



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
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Order F12-06

THE BOARD OF EDUCATION OF SCHOOL DISTRICT No. 61 (Victoria)

Jay Fedorak, Adjudicator

April 19, 2012

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Summary: A bus driver requested copies of complaints that students made against him regarding his behaviour when transporting them on a school trip. The School District provided him with one record in its entirety and another with all of the information, except for the names of the students, which it withheld under s. 22. The bus driver requested a review in order to obtain access to the names of the students and their contact information. The adjudicator found that s. 22(1) of FIPPA applied to the names of the students, because disclosure would be an unreasonable invasion of the students' personal privacy.

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

Authorities Considered: **B.C.:** Order F10-37, [2010] B.C.I.P.C.D. No. 55; Decision F07-03, [2007] B.C.I.P.C.D. No. 14; Decision F08-02, [2008] B.C.I.P.C.D. No. 4; Order 01-53 [2001] B.C.I.P.C.D. No. 56; Order F10-36, [2010] B.C.I.P.C.D. No. 54.

INTRODUCTION

[1] This case involves a bus driver for a private company challenging a decision of the Board of Education of School District No. 61 (Victoria) ("School District") to withhold the names of students in records relating to complaints against him. The bus driver requested copies of all records relating to the complaints that the students made. The School District withheld the names on

the grounds that disclosure would be an unreasonable invasion of the personal privacy of the students, under s. 22(1) of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”). The School District also applied s. 19(1)(a) of FIPPA on the grounds that disclosure could harm the personal safety of the students, and s. 21(1), which requires public bodies to withhold information the disclosure of which would harm the business interests of a third party.

ISSUES

[2] The questions that I must decide are:

1. Whether the School District must withhold the names of the students to protect personal privacy under s. 22(1) of FIPPA.
2. Whether the School District may withhold the names of the students to protect their personal safety under s. 19(1)(a) of FIPPA.
3. Whether the School District must withhold the names of the students to protect the business interests of a third party under s. 21(1) of FIPPA.

DISCUSSION

[3] **Background**—The bus driver worked for a company that the School District hired to transport students on school trips. In this case, the bus driver took a band class on a trip in 2008. Three of the students reported to a school counsellor that some of the behaviour of the bus driver during the trip made them feel uncomfortable. The school reported this information to the bus company, which subsequently disciplined the driver.

[4] The bus driver wants the names and contact information of the students to contact them and their parents to obtain information for the purpose of changing the school records relating to the trip. He believes the records contain false accusations against him, and he wants to clear his name.

[5] **Records in Issue**—There are two records that are responsive to the request. The first is a copy of a letter written by a school counsellor “To Whom It May Concern”. The letter outlines the behaviour that the students said made them uncomfortable. The bus driver has received this record in its entirety. The second record consists of six pages of handwritten notes from interviews between the counsellor and the students. While the first record identifies three complainants, the interviews involved eight students, including boys and girls. The students are identified by first name only, with two exceptions. The names are the only information that the School District has withheld. The records do not include the contact information of the students or any information about their parents.

[6] The bus driver submits that any records in the school's files that contain the contact information of the students should be considered records of the investigation and, therefore, subject to his request. I disagree. His request was for records relating to the complaints. The School District has produced these records. They do not contain contact information for the students or their parents. The bus driver's request did not include reference to any databases or directories that might contain contact information. Therefore, this contact information is not at issue in this inquiry.

[7] **Preliminary Issues**—The bus driver has raised a series of new issues for the first time in his initial submission. These include complaints about the content of the School District's response under s. 8(1)(c)(i); the accuracy of the information in the records under s. 28; disclosure of personal information under ss. 30.4, 33, 33.1(1)(b); and use of personal information under s. 32(b). He also asks for a finding that the School District has committed an offence under ss. 74.1(1) and (5).

[8] Past orders and decisions of the Office of the Information and Privacy Commissioner for British Columbia ("OIPC") have said parties may raise new issues at the inquiry stage only if permitted to do so.¹ The bus driver did not ask the permission of the OIPC to raise these issues prior to the inquiry. Had the bus driver raised these issues at the time of his request for review, the OIPC would have investigated the complaints with respect to ss. 8, 28, 30.4, 32, 33, and 33.1 as separate investigations. In addition, the OIPC does not prosecute offences under s. 74. It is the responsibility of the Ministry of Justice to prosecute offences.

[9] I have decided, therefore, not to permit the bus driver to raise these issues in this inquiry. He retains the right to request the OIPC to commence separate investigations into any or all of his complaints.

[10] **Would Disclosure be an Unreasonable Invasion of the Students' Privacy?**—FIPPA requires public bodies to withhold personal information where its disclosure would be an unreasonable invasion of a third party's personal privacy. The test for determining whether disclosure would be an unreasonable invasion of privacy is contained in s. 22 of FIPPA.

