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Order F16-01

LANGARA COLLEGE

Wade Raaflaub
Adjudicator

January 20, 2016

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Summary: The applicant asked Langara College for grades assigned to him by classmates in a business course, as well as those that his classmates assigned to each other. The College refused access on the basis that disclosure would be an unreasonable invasion of the personal privacy of the applicant's classmates under s. 22(1) of FIPPA. The Adjudicator agreed, but found that the College was required to give the applicant a summary of his grades in a manner that would not identify his classmates.

Statute Considered: *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165, ss. 22, 22(1), 22(2), 22(2)(c), 22(2)(f), 22(3), 22(3)(d), 22(3)(g), 22(3)(h), 22(4), 22(5), 22(5)(a), 22(5)(b), 57(2), 58, 59(1) and Schedule 1 (definitions of "contact information" and "personal information").

Authorities Considered: B.C.: Order F06-11, 2006 CanLII 25571 (BC IPC); Order F13-04, 2013 BCIPC 4 (CanLII); Order F14-18, 2014 BCIPC 21 (CanLII); Order F14-47, 2014 BCIPC 51 (CanLII); Order F15-12, 2015 BCIPC 12 (CanLII).

INTRODUCTION

[1] This inquiry involves an applicant's access request to Langara College ("College") for grades that his classmates gave to him, and to each other, following group negotiation exercises in a business course. The question is whether disclosure of the requested information would be an unreasonable invasion of the personal privacy of third parties.

ISSUE

[2] The issue in this inquiry is whether the College is required to refuse to disclose information under s. 22(1) of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”).

[3] Under s. 57(2), the applicant has the burden of proving that disclosure would not be an unreasonable invasion of any third party’s personal privacy.

DISCUSSION

[4] **Background--**The applicant was one of 36 individuals enrolled in a business course at the College in 2014. The class work included group negotiation exercises. At the end of the course, students assessed one another’s reputations as negotiators, by assigning a grade between 0 and 10. If students felt that they did not have sufficient experience with a particular classmate to form a judgment, they did not have to give that classmate a reputation grade. The average of each student’s grades formed his or her “reputation index”.

[5] The applicant made an access request to the College for the grades that his classmates had given him, the grades that his classmates had received, and the total number of grades assigned to each student including himself. He expressly indicated that he did not want to know the identity of the student associated with any of the grades given or received.

[6] The College disclosed to the applicant the total number of grades that he had received, as well as his reputation index. However, the College refused to give the applicant access to his individual reputation grades. It cited s. 22(3)(h) of FIPPA, which presumes that a disclosure of personal information constitutes an unreasonable invasion of the personal privacy of third parties – here, the applicant’s classmates – if the disclosure would reveal the content of their personal evaluations supplied in confidence, and the applicant could reasonably be expected to know their identities.

[7] The College also refused to give the applicant access to his classmates’ reputation grades and the total number of grades that each of them had received, on the basis that the grades relate to their educational history under s. 22(3)(d) and are personal evaluations about them under s. 22(3)(g). Both provisions set out a presumption that disclosure would be an unreasonable invasion of personal privacy.

[8] The applicant asked the Office of the Information and Privacy Commissioner (“OIPC”) to review the College’s decision. As investigation and mediation did not resolve the matter, the applicant asked for an inquiry.

[9] **Information at Issue**--The information at issue consists of the reputation grades assigned to each student, along with the total number of grades assigned to him or her (except the total assigned to the applicant, as this has already been disclosed to him). The withheld information appears on a spreadsheet. The columns, arranged alphabetically by last name, set out the grades that each student received, the total number of grades that he or she received, and his or her reputation index (the latter of which was not requested by the applicant). The rows, also arranged alphabetically, indicate which student gave which other student a particular grade. Although the applicant did not request any names, it can be readily presumed that the spreadsheet is arranged alphabetically, as is common practice with class lists and student information.

Disclosure harmful to personal privacy – s. 22

[10] Section 22(1) of FIPPA requires a public body to refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party’s personal privacy. The section applies only to personal information, so the first step is to determine whether the information at issue is personal information as defined by FIPPA. If so, the next step is to decide whether the information falls within any of the situations set out in s. 22(4), in which case disclosure is expressly not an unreasonable invasion of personal privacy. If s. 22(4) does not apply, it is then necessary to determine whether any of the provisions of s. 22(3) are engaged, in which case disclosure is presumed to be an unreasonable invasion of third party privacy, although any such presumptions are rebuttable.

[11] Whether or not presumptions against disclosure arise under s. 22(3), it is necessary to consider all relevant circumstances, including those listed in s. 22(2), in determining whether disclosing the personal information would be an unreasonable invasion of a third party’s personal privacy. If the conclusion is that disclosure would unreasonably invade the personal privacy of a third party, the final step is to decide whether s. 22(5) applies so as to require the public body to release a summary of any information to the applicant.

Personal information – definition

[12] Schedule 1 to FIPPA defines “personal information” as “recorded information about an identifiable individual other than contact information”. In turn, “contact information” is defined as “information to enable an individual at a place of business to be contacted and includes the name, position name or

title, business telephone number, business address, business email or business fax number of the individual”. There is no contact information here.

[13] The Commissioner has adopted the following approach in determining whether information constitutes personal information:

I accept that, in order to be personal information, the information must be reasonably capable of identifying a particular individual either alone or when combined with information from other available sources. The information need not identify the individual to everyone who receives it; it is sufficient in a case such as this if the information reasonably permits identification of the individual to those seeking to collect, use or disclose it.¹

[14] The College submits that the reputation grades given to the applicant’s classmates constitute their personal information because their names appear on the spreadsheet. It acknowledges that the applicant’s grades are his own personal information, but goes on to argue that his grades are also the intertwined personal information of his classmates on the basis that they are the latter’s personal evaluations or opinions. As noted by the College, an evaluator’s evaluation or opinion about another individual can constitute the evaluator’s personal information to the extent that he or she is revealed as the one who provided the evaluation or opinion.² Based on this, the College similarly argues that each student’s grade is not only the personal information of the recipient, but of the individual who assigned it.

[15] Although the applicant did not request his classmates’ names, the information on the spreadsheet is arranged alphabetically, according to both the students receiving grades and those giving them. Further, the students in the course were provided with an online class list, a copy of which the applicant submitted himself. The applicant can therefore easily insert the names in the spreadsheet. I accordingly find that all of the grades, whether viewed as given or received, amount to the information of identifiable individuals, as does the number of grades that each student received. While the applicant’s grades are his own personal information, they are also the personal information of the classmates who assigned them.

[16] As the information requested by the applicant is the personal information of his classmates, or the applicant’s own personal information inextricably intertwined with theirs, I must now decide whether disclosure would be an unreasonable invasion of his classmates’ personal privacy.

¹ Order F13-04, 2013 BCIPC 4 (CanLII) at para. 23.

² See, e.g., Order F06-11, 2006 CanLII 25571 (BC IPC) at paras. 41-43; Order F14-47, 2014 BCIPC 51 at para. 14.

No unreasonable invasion of person privacy – s. 22(4)

[17] Section 22(4) enumerates situations in which the disclosure of personal information is not an unreasonable invasion of a third party's personal privacy. Neither party raised the possible application of the section. I considered whether any of the situations exist here, but find that none of them do.

Presumptions against disclosure – s. 22(3)

[18] Section 22(3) enumerates situations in which there is a presumption against the disclosure of third party personal information. The provisions relevant to this inquiry are as follows:

- (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,

- (h) the disclosure could reasonably be expected to reveal the content of a personal recommendation or evaluation, a character reference or a personnel evaluation supplied by the third party in confidence and the applicant could reasonably be expected to know the identity of the third party,

...

[19] I find that there is a presumption against disclosure of the information at issue on the basis that it relates to educational history under s. 22(3)(d). Not only are the grades of the applicant's classmates part of their educational history, but the grades that they assigned to the applicant and each other relate to their educational history, as the grading exercise was part of the requirements of the course.

[20] Under s. 22(3)(g), there is also a presumption against disclosure of the grades of the applicant's classmates, as they amount to personal evaluations of each classmate's reputation as a negotiator.

[21] Finally, there is a presumption against disclosure of the applicant's own grades, and those of his classmates, under s. 22(3)(h). Disclosure would reveal the content of the personal evaluations that the students gave about one another's reputations, the applicant is in a position to identify which classmate gave which grade due to the alphabetical organization of the spreadsheet, and the grades were supplied in confidence.

[22] I find that the grades were supplied in confidence because there was an understanding that they would not be disclosed. The instructor of the course states in an affidavit that he told the students that their assessments of one another would be held by him in complete confidence, and that he would not provide their reputation grades to anyone else. He emphasized that this was to ensure the integrity of the evaluation process by encouraging students to be candid and honest, and to alleviate any fear of reprisal or negative consequences from a classmate because of their evaluation of that classmate.

[23] While there are presumptions against disclosure of the information at issue under ss. 22(3)(d),(g) and (h), I must go on to review any relevant circumstances in favour of, or against, disclosure.

