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Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 106-1996
May 28, 1996

INQUIRY RE: A decision by School District No. 31 (Merritt) to refuse an applicant access to records concerning a workplace incident between the applicant and another teacher

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1. Description of the review

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner on April 10, 1996 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review of a decision by School District No. 31 (Merritt) to withhold certain records from the applicant.

2. Documentation of the inquiry process

On December 21, 1995 the applicant wrote to the School District and requested a witness statement and other notes about a workplace incident in June 1993 that had occurred between the applicant and a fellow teacher. The request was accompanied by a photocopy of a handwritten note signed by the witness which authorized the release of a statement to the applicant.

On December 21, 1995 the School District responded that it could not accept the photocopied, handwritten note as authorization for the release of the witness statement. The School District suggested that the witness should contact it directly so that suitable authorization could be arranged. The School District also refused the applicant access to the notes made about the incident because they were part of an ongoing action on the part of the School District.

On January 11, 1996 the applicant wrote to the Office of the Information and Privacy Commissioner and requested a review of the School District's decision to withhold the witness statement and accompanying notes.

On March 4, 1996 the School District clarified its original response letter to the applicant. It stated that it had never received a signed statement of authorization from the witness. The School District also confirmed that it was withholding the other information requested by the applicant under section 22 of the Act.

3. Issue under review at the inquiry and the burden of proof

The issue under review in this inquiry is whether the records in dispute should be withheld under section 22 of the Act. This section reads in part 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

> ...
> (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation,
> ...
> (d) the personal information relates to employment, occupational or educational history,

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

> (a) the third party has, in writing, consented to or requested the disclosure,
> ....

Section 57 of the Act establishes the burden of proof on the parties in this inquiry. Under section 57(2), if the record or part of the record to which the applicant is refused access contains personal information of a third party, it is up to the applicant to prove that disclosure of this information would not be an unreasonable invasion of the third party's personal privacy. In this case, the applicant must prove that the release of the requested records would not be an unreasonable invasion of the privacy of the other parties involved in the incident.

4. The records in dispute

The records in dispute consist of several pages of documents concerning a workplace incident in 1993 between the applicant and a fellow teacher. These documents include two pages of handwritten notes about the incident, a one-page summary of an account given by the witness to

the incident, a one-page letter from the applicant to the School District (which the applicant already has), and a one-page memo from the other teacher involved in the incident.

5. The applicant's case

The applicant is a teacher who claims that she was almost attacked by a male teacher in front of a student. She has requested the written statement of the female witness and the principal's notes from his investigation of the event. She states that the witness has consented in writing to this disclosure and that, if the School District doubts the authenticity of the release, it can verify the witness's signature through school records.

The applicant disputes the School District's reliance on section 22 of the Act to prevent disclosure, since it would not unreasonably invade the privacy of anyone else. She also submits that she is the victim in the case and that all of the information is about her.

6. The School District's case

The School District emphasizes that the records in question concern the applicant teacher, the other teacher, the principal, and the student witness. The notes in question were used in the investigation of the teacher's allegations and were discussed at *in camera* meetings of the School Board. The School District states that the applicant has commenced an action against the Board before the B.C. Council of Human Rights.

I have discussed the specifics of the School District's arguments below.

7. Discussion

Verifying the consent of the third party for release of her statement appears to be an issue in this inquiry, with the School District apparently insisting on the witness coming forward for this purpose, several years after the occurrence. Given the obligation under section 6 of the Act to assist applicants, I am of the view that the School District should have contacted the witness directly (or confirmed her signature) to verify the consent rather than insisting on the reverse. However, the consent issue is really a red herring in this case, since the applicant should have a right of access to her personal information in the witness statement, as should the other teacher if he is interested.

In its submission for this inquiry, the School District belatedly sought to claim section 14 protection for the records in dispute because they were discussed extensively with the School Board's lawyers. When an inquiry is underway on the basis of an agreed-upon set of exceptions, section 22 in this case, I am not prepared to accept late arguments, of which the applicant did not have notice, that were not specified in the formal written Notice of Inquiry.

Section 22(2)(f): 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,

The School District seeks to claim this "relevant circumstance" to support non-disclosure because the school principal supplied the information in the records in dispute to the School Board in confidence at a special meeting. In my view, this section applies to the original conditions under which the information was collected, not how it was later used by the person who originally collected it. In future, such practices with respect to confidentiality in school-related investigations should be clarified in the written policies of any School District. (See Order No. 62-1995, November 2, 1995, pp. 11-12; and Order No. 70-1995, December 14, 1995, p. 8)

Section 22(3)(b): A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if ... (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation,

The School District claims that this section prevents disclosure of the records in dispute because the applicant filed a grievance with the School Board and the incident was also discussed with the Royal Canadian Mounted Police (RCMP). I find that the attempt to rely on this section in the stated circumstances of this application for personal information is without merit on the basis of the very limited evidence advanced by the public body. The School District brought forward no evidence with respect to any "investigation into a possible violation of law." Thus this presumption fails in this case. Having read the records in dispute, I fail to see what interest the RCMP might have had in the details of this specific episode.

Section 22(4)(a): A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if (a) the third party has, in writing, consented to or requested the disclosure,

The School District now appears to admit that the applicant does have the consent of the witness to release the record in dispute, although it does not have the permission of the others involved. But it still questions the authenticity of the signature on the release and claims that this section therefore does not apply. I find the School District's attempted reliance on this section without merit with respect to the release of the witness's statement to the applicant, since she has a right of access to her own personal information. Moreover, there is no personal information about the witness in the principal's notes of her statements to him.

Review of the records in dispute

There are four different records involved in this inquiry, three of which are the subjects of the request for access. One is a letter from the applicant to the school principal, which she already has. The second is a memo from the other teacher to the principal about what had happened in the altercation. Since the applicant teacher figures centrally in the other teacher's account, it is my judgment that this personal information should be conveyed to her in full, not least because it is an innocuous description of who said or did what to whom in a culminating episode of friction between two persons. There is no evidence that this memo was supplied in confidence.

The statement by the student who witnessed the event between the two teachers is in the form of a series of descriptive points and was presumably written by the principal during an interview with the student immediately after the event. This statement should be released to the applicant.

The final document is two pages of notes written over seven separate days before and after the dispute between the two teachers. It outlines a series of on-going incidents in the workplace between them over minor school matters. They are clearly working notes of a manager responsible for monitoring behaviour on school premises. The involvements and opinions or actions of various staff are recorded. In my view, the notes should be disclosed to the applicant, except for one sentence which refers specifically to a sensitive matter about the other teacher.

8. Order

I find that disclosure of the records in dispute, with the one exception referred to above, would not be an unreasonable invasion of any third party's personal privacy.

Thus, I find that the head of School District No. 31 was not required to refuse access to the records in dispute under section 22, except for one sentence. Under section 58(2)(a), I require the head of School District No. 31 to give the applicant access to the records in dispute, with the exception of the one sentence described above, which is to be severed.

May 28, 1996

David H. Flaherty
Commissioner