had not disclosed much the same information in its submissions, as I noted above, I would have found that the applicant was not entitled to item 22 either. Since the NVSD has disclosed this same information in its initial submission, I find that it would not unreasonably invade the coach's personal privacy for the applicant to receive the information in item 22 that corresponds to that already disclosed by the NVSD in its submission. Approximately two-thirds of the information withheld in item 22 overlaps with that disclosed in the NVSD's submissions and the applicant is entitled to receive it. The balance of item 22 must be withheld.

4.0 CONCLUSION

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

1. Under s. 58(2)(c) of the Act, I require the NVSD to refuse to disclose the personal information in items 8, 11, 17 and 20, and part of item 22, in the disputed record, as shown in red ink on the copy of the record given to the NVSD with its copy of this order; and

2. Under s. 58(2)(a) of the Act, I require the NVSD to disclose to the applicant the rest of the information it withheld from the disputed record, being items 1-7, 9, 10, 12-16, 18, 19 and 21, remaining part of item 22, and item 23.

August 10, 2001

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia