



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

Order 01-53

**THE BOARD OF SCHOOL TRUSTEES OF SCHOOL DISTRICT NO. 84
(VANCOUVER ISLAND WEST)**

David Loukidelis, Information and Privacy Commissioner
December 21, 2001

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Summary: Applicant requested copies of records created during School District's investigation of applicant's complaint about another employee, *i.e.*, the investigation report, a list of witnesses interviewed, the applicant's submissions and interview notes, the respondent's submissions and interview notes and the investigator's rough notes of witness interviews. The School District is not required by s. 22(1) to withhold information that would identify the employee complained about or the applicant's allegations. The School District is also not required, in this case, to withhold the investigator's findings that each of the applicant's allegations were not substantiated, because, as material in the inquiry confirms, the applicant knows this information. The School District must, however, withhold the third party's personal information consisting of what witnesses said (or the investigator observed) about the third party's workplace behaviour or actions, as this is the third party's employment history. The School District also must withhold information that would identify witnesses who supplied personal information of the applicant or the third party in confidence. The School District must provide the applicant with a summary of that information under s. 22(5).

Key Words: workplace investigation – personal information – opinions or views – submitted in confidence – unreasonable invasion of personal privacy.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 14, 22(1), 22(2)(c), (f) and (h), 22(3)(d), (g) and (h), 22(4)(e), 22(5).

Authorities Considered: **B.C.:** Order No. 286-1998, [1998] B.C.I.P.C.D. No. 81; Order 00-44, [2000] B.C.I.P.C.D. No. 48; Order 00-53, [2000] B.C.I.P.C.D. No. 57; Order 01-07, [2001] B.C.I.P.C.D. No. 7; Order 01-25, [2001] B.C.I.P.C.D. No. 26; Order 01-41, [2001] B.C.I.P.C.D. No. 42.

Cases Considered: *Blencoe v. British Columbia (Human Rights Commission)* (1998), 49 B.C.L.R. (3d) 216 (C.A.).

1.0 INTRODUCTION

[1] This inquiry arises out of a complaint that the applicant made to her employer, The Board of School Trustees of School District No. 84 (Vancouver Island West) (“School District”), against another School District employee (“third party”). The applicant’s complaint focussed on certain interactions between the applicant and the third party over a period of time. Regrettably, it appears they could not resolve the issues between them, and this led to a complaint by the applicant under the collective agreement. The complaint was neither a sexual discrimination nor a sexual harassment complaint.

[2] In response to the applicant’s complaint, the School District appointed an investigator, as contemplated by the collective agreement. The investigator carried out a series of interviews with the parties and with witnesses, and wrote a report of her investigation and findings. She found that the applicant’s allegations were not substantiated and that the complaint was unfounded. The applicant later requested access to the investigator’s report under the *Freedom of Information and Protection of Privacy Act* (“Act”). It also appears the applicant’s union filed a grievance about the investigation report but, according to both the School District and the third party, the union has not actively pursued the matter (p. 6, public body’s further initial submission; p. 5, third party’s further initial submission).

[3] The School District notified the third party of the request under s. 23 of the Act and the third party’s lawyer responded on the third party’s behalf, saying that the third party objected to the School District disclosing any of the investigation report. The School District then decided to disclose the report in severed form. It decided that it was required by s. 22 to remove the third party’s name, other information that would identify the third party, references to the allegations the applicant had made against the third party and personal information of other third parties. It also decided to withhold some other information under ss. 13 and 14. The School District notified the third party of this decision and the third party requested, under s. 52(2) of the Act, a review of that decision. It is clear from correspondence between the third party’s lawyer and the School District’s lawyer, exchanged as part of the School District’s s. 23 consultations with the third party, that the third party objected to disclosure of any part of the investigation report.

[4] During mediation by this Office, the School District decided that it could disclose a small amount of additional information. The third party maintained the position that the School District could not disclose any of the report, while the applicant confirmed that she wanted full disclosure. As the matter did not settle in mediation, I held a written inquiry under s. 56 of the Act.

[5] In her original request, the applicant only sought access to the investigator’s report. In her initial submission in the inquiry, however, she said she also wanted all associated records used in compiling the report. The third party argued that this changed

the scope of the inquiry and pointed out that the School District had not made a decision about disclosure of the associated records. The third party suggested, however, that it made sense for me to consider both the report and associated records, if the applicant wanted all of that material, and suggested an adjournment of the inquiry so that the School District might make a decision on the second category of records. The School District and the applicant both agreed with this suggestion and this Office adjourned the inquiry. The School District then set out its position on disclosure of the associated records and provided me with copies of the severing that it suggested. All three parties provided further initial submissions on those records and the School District provided me with copies of all of the associated records, with proposed severing under s. 22. (I also have a copy of the investigation report with the severing that the School District settled on in mediation.) The applicant continues to seek access to all of the disputed records in their entirety, while the third party resists disclosure of any of the records.

[6] All of the parties have proceeded, in dealing with both the originally-requested investigation report and the associated records described below, on the basis that I should address all of the issues that arise from the School District's original decision and its later decision, as just described, regarding the associated records.

[7] The records in dispute are the investigator's 10-page report and what the School District describes as four appendices, *i.e.*, Appendices A through D (collectively, the "associated records"). The associated records consist of the following:

1. a list of the individuals the investigator interviewed and of individuals who accompanied some witnesses to their interviews (Appendix A, 2 pages);
2. the applicant's submissions to the investigator and notes of the investigator's interviews with the applicant (Appendix B, approximately 50 pages);
3. the third party's submissions to the investigator and the investigator's notes of her interviews with the third party (Appendix C, approximately 25 pages); and
4. the investigator's rough notes from witness interviews (Appendix D, approximately 43 pages).

2.0 ISSUES

[8] The issues before me in this inquiry are as follows:

1. Is the School District authorized by s. 14 to withhold information?
2. Is the School District required by s. 22(1) to withhold personal information?

[9] Section 57 establishes the burden of proof in inquiries. Under s. 57(1), the School District has the burden regarding s. 14 while, under s. 57(2), the applicant has the burden regarding s. 22.

[10] The School District relied on s. 13 in its decision letter to the third party's lawyer, and this Office's Notice of Written Inquiry listed it as an issue, but the School District's initial submission says that it no longer relies on s. 13. I therefore need not consider it here.

[11] The applicant complains, in her initial submission, about delay in the School District's response to her access request. Although the School District responded to the applicant's comments, the issue of delay was not mentioned in the Notice of Written Inquiry issued to the parties by this Office. This issue is not properly before me and I have not considered it.

3.0 DISCUSSION

[12] **3.1 Solicitor Client Privilege** – The School District says that it can refuse to disclose nine words on p. 4 of the investigation report under s. 14 of the Act. That section says that a public body may refuse to disclose to an applicant “information that is subject to solicitor client privilege.”

[13] It is well established that s. 14 of the Act incorporates both branches of common law solicitor client privilege, *i.e.*, legal professional privilege and litigation privilege. The School District does not explicitly say which branch of solicitor client privilege it relies on. Nor does it explain how it believes the information falls under s. 14. However, it appears to rely on the branch that protects confidential communications between lawyer and client. The test for that kind of privilege is set out in, among others, Order 01-25, [2001] B.C.I.P.C.D. No. 26. At para. 60, I described the test for legal professional privilege as follows:

[60] ... In Order 00-08, [2000] B.C.I.P.C.D. No. 8, I set out the following four elements of the test for solicitor-client communications privilege, which I took from the decision of Thackray J. in *B. v. Canada*, [1995] 5 W.W.R. 374 (B.C.S.C.):

1. there must be a communication, whether oral or written,
2. the communication must be of a confidential character,
3. the communication must be between a client (or his agent) and a legal advisor, and
4. the communication must be directly related to the seeking, formulating, or giving of legal advice.

[14] The School District's argument for applying s. 14 was submitted *in camera*, on the basis that disclosure of its argument would reveal the withheld information. I can say, however, that nothing in the material before me indicates that the withheld information is a confidential communication between a lawyer and client (in this case, the third party). Nor would the information reveal such a communication.

[15] Further, I am not persuaded that these nine words are protected by litigation privilege under s.14. Litigation privilege applies to any record or communication that

comes into existence for the dominant purpose of advising on, preparing for or conducting litigation that was underway or in reasonable prospect at the time the record or communication came into existence. No evidence was submitted by the School District to support a claim of this kind of privilege and the material before me does not indicate any basis for a finding that litigation privilege applies to these nine words.

[16] I find that s. 14 does not authorize the School District to withhold this information.

[17] **3.2 Outline of Section 22 and the Parties' Positions** – Section 22(1) of the Act provides that a public body must refuse to disclose personal information the disclosure of which would unreasonably invade third-party personal privacy. The School District says s. 22 requires it to withhold: the third party's name and other identifying information; personal information that is part of the third party's employment history; others' opinions about the third party; the applicant's allegations against the third party; and personal information that would identify the witnesses, other than the applicant and the third party, whom the investigator interviewed. The School District says, in this light, that it can release some of the records in severed form and that it can summarize others under s. 22(5) of the Act.

[18] The School District argues that s. 22(3)(d) applies to most of the third-party personal information. It also considers, apparently, that s. 22(3)(g) applies, although it does not explicitly say so. The School District says it arrived at its position having considered the circumstances in ss. 22(2)(c), (f) and (h). It also says it considered the applicant's rights of access as compared to the third party's privacy rights under the Act. It suggests that, while the applicant's access rights might be greater than those of an outside party such as the media, they are not more important than the third party's privacy rights. The School District points to a number of decisions of my predecessor, David Flaherty, that deal with harassment or disciplinary investigation information and says they support this view (pp. 3-5, further initial submission).

[19] As I noted earlier, the third party objects to disclosure of any of the report on the ground that its disclosure, or disclosure of the associated records, would unreasonably invade the third party's personal privacy (p. 1, further initial submission). I pause to note here that, as the discussion below indicates, the third party's position is simply not tenable. The investigation report and the associated records contain the applicant's personal information, not just the personal information of the third party and others. Nothing in the material before me supports the conclusion that the applicant cannot have her own personal information because that would somehow invade the third party's personal privacy.

[20] The applicant, again, seeks access to the entire investigation report and all of the associated records. She begins her initial submission by describing her previous attempts to obtain a copy of the report, either under the Act or through arbitration of her grievance, brought in the wake of the investigator's exoneration of the third party. She argues that she has a right under the Act to information about herself created or gathered in the investigation (paras. 4-11, initial submission).

[21] It is convenient to reproduce the relevant parts of s. 22 here:

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
- ...
- (c) the personal information is relevant to a fair determination of the applicant's rights,
- ...
- (e) the third party will be exposed unfairly to financial or other harm,
- (f) the personal information has been supplied in confidence,
- ...
- (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.
- (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 that the third party supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation,
- (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,
- (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 the summary cannot be

prepared without disclosing the identity of a third party who supplied the personal information.

[22] **3.3 How Section 22 is Applied** – When a public body is considering the application of s. 22, it must first determine whether the information in question is personal information within the Act’s definition of “personal information”. Although the information that the School District would withhold under s. 22 is personal information, not all of it is the personal information of the third party. Some of it is, in fact, the applicant’s personal information, as is admitted by both the School District (p. 11, further initial submission) and the third party (p. 5, further initial submission). Further, some of the information is personal information of witnesses, other than the third party and the applicant, whom the investigator interviewed. The names of these witnesses are their personal information. Some of the information which the School District proposes to withhold is, in my judgement, no one’s personal information.

[23] The next step in the s. 22 analysis is to determine whether disclosure of the personal information would be an unreasonable invasion of a third party’s personal privacy. The public body must consider whether disclosure of the disputed information is considered, under s. 22(4) of the Act, *not* to result in an unreasonable invasion of third-party privacy. Here, I consider that some of the information in the report and Appendix A falls into this category, specifically s. 22(4)(e) (information about someone’s “position, functions or remuneration” as a public body employee).

[24] Next, the public body must decide whether disclosure of the disputed information is, under s. 22(3), *presumed* to cause an unreasonable invasion of privacy. According to s. 22(2), the public body then must consider all relevant circumstances in determining whether disclosure would unreasonably invade personal privacy, including the circumstances set out in s. 22(2). The relevant circumstances may or may not rebut any presumed unreasonable invasion of privacy under s. 22(3) or lead to the conclusion that disclosure would not otherwise cause an unreasonable invasion of personal privacy.

[25] Before discussing the merits of this matter, I should say something about how the Act affects workplace investigations such as the one underlying this case. As I observed in Order 01-07, [2001] B.C.I.P.C.D. No. 7, at para. 6, such investigations require discretion, tact and professionalism in ascertaining the relevant evidence and in making necessary factual findings. Such a process may be enhanced by conducting the investigation in confidence. Although doing so may lead to a better process and outcome, the value of confidentiality – and any promises or agreements to ‘respect’ or ‘ensure’ confidentiality – cannot override the Act. That is clearly not what the Legislature intended. As I said in Order 01-07, at para. 8, complaint investigation records such as those involved here “enjoy no greater protection under the Act because they are the product of a workplace investigation.” There is no basis in the Act for a zone or cloak of confidentiality. The question of whether information can or must be withheld from investigation-related records must be addressed on an exception-by-exception basis in the circumstances of each case. The sensitivity of workplace complaint investigations can be an appropriate contextual factor in such cases, but the same rules under the Act apply to such materials as apply to personal information in other records.

[26] **3.4 Nature of the Disputed Information** – I will now deal with issues arising under s. 22(3) in relation to the disputed information, *i.e.*, whether any of the information is personal information that is subject to one or more of the presumed unreasonable invasions of personal privacy found in s. 22(3).

Employment History

[27] The School District argues that allegations made against an individual arising from things the individual is alleged to have done in the course of her or his employment duties are information about that individual's employment history (p. 4, further initial submission). The third party argues, with vigour, that, since the investigator's report was

... entirely concerned with the Third Party's workplace conduct, it can reasonably be expected that some, if not all, of the information contained in it must be presumed to relate to [his or her] employment, occupational or educational history, and as such, ought not to be disclosed.

One of the stated goals of the ... provision in the Collective Agreement is to ensure that harassers will be subject to disciplinary or corrective action (Article A.5.1.b). It must be the case that investigation records created pursuant to the Collective Agreement as part of the resolution process for ... complaints, and upon which the decision whether to discipline or not will be based, form part of the employee's discipline record. (p. 9, further initial submission)

[28] The third party cites a number of orders in which my predecessor found that disciplinary matters fall under s. 22(3)(d). The third party resists disclosure of *any* of the investigation report because, the third party says, he or she has no confidence that the applicant would respect the confidential and sensitive nature of that record or that she would refrain from "inappropriate" disclosure of the report (para. 11, third party's affidavit).

[29] The applicant argues that disclosure of the investigation report would not unreasonably invade the third party's personal privacy because she named the third party at the time the investigator generated the report. She says the following, at paras. 15-16 of her initial submission:

Due to the nature of a harassment report it would be highly unlikely to find in the report information relating to ... [the third party's] medical history, treatment, occupational or educational history, or personnel evaluations regarding [him/her]self. Furthermore since the third party ... [is no longer a School District employee], the requested information will have no relevance to a determination of [his/her] rights as an employee of the school district.

[30] The applicant also argues that those who participated in the investigation did so willingly and should be held accountable for their statements to the investigator.

[31] Not surprisingly, the third party rejects the applicant's argument that the third party has lost his or her privacy rights on the basis that the third party has left the School District. On the contrary, the third party argues, the same privacy rights apply now as when the third party was employed by the School District. Moreover, the third party says, the report concerns the third party's discharge of the third party's duties and thus could affect the third party's future career plans (p.2, reply submission).

[32] As in Order 01-07 and Order 00-44, [2000] B.C.I.P.C.D. No. 48, I agree that information created in the course of a complaint investigation and disciplinary matter in the workplace that consists of evidence or statements by witnesses or a complainant about an individual's workplace behaviour or actions is information that "relates to" the third party's "employment history". I also consider that an investigator's observations or findings, in the investigator's interview notes and in an investigation report itself, about an individual's workplace behaviour or actions are part of the third party's employment history. All of this information will be personal information that is subject to the presumed unreasonable invasion of personal privacy created by s. 22(3)(d).

[33] It will usually be the case that such records will also contain information relating to the employment history of the complainant. Statements by the individual who is the subject of the investigation, and by witnesses, about the complainant's workplace behaviour and actions will be the personal information of the complainant. This personal information is information that "relates to" the complainant's "employment history". Further, to the extent an investigator's interview notes, and investigation report, contain observations or findings about a complainant's workplace behaviour or actions, that personal information will be part of the applicant's employment history. This information will also be subject to the presumed unreasonable invasion of personal privacy created by s. 22(3)(d) where someone other than the complainant seeks access to that information.

[34] These views are similar to those I expressed in Order 01-07, for example. In that case, I said the following, at paras. 19-20:

[19] The notes of interviews with third party witnesses, and the investigation report summaries of what they said, constitute the manager's personal information [*i.e.*, personal information of the person complained about] and the applicant's personal information [*i.e.*, the complainant's] to the extent they record what witnesses said about those individuals' actions, in the course of their employment, as individuals. That information is factual information – about what those individuals said or did – and "relates to" their employment history as individuals. It is not information about the position, functions or remuneration of those individuals or the how, when or why of their discharge of official functions. It therefore falls outside s. 22(4)(e) of the Act. For another example of the need to distinguish between information subject to s. 22(3)(g) and information subject to s. 22(4)(e), see Order 00-53, [2000] B.C.I.P.C.D. No. 57. In that case, the public body wrongly withheld, under s. 22(3)(d), facts as to the manner in which an employee discharged employment functions.

[20] Because it is subject to s. 22(3)(d), disclosure of the manager's personal information to the applicant is presumed to unreasonably invade the manager's personal privacy. This conclusion is, I note, consistent with the position taken in Ontario Order MO-1285, [2000] O.I.P.C. No. 45.

[35] It follows that disclosure of evidence of, or statements made by, witnesses about the third party's workplace behaviour or actions (including any opinions or views expressed by others about the third party) is presumed, under s. 22(3)(d), to be an unreasonable invasion of the third party's personal privacy. This includes the investigator's views or opinions, any evidence given by, or statements made by, the applicant about the third party, and any findings or conclusions expressed by the investigator.

[36] This also includes any record of the applicant's allegations against the third party. The School District argues that disclosure to the applicant of the allegations she made about the third party would be an unreasonable invasion of the third party's personal privacy. At pp. 7-9 of its further initial submission, the School District encourages me to take an approach different from the one I took in Order 00-44, in which I dealt with a record that contained the applicant's allegations against the third party. I concluded in that case that the recitation of allegations made by the applicant did not fall under s. 22(3)(d). At p. 4, I said the following:

... The applicant already knows those allegations, since he made them in the first place. In such a case, I do not agree that the allegations themselves, already known to the applicant, are part of the third party's employment history as it relates to the applicant's request.

[37] On reflection, I now think the better view is that a record of allegations is, even where the applicant is the complainant who made the allegations, part of the third party's employment history for the purposes of s. 22(3)(d). It is another question, which I address below, whether such information can in a given case be disclosed to an applicant (complainant) without unreasonably invading the personal privacy of the third party (respondent).

[38] It should also be said that a complainant's allegations about what another person said or did to the complainant in the workplace can also be seen as the complainant's personal information, as information related to the complainant's employment history. This will trigger s. 22(3)(d) where a third party seeks the complainant's personal information. In a case such as this, where the complainant is the applicant, the s. 22(3)(d) presumed unreasonable invasion of personal privacy will not, of course, be a factor.

Identifying Information

[39] Next, the School District contends that disclosure of information indicating the third party's work duties and actions the third party took in the course of employment would identify the third party and therefore would unreasonably invade the third party's personal privacy. It also argues that disclosure of the third party's name and other

identifying information – such as the third party’s occupation – would be an unreasonable invasion of the third party’s privacy under s. 22(1) generally. The School District makes similar s. 22(3)(d) arguments about the names and some other information related to other third parties, generally the witnesses. (See, for example, pp. 14, 15, 19, 21, further initial submission.)

[40] I accept that the name, and other identifying information of the third party, is the third party’s personal information and that it is, in this context, information that “relates to” the third party’s employment history under s. 22(3)(d). The third party’s name and other identifying information is covered by s. 22(3)(d) only because that information appears in the context of a workplace investigation. This is not to say that, in the ordinary course, the name or other identifying information of a public body officer, employee or member is covered by s. 22(3)(d). Moreover, even in cases such as this, where the identifying information is covered by s. 22(3)(d), any third-party identifying information that in some way relates to the third party’s job duties in the normal course of work-related activities falls into s. 22(4)(e). I refer here to objective, factual statements about what the third party she did or said in the normal course of discharging her or his job duties, but not qualitative assessments or evaluations of such actions. For a similar finding, see, for example, Order 00-53, [2000] B.C.I.P.C.D. No. 57.

[41] The disputed records also contain personal information of other third parties, *i.e.*, the names of, and other information about, witnesses whom the investigator interviewed. The names of witnesses are undoubtedly their personal information, as is the other recorded information about them. Based on the material before me, I do not consider this identifying information of witnesses who are School District employees to be personal information covered by s. 22(3)(d). That information does not relate to their employment history in the way it does for the third party. I will deal below with the issue of whether the witnesses provided their personal information in confidence and, if so, whether their personal information can be disclosed without unreasonably invading their personal privacy.

Personal Recommendations and Evaluations

[42] The third party says, at p. 9 of the third party’s further initial submission, that ss. 22(3)(g) and (h) apply. The third party argues that almost all of the investigation report consists of the third party’s personal information because it consists of opinions about the third party, including statements, allegations or conclusions of the investigator or witnesses about the third party’s conduct, character, practices or credibility. The third party also says the investigation report contains the third party’s personal information in the nature of the third party’s opinions about the applicant’s allegations. (I do not agree with this last assertion – my review of the investigation report reveals no third-party opinions of this kind.)