Relevant circumstances – s. 22(2)

[24] Section 22(2) requires a public body to consider all relevant circumstances, both those enumerated in the section as well as any others, in determining whether the disclosure of third party personal information would be unreasonable. The provisions of s. 22(2) that are possibly applicable in this inquiry are:

22(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

...

(c) the personal information is relevant to a fair determination of the applicant's rights,

...

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

...

[25] The College raised the application of s. 22(2)(f). For the same reasons set out earlier, I find that the reputation grades were supplied in confidence, which militates against their disclosure.

[26] The applicant submits that he has been subjected to unwanted treatment as a result of ageism and poverty, which I take to mean that he believes that his classmates unfairly graded him. While a circumstance in favour of disclosing third party personal information is that the information is relevant to a fair determination of an applicant's rights under s. 22(2)(c), I do not find the section to be engaged here. One of the requirements for the section to be engaged is that there be a related proceeding that is either under way or contemplated,³ but the applicant has pointed to no such proceeding. He has not said that he has appealed his grade in the business course, for example.

[27] I considered whether there are any other relevant circumstances in this case, but find that there are not. Neither party drew any others to my attention.

Conclusion – s. 22(1)

[28] As the information requested by the applicant is the personal information of his classmates, and the presumptions against disclosure under ss. 22(3)(d),(g) and (h) have not been rebutted, I conclude that disclosure would be an unreasonable invasion of the personal privacy of third parties.

Possible summary of information – s. 22(5)

[29] Section 22(5) requires a public body to give an applicant a summary of personal information supplied in confidence about him or her, unless the summary would identify the third party who supplied it. The section reads:

- (5) On refusing, under this section, to disclose personal information supplied in confidence about an applicant, the head of the public body must give the applicant a summary of the information unless
 - (a) the summary cannot be prepared without disclosing the identity of a third party who supplied the personal information, or
 - (b) with respect to subsection (3) (h), either paragraph (a) of this subsection applies or the applicant could reasonably be expected to know the identity of the third party who supplied the personal recommendation or evaluation, character reference or personnel evaluation.

[30] I have found that the applicant's own reputation grades constitute personal information about him, although they simultaneously constitute the personal information of his classmates, as they can be identified from the spreadsheet as

³ See, e.g., Order F15-12, 2015 BCIPC 12 (CanLII) at para. 34.

the individuals who evaluated the applicant. I have also found that the grades were supplied in confidence. I now turn to whether a summary of the applicant's grades can be prepared in a manner that does not identify which classmate gave which grade.

[31] The College argues that, given the relatively small enrolment and the course's interactive nature, it is possible for the applicant to independently ascertain, through process of elimination, which classmate gave him which grade. In other words, the College suggests that no connection to last names is necessary for the applicant to accurately infer which grade came from a particular classmate.

[32] Because students were given grades by only those classmates who had sufficient experience negotiating with them, I acknowledge that the applicant is in a position to narrow the pool of classmates who likely (though not definitively) gave him a grade. He knows that a specific number of his 35 classmates assessed him, and they are likely to be those with whom he participated in the group negotiation exercises, whether as a teammate or opponent. He may also have a view as to which classmates gave him a relatively high versus low grade, depending on his own perception of whether they did or did not like his behaviour.

[33] However, even if the applicant could successfully ascertain which classmates gave him a grade in the first place, which of those thought that he had a relatively good reputation as a negotiator, and which of those thought that he had a relatively poor one, he would still not be able to actually identify which classmate gave which grade. With numerous students assigning the applicant a grade on a scale of 0 to 10, there are too many permutations to enable him to identify which of the students who liked his behaviour gave him which of the higher grades, and which of the students who disliked his behaviour gave him which of the lower grades.

[34] Therefore, regardless of the applicant's interactive experience negotiating with his classmates, I find that a summary of his reputation grades that is not arranged alphabetically would not enable him to identify which grade was given by which classmate. Neither ss. 22(5)(a) nor (b) precludes a summary arranged non-alphabetically. The College can provide a list of the applicant's grades in numerical or random order, for instance.

CONCLUSION

[35] For the reasons given above, I make the following orders under s. 58 of FIPPA:

1. Subject to paragraph 2 below, Langara College is required to refuse the applicant access to the information at issue under s. 22(1).
2. Langara College is required to perform its duty under s. 22(5) by giving the applicant a summary, or list, of the reputation grades that his classmates gave him in non-alphabetical order.
3. Langara College must provide the applicant the summary before March 2, 2016, in accordance with s. 59(1). Langara College must also concurrently provide the OIPC Registrar of Inquiries with a copy of its letter to the applicant, along with the summary.

January 20, 2016

ORIGINAL SIGNED BY

Wade Raaflaub, Adjudicator

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