



August 18, 2004

To the parties:

**Application by Translink to have the request by an applicant to proceed to an inquiry dismissed under s. 56(1) of the *Freedom of Information and Protection of Privacy Act* (“Act”)—OIPC File No. 18806**

**1. Purpose of this letter**—This decision is in response to Translink’s request of March 5, 2004 that the Commissioner decline to proceed with an inquiry in this matter, because it believes no arguable case can be made by the applicant for accessing the third party personal information sought. The Information and Privacy Commissioner has, under s. 49(1) of the Act delegated this matter to me for a decision.

**2. Background**—The applicant functions in a supervisory capacity within the public body. In response to personnel issues involving the applicant and the applicant’s coworkers, an outside human resource consultant was retained to “identify the conflict that existed with respect to the employees” on the applicant’s shift. The report concluded that the applicant’s leadership style contributed in part to the conflict and recommended certain steps be taken to improve the situation.

On October 20, 2003, the applicant requested a copy of the report. In response, Translink provided the applicant with a copy of the report, but severed a small amount of information pursuant to s. 22(1) of the Act. The severed information included statements the applicant was alleged to have made as well as comments that, if disclosed, might identify the person(s) who made the comment. Translink, in its response to the applicant stated “the withheld information can be summarized as descriptions by employees of respective interactions to which they were parties and were provided with an expectation of confidence on the part of the respective employees.”

The applicant requested a review of the decision by Translink to withhold information from the report. Through mediation, more information was released. However, the applicant remained dissatisfied and requested this matter proceed to a formal inquiry.

In response, Translink requested that the Commissioner exercise his discretion under s. 56(1) of the Act and decline to hold an inquiry. On March 17, 2004, this Office notified both parties that a decision would be made under s. 56(1) of the Act and that both parties would have the opportunity to be heard.

3. **Discussion**— Section 56(1) gives the Commissioner discretion to hold an inquiry respecting a request for review. Section 56(1) of the Act reads as follows:

**Inquiry by Commissioner**

56(1) If the matter is not referred to a mediator or is not settled under section 53, the commissioner may conduct an inquiry and decide all questions of fact and law arising in the course of the inquiry.

In this case, Translink has requested that the Commissioner decline to proceed with an inquiry on the grounds that the information in dispute is clearly protected from disclosure by virtue of s. 22(1) of the Act. Translink states that the severed information “constituted comments reported on a confidential basis by certain employees regarding specific communications with the applicant.” Because disclosure of the comments could potentially reveal the identity of the employees who provided the information, Translink believes disclosure would constitute an unreasonable invasion of privacy of the third parties.

The applicant argues that this case “is an appropriate case” to proceed to inquiry. The applicant refers to several sections in the Act that rebut the presumption that disclosure would constitute an unreasonable invasion of privacy of the third parties. The applicant believes, while some information collected during the investigation may have been supplied in confidence, the report itself is not confidential, and doubts whether disclosure would reveal the identity of the source. The applicant makes several other arguments for disclosure including the information is his/her employment history, is necessary to ensure health and safety in the workplace and is necessary for a fair determination of the applicant’s rights.

This inquiry is not into the merits of the application of s. 22(1). It is narrowly about whether or not the matter may proceed to a formal inquiry, where the appropriateness of the application of s. 22(1) would be decided.

In support of its request, Translink refers to the Commissioner’s decision under s. 56(1) dated July 9, 2003. That decision relates to a request by Simon Fraser University (“SFU”) to the Commissioner to decline to proceed to an inquiry. The applicant was an SFU student, who had requested the names of 44 students that had been “found guilty of plagiarism.” The Commissioner declined to hold an inquiry, finding that “the s. 22(3)(d) presumed unreasonable invasion of personal privacy is clear on the face of this case and there is not even an arguable prospect of that presumption being relieved by any of the considerations in s. 22(2).”

I find that the circumstances in this case are easily distinguished from the SFU case. In the SFU case, the information did not relate in any way to the applicant, and no factor under s. 22(2) could be suggested to rebut the presumption under s. 22(1). In the case before me, the information in dispute is about the applicant and is contained in a report that makes less-than-favourable conclusions about the applicant’s leadership style.

While s. 22(1) is a mandatory section requiring public bodies to withhold information that, if disclosed would be an unreasonable invasion of a third party's privacy, s. 22(2) sets out a list of factors that must be taken into consideration when making that determination. While at the end of the day the applicant may not succeed in accessing the withheld information, I believe in these circumstances the applicant should not be denied the opportunity to present his/her case at a formal inquiry.

I have decided that this is not an appropriate case to exercise my discretion not to hold an inquiry under s. 56(1) of the Act. I allow the applicant to proceed to an inquiry under s. 56(1) of the Act.

Yours sincerely,

Mary Carlson  
Director  
Policy & Compliance

cc: Brenda Guiltner, Registrar of Inquiries