[43] The School District may be relying on s. 22(3)(g) on p. 4 of its further initial submission, when it says that opinions and allegations about the third party are that person’s personal information. It may, on the other hand, be saying that the views or opinions of others about the third party are the third party’s personal information by

virtue of paragraph (h) of the Act's definition of the term "personal information", which provides that anyone else's opinions about an individual are that individual's personal information.

[44] At all events, consistent with what I said in Order 00-44 and Order 01-07, the disputed records do not, in my view, contain performance evaluations of the third party or the applicant as contemplated by s. 22(3)(g) of the Act. They contain, rather, various parties' statements, or evidence, as to facts relevant to the applicant's specific allegations against the third party in relation to a complaint under the collective agreement. They are along the lines of 'she said this' or 'she did that', and are not the kind of evaluative material or recommendations contemplated by s. 22(3)(g).

[45] Nor are the allegations themselves covered by s. 22(3)(g). They are hardly recommendations or evaluations of a kind contemplated by that section. Even though the allegations in some sense convey the applicant's view of the third party's workplace behaviour, they do not constitute evaluative material as intended by s. 22(3)(g).

[46] This observation also extends to, among other things, the contents of the investigation report itself, including the investigator's findings or observations. These are findings of fact, made in the context of a formal investigation under the authority of a collective agreement, about what did or did not happen in the workplace as between two individuals. In any case, the applicant is aware of the investigator's general findings – again, that all of the applicant's allegations were not substantiated – and the School District and third party discussed them in their submissions. These are not personal evaluations or personnel evaluations as contemplated by s. 22(3)(g).

[47] The third party did not develop the s. 22(3)(h) theme. That section does not, in any case, apply. Section 22(3)(h) is intended to protect the identity of anyone who has, in confidence, provided recommendations or evaluations contemplated by s. 22(3)(g). The material just described does not fall under s. 22(3)(g), so s. 22(3)(h) does not apply.

[48] **3.5 Relevant Circumstances** – As contemplated by s. 22(2), I will now discuss the circumstances relevant to determining whether the School District is required by s. 22 to refuse disclosure.

Fair Determination of the Applicant's Rights

[49] The School District argues that the disputed information is not relevant to a fair determination of the applicant's rights, as contemplated by s. 22(2)(c), because she has filed a grievance under the collective agreement. The School District also claims, however, that the applicant's union has not been actively pursuing the grievance (p. 6, further initial submission).

[50] The third party supports this position, saying also that the investigator's findings were not seriously contested by anyone (p. 6, further initial submission). The third party also suggests, as does the School District, that the applicant can gain access to the report through the arbitration process, subject to her agreeing to the terms of a confidentiality

agreement. The applicant has, they say, chosen not to avail herself of that disclosure process because she will not agree to keep confidential anything that is disclosed to her under that process. It follows, they argue, that disclosure under the Act is not relevant to a fair determination of her rights.

[51] For her part, the applicant claims she refused to enter into a confidentiality agreement because it contains clauses which would prevent her from getting legal advice and would hinder her legal advisers in challenging the report's findings in any arbitration of her grievance (paras. 15 and 17, further initial submission). I note that, to the contrary, the so-called disclosure agreement – a copy of which was attached to the third party's affidavit – would expressly allow legal counsel for the applicant's union to receive a copy of the investigation report and to show it to the applicant. I fail to see how the agreement would affect the applicant's rights, as regards the investigation report, in the way she suggests.

[52] The applicant's other arguments about why she needs to have the records are lengthy and I will not recite them in any detail here. She says, essentially, that because the information relates to investigation of incidents that involved her and the third party, more than the issue of privacy is involved. Her need to know exactly what is in the investigator's report is also involved. She also argues that she can only assess whether the School District's decision about her complaint is consistent with all the findings and recommendations in the investigation report or is contrary to those findings and recommendations by having the report. By viewing the report, she says, she will be in a better position to assess how the School District responded to her complaint and whether the investigation was thorough and impartial and whether the information the investigator relied on was true and accurate or was based on opinion, hearsay or exaggeration. She argues this is the only way she can satisfy herself about the way in which the School District dismissed her complaints.

[53] The applicant further argues that she could be prejudiced in the community if the investigation records contain misleading information of which she is not aware. She claims "the negative legacy of the report has continued to follow me, creating stumbling blocks for me in my present employment" (para. 23, initial submission). She returns to this theme in para. 12 of her reply, but in neither case does she explain how she has been prejudiced or negatively affected by events surrounding the investigation nor how these events affect her "rights".

[54] In this respect, I said the following in Order 01-07, at paras. 30 and 31, about determining whether s. 22(2)(c) applies:

- [30] In Ontario Order P-651, [1994] O.I.P.C. No. 104, the equivalent of s. 22(2)(c) was held to apply only where *all* of the following circumstances exist:
1. The right in question must be a legal right drawn from the common law or a statute, as opposed to a non-legal right based only on moral or ethical grounds;

2. The right must be related to a proceeding which is either under way or is contemplated, not a proceeding that has already been completed;
3. The personal information sought by the applicant must have some bearing on, or significance for, determination of the right in question; and
4. The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.

[31] I agree with this formulation. I also note that, in *Greater Vancouver Mental Health Service Society v. British Columbia (Information and Privacy Commissioner)*, [1999] B.C.J. No. 198 (S.C.), at paras. 85-89, Lynn Smith J. concluded that a complainant's "fairness" concerns, related to the conduct of a complaint investigation, did not activate s. 22(2)(c).

[55] The applicant in Order 01-07 also expressed doubt about the conduct of a complaint investigation and argued that what she referred to as the 'rules of natural justice' should allow her to have access to investigation materials. I found that s. 22(2)(c) was not a relevant circumstance in that case, as there was no live legal issue surrounding the investigation. I qualified that finding in the following passage, at para. 34:

[34] The situation may differ, of course, where an applicant seeks information that is relevant to, and necessary for, an existing or pending arbitration or other legal proceeding in which that applicant's legal rights are being determined. An example is where an employer has refused to disclose information from an investigation that is needed by the applicant to defend herself in legal proceedings arising from, or related to, the investigation.

[56] Here, the applicant's union apparently launched a grievance following the investigation. The general nature of the disputed records is known to the applicant – the investigator deposed that, in the course of her investigation, she gave the applicant an indication of the nature of the witness statements (para. 4, Baxter affidavit). Accordingly, I am satisfied that the applicant was, from discussions with the investigator and her knowledge of the allegations and other facts, in a position to make the case here that she needs the records for a fair determination of her rights. She has not, however, provided me with evidence about the nature of the grievance, nor with any evidence as to how the investigation report or the associated records would be relevant to a fair determination of any of her legal rights in that process. Nor has she provided any evidence to counter the School District's claim, supported by the third party, that the grievance is stalled or in abeyance. Instead, her arguments centre on what she says is her 'right to know' how the investigation was conducted. I am not persuaded that her arguments link disclosure of the personal information in dispute with a fair determination of her legal rights in any grievance or arbitration process.

[57] I find that s. 22(2)(c) is not a relevant circumstance in this case that favours disclosure.

Confidential Supply

[58] Section 22(2) requires a public body to consider whether personal information was supplied in confidence within the meaning of s. 22(2)(f). The School District says this circumstance applies – and favours withholding the disputed information. It points to a provision of the collective agreement which says that all parties involved in a complaint agree to respect confidentiality. It also points out that, at p. 4 of the investigation report, the investigator outlined the conditions of confidentiality under which she conducted the investigation (pp. 6-7, initial submission). Moreover, the investigator deposed that she had conducted the investigation in confidence, as follows:

3. At the commencement of interviews with witnesses (including the complainant and respondent), I advise them that any information discussed during the investigation process is to be kept strictly confidential. I warn each witness not to talk about the matters discussed in the course of the investigation with anyone other than their chosen representative. I also tell each witness that the materials generated during the process are subject to the provisions of the *Freedom of Information and Protection of Privacy Act*. Given this, I advise witnesses that I cannot provide them with an absolute guarantee of confidentiality. I explain to witnesses that in the course of the investigation, and under the *Act*, the complainant or respondent may be entitled to know the details of statements made in the course of the investigation, but that individual witnesses will not be linked to particular statements.
4. In meeting with the complainant and the respondent in this matter, I provided both parties with an indication of the nature of the relevant allegations and statements which had been made in the course of my investigation. I did not advise the complainant of the identity of the specific witnesses who had made the statements which were reviewed with her.

[59] The third party supports the School District's s. 22(2)(f) argument. The third party deposed that she or he had participated in the investigation on the condition that all parties would keep the matter confidential. The third party also deposed that, although he or she had kept the matter as confidential as possible, the third party later learned that a number of other School District employees and community members indicated they were aware of the complaint (paras. 5-7, third party's affidavit). The third party believes that the applicant is the source of this information, despite the collective agreement stipulation that participants are to keep the matter confidential. The third party advances reasons for supposing that the applicant has failed to respect her confidentiality obligations and the applicant gives reasons to suppose the contrary.

[60] I make no finding on whether the applicant has breached any confidentiality obligation that may apply to her. That question is irrelevant to the issue of whether information supplied to the investigator by the applicant, by the third party and by witnesses was "supplied in confidence" for the purposes of s. 22(2)(f). The affidavit evidence provided by both the School District and the third party establishes, in my view, that the third party and other witnesses participated in the investigation in the expectation that both what they said and the outcome of the investigation would be kept confidential. The affidavit evidence also establishes that the investigator conducted her investigations

in confidence and that, with an appropriate reservation about the Act, she assured witnesses (including the applicant and the third party) of confidentiality.

[61] I commend the investigator for making participants aware both of the Act's application and the limits on any assurances of confidentiality respecting the investigation. As I noted at para. 25 of Order 01-07, and as the investigator acknowledges in her affidavit, there can be no absolute guarantee of confidentiality and public bodies should be cautious in giving assurances of confidentiality, for the purposes of the Act or otherwise. As to disclosure through arbitration processes, as I noted in Order 01-07, labour arbitrators have ordered disclosure of supposedly "confidential" reports and interview notes to allow a party to prepare for an arbitration.

[62] I find that the applicant, the third party and the witnesses supplied personal information in confidence to the investigator within the meaning of s. 22(2)(f) and that this is a relevant circumstance that favours the withholding of personal information provided by the third party and by witnesses, though not that provided by the applicant. As regards the personal information supplied by the applicant – whether her own or that of others – the applicant is the source of that information and thus knows it already. The fact that it has been recorded by the investigator does not, consistent with what is said below in relation to the record of allegations, support withholding from the applicant the very information she provided.

Unfair Harm and Unfair Damage to Reputation

[63] Both the School District and the third party argue that, having obtained copies of the records containing the allegations and identifying information about the third party, the applicant is likely to use the material to cause unfair harm to the third party's reputation (pp. 5-6, School District's further initial submission; p.7, third party's further initial submission; and paras. 7 and 11, third party's affidavit). Although the third party does not clearly say how the applicant has used, or may use, the outcome of the investigation to harm the third party's reputation, it appears the third party is concerned that the applicant will circulate copies of records of the allegations in an attempt to discredit the third party and diminish her or his standing. This concern is shared by the School District.

[64] The School District argues that the circumstances in ss. 22(2)(e) and (h) weigh against disclosure of the severed information and that disclosure of the applicant's allegations could harm the third party's reputation even where, as here, the allegations have been proved to be unfounded and the third party has been vindicated by the investigator. It argues, at p. 7 of its initial submission, that the

... reporting of unjustified accusations may lead, in the minds of some, to a conclusion or view that the Respondent [third party] must have 'done something' to prompt the allegations. At the very least, the Respondent's name would be associated with a number of serious and unjustified allegations.

[65] The third party addresses the circumstances in s. 22(2)(e) and (h) jointly, saying (at pp. 7-9, further initial submission) that disclosure of the information would

... expose [the third party] unfairly to harm and unfairly damage ... [the third party's] reputation. There is no question that for an educator and ... [title of the third party's position] who stands in a fiduciary position to ... [his/her] students and to the community, any publicity whatsoever surrounding the allegations contained in the Report will diminish ... [his/her] personal and professional reputation. This would be true whether or not it was determined that there was substance to some of the allegations against [the third party], but the fact that ... [she or he] was vindicated highlights the unfairness that would result if the Report were released improperly.

Indeed, the mere fact that an individual has been accused ... gives rise to serious social stigma and harm to that person's reputation. This view has been accepted by the British Columbia Court of Appeal

[66] In referring to “serious social stigma” from mere accusations, the third party relies on *Blencoe v. British Columbia (Human Rights Commission)* (1998), 49 B.C.L.R. (3d) 216. Both the Court of Appeal majority and dissent in *Blencoe* accepted that public knowledge of allegations of sexual harassment against the petitioner had stigmatized him. The charges in *Blencoe* were, unlike this case, of a sexual nature. There are accusations and then there are accusations – one might, for example, be ‘accused’ of not delivering one’s work on time. I will say at once that I do not accept that any supposed stigma here weighs against the applicant, who made these allegations and knows them, obtaining these records.

[67] The third party deposed that she or he had told the investigator that “the allegations were potentially damaging to my professional reputation, and that, as a result, I would protest the release of the report or any summary of the report.” The third party also deposed as follows:

8. Although I was entirely vindicated by the investigation, I considered the complaint and the allegations to be an extremely serious matter. The very fact that others knew that I had been accused ... was, in my view, sufficient to undermine my position and the trust which the community places in me as ... [title of third party's position]. As an educator and professional, allegations of this nature, whether or not they are founded, are personally embarrassing and have the ability to serious the impact [*sic*] upon my reputation.

[68] It appears from the third party's affidavit that he or she has retired since the 1998 investigation – and it seems the third party is not working as an educator in any other capacity. This diminishes the above-stated concerns about harm to the third party's professional reputation.

[69] The third party also argues that it is unfair for the applicant to “take advantage” of the investigation process, “which is agreed to be confidential, and then to use the confidential outcome of that process to harm the reputation” of the third party (pp. 8-9, further initial submission). I will say here that it is not possible, through a collective or

other agreement, to agree that such a process is confidential and thus oust any right of access under the Act. There is no question, in my view, of unfairness in the applicant seeking to exercise her rights under the Act as she has done here, despite what the collective agreement may say about confidentiality.

[70] For her part, the applicant says that

... this investigation complete with preliminary meetings did have significant, documented adverse affects on myself. Therefore, the suggestion that I would distribute information related to the investigation which might have a negative impact on myself and the process, is unfounded.

[71] We are dealing here with the applicant's allegations, which she made in writing. It would be unrealistic, in my view, to ignore the fact that the applicant knows what the allegations are, regardless of whether she has her own record of them. She has, I note, summarized her allegations in her initial submission in this inquiry. Similarly, the applicant knows the third party's name, occupation and work-related duties, since she made the allegations against the third party. She refers to the third party by name throughout her submissions in this inquiry. Recitations of, or references to, the allegations in the disputed records merely record what the applicant knows – the specific allegations she made. A record of those allegations, created for the purposes of an investigation that found the allegations to be unsubstantiated, would not give credence to the allegations in the mind of a reasonable person if the applicant possessed a copy of the recorded allegations.

[72] Again, the School District says the applicant is likely to use the disclosed information, including her own allegations, to publicly harm the third party's reputation, without exonerating portions of the records being part of the material that she will allegedly circulate or publicize. The School District says, at p. 9 of its further initial submission, this would be

... fundamentally unfair to the Respondent [third party], who would face the choice of either allowing these serious allegations to circulate unrefuted, or agreeing to disclose his own personal information in attempt [*sic*] to respond to these allegations.

[73] The applicant is aware that the investigator found that her allegations were unsubstantiated. The applicant's knowledge of the outcome is confirmed by the fact that her union has lodged a grievance in connection with the investigation's outcome. This is also confirmed by both the School District and the third party in their submissions in this inquiry, which they did not submit *in camera* in this respect. I do not accept that it would somehow be "fundamentally unfair" to expect the third party to defend his or her reputation against defamatory statements by the applicant about the investigation. The third party is already subject to the risk of defamation by the applicant and disclosure of the applicant's own allegations to her would not, in my view, realistically affect this risk.

[74] The School District argues that the applicant's knowledge of the allegations she made should not result in disclosure to her of her own allegations. It argues as follows at p. 9 of its further initial submission:

As noted above, the previous Commissioner has held that true third parties to the investigation process, like the media, ought not to be provided access to any information regarding harassment of an applicant. For example, if a media outlet were able establish [*sic*] that it had already, through some other means, obtained information regarding the fact of a complaint, and its nature, one would not expect that this fact would grant an entitlement to access personal information of participants in the process. Yet this is a potential consequence of the *Ministry of Social Development* decision.