[11] Numerous orders have considered the application of s. 22, for example, Order 01-53.² First, the public body must determine if the information in dispute is personal information. Then, it must consider whether disclosure of any of the information is not an unreasonable invasion of third-party privacy under s. 22(4). If s. 22(4) does not apply, then the public body must determine whether

¹ See for example Order F10-37, [2010] B.C.I.P.C.D. No. 55; Decision F07-03, [2007] B.C.I.P.C.D. No. 14, and Decision F08-02, [2008] B.C.I.P.C.D. No. 4.

² [2001] B.C.I.P.C.D. No. 56.

disclosure of the information is presumed to be an unreasonable invasion of third-party privacy under s. 22(3). Finally, it must consider all relevant circumstances, including those listed in s. 22(2), in deciding whether disclosure of the information in dispute would be an unreasonable invasion of third-party privacy. I take the same approach here.

Is it personal information?

[12] The first step in applying s. 22 is to determine whether the requested information is personal information. The bus driver has requested access to the names of individuals that the School District withheld from him. Names constitute the information of identifiable individuals. Therefore, they constitute personal information.

Not an unreasonable invasion of privacy

[13] The next step in applying s. 22 is to determine whether any of the provisions of s. 22(4) apply. None of the parties have identified any that apply. I am unable to identify any that apply. I will proceed to consider whether any of the provisions of s. 22(3) apply.

Presumed unreasonable invasion of privacy

[14] The information at issue was collected as part of an investigation relating to incidents that occurred in an educational setting. Students from a band class were on a field trip that the School District organized. The trip was part of the students' educational program. Therefore, I find that their personal information collected as part of the investigation constitutes their educational history, in accordance with s. 22(3)(d) of FIPPA. This is consistent with previous orders that have found that the personal information of employees collected as part of a workplace investigation constitutes the employment history of those employees.³

[15] Therefore, disclosure of the names is presumed to be an unreasonable invasion of the students' personal privacy.

[16] There are no other factors that provide a presumption of unreasonable invasion of privacy. I will now turn to reviewing the relevant circumstances to determine whether they rebut the presumption of an unreasonable invasion of third party privacy.

³ See Order F10-36, [2010] B.C.I.P.C.D. No. 54, para. 23 and Order 01-53, para. 32.

Relevant circumstances

[17] The School District submits that the students wished to remain anonymous and the counsellor promised them confidentiality. It cited s. 22(2)(f) of FIPPA, which stipulates that whether the information was provided in confidence is a relevant circumstance.⁴ The School District has satisfied me that the students supplied the information, including their names, in confidence. I agree that this is a relevant circumstance in this case. Therefore, I find that the personal information was supplied in confidence for the purpose of s. 22(2)(f). This circumstance argues in favour of withholding the students' names.

[18] The School District also cites s. 22(2)(e) of FIPPA as a relevant circumstance. This applies where disclosure might cause financial or other harm to a third party. The School District has not addressed this point. I do not see how this provision would apply in this case. I find that it is not a relevant circumstance in this case.

[19] I find that no other relevant circumstances apply in the case. The bus driver submits that he seeks the information in order to assist him in addressing his perceived harm to his reputation. He wants to discuss the information in the record with the students and their parents in hopes that this could somehow lead to the School District amending its records concerning him. However, he has already received all of the details of the students' complaints. Moreover, he has had an opportunity to address the details of the complaints with the School District and his employer. I do not see how knowing the names of the students would assist him to address his perceived damage to his reputation. I do not find this to be a relevant circumstance that argues in favour of the disclosure of the students' names.

[20] I find that there are no relevant circumstances that rebut the presumption that disclosure of the names of the students would be an unreasonable invasion of privacy.

Conclusion

[21] I have found that the students' names on the requested records constitute the educational history of the students. Consequently, disclosure is presumed to be an unreasonable invasion of their privacy. I find that none of the relevant circumstances rebut the presumption that disclosure would be an unreasonable invasion of privacy. I find that the fact that the students' supplied their information in confidence favours withholding the information. Therefore, I find that s. 22(1) of FIPPA applies to the students' names and the School District must continue to withhold them.

⁴ School District Reply Submission, p. 6.

[22] **Would Disclosure Reasonably be Expected to Threaten Anyone's Health or Safety?**—As I have determined that s. 22(1) of FIPPA applies to the information in dispute, it is not necessary for me to determine whether s. 19(1) applies.

[23] **Would Disclosure Reasonably be Expected to Harm the Business Interests of a Third Party?**—Again, having determined that s. 22(1) of FIPPA applies to the information in dispute, it is not necessary for me to determine whether s. 21(1) applies. I would observe, however, that there are no third party businesses mentioned in any of the records, and the information at issue does not constitute commercial or financial information of a third party. The only point of connection between the information at issue and s. 21(1) of FIPPA, is the reference to information supplied in confidence under s. 21(1)(b). This provision is part of a three-part test with respect to third party business information only, and cannot apply to personal information, unless that personal information also constitutes commercial or financial information.

CONCLUSION

[24] For the reasons given above, under s. 58 of FIPPA, I require the School District to withhold the requested information, under s. 22(1) of FIPPA.

April 19, 2012

ORIGINAL SIGNED BY

Jay Fedorak
Adjudicator

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