Section 22 requires a balancing of the interests of an applicant and the individual whose personal information is to be disclosed. In our submission, the interests of an applicant are not significantly advanced by the disclosure of information of which they are already fully aware. The main interest of applicants in these cases is to gain access to the reasoning process of the investigators who investigated their complaints, and the findings made concerning the respondent. They are, not, however entitled to this information.

[75] First, it would not be accurate to suggest here that disclosure of the investigation report would reveal the "reasoning process" of the investigator. The report recites the process followed by the investigator and states her conclusions about the various allegations. But it does not describe the evidence she obtained or otherwise disclose her process of reasoning.

[76] As for my predecessor's views in this area, I do not think he intended to say that outside parties, including the media, is by definition precluded by s. 22 from ever gaining access to information regarding workplace investigations. Second, the School District incorrectly assumes, in the above passage, that the only relevant factor is an applicant's state of knowledge about a complaint. In my view, the relevant fact is that the applicant knows what the allegations are because she made them, as complainant. To ignore the applicant's relationship to the information, and the context in which it arose and appears in the records, would be unrealistic. The applicant is not – when one assesses whether disclosure to the applicant of the third party's personal information would *unreasonably* invade his or her personal privacy – in the same position as the media outlet mentioned in the School District's example.

[77] This is not to say, I should add, that an arm's-length applicant's knowledge of requested personal information could never be a relevant circumstance. At one end of the scale, if the applicant clearly knows what the requested personal information is, because it has somehow become common public knowledge, the fact that the information is already publicly known *may* favour disclosure, although other factors (including the nature of the personal information) will also have to be examined.

[78] Returning to the question of harm to reputation and unfair harm, the applicant in this case is, as was the applicant in Order 00-44, already free – at risk of liability in

damages for defamation – to broadcast her allegations to the world at large without having the disputed records in hand. The only, I believe illusory, advantage she might gain by having, from the School District, copies of records in which her allegations are recorded by the investigator or by the School District would be to show that she made the allegations to the School District and that they were investigated. She could go no further than she now could in making unsubstantiated claims or allegations about the third party. She could not at this time, for example, falsely claim that the investigator upheld her complaint without exposing herself to liability in damages for defaming the third party. It does not matter whether she has copies of records in which her allegations are recorded, as she could not bolster a false case against the third party simply by brandishing records that repeat her allegations.

[79] Arguments as to unfair harm or damage to reputation fail to account for the fact that the applicant does not need records of the allegations, or of her evidence, to harm the third party's reputation. As I also noted above, the investigation report exonerated the third party entirely. If the applicant nonetheless were to attempt to besmirch the third party's reputation, she would do so at risk of liability in damages for defamation. The fact is that any damage she might do to the third party's reputation would not hinge on her receiving copies of the allegations that she made or records of the evidence she gave to the investigator in support of the allegations. I am not persuaded that a reasonable person would give any more credence to the applicant's allegations because she brandishes a copy of a School District record in which her own allegations are documented, without supporting evidence or any validating comment by the School District.

[80] Accordingly, in this case, the applicant's knowledge of the third party's identity and the allegations that she made against the third party is, in my view, a relevant circumstance that favours disclosure of that which is already known to her. I cannot, therefore, agree with the School District's contention that it should (for example) sever the applicant's own letters to the School District in which she initially made allegations that were later found to be unsubstantiated. Regardless of whether she has retained a copy of those letters, it would to my mind be absurd to withhold the very allegations that the applicant made to the School District. The observation applies to the other disputed records in which the allegations are recorded or described.

[81] I am also not persuaded, for the reasons just given, that disclosure to the applicant of the third party's name or other identifying information would unreasonably invade the third party's privacy in these circumstances. Again, the applicant knows this information already – knowledge that is confirmed by the submissions and evidence of the other parties in this inquiry – and disclosure to the applicant of the third party's identifying information would not, even in association with the applicant's allegations, be an unreasonable invasion of the third party's personal privacy.

[82] By contrast, disclosure to the applicant of what witnesses said about the behaviour or actions of the third party would be an unreasonable invasion of the third party's personal privacy. I have already found that such information is covered by the presumed unreasonable invasion of personal privacy created by s. 22(3)(d). I have also

found that s. 22(2)(f) favours withholding this information from the applicant. Nor has the applicant shown that any other relevant circumstance exists, as provided in s. 22(2)(c) or otherwise, to favour disclosure of this information.

[83] I pause here to note that an applicant will relatively rarely be refused access to an entire record containing her or his own personal information in order to protect someone else's personal privacy. In saying this, I reject the third party's contention that no part of the disputed records can be disclosed. Section 4(2) of the Act requires the School District to sever and withhold only information that is protected from disclosure under, in this case, s. 22 of the Act. An entire record can be withheld only if protected information cannot "reasonably be severed" from the record. This is not such a case, as the School District has correctly acknowledged. The third party seems to believe that, because the entire process was said to be confidential, all of the related records must be withheld. This amounts to a claim that, because a confidential process is involved, the related records are protected as a class on the grounds of confidentiality alone. Such a claim is not tenable.

[84] I will now apply the above general findings to each of the records. The investigation report itself is a ten-page record that outlines the investigation and sets out the investigator's findings. The report is succinct because it does not recite the evidence that the investigator gathered, or the findings she made, in relation to each of the allegations. The report recites each allegation and then simply states the investigator's conclusion as to whether or not the evidence supported the particular allegation. (Again, as the applicant knows, and the other parties have confirmed in this inquiry, the investigator found the applicant's complaint to be unsubstantiated.) The report has four appendices, principally consisting of witness interview notes, with related records. I will deal with the report and each of the appendices separately.

Investigation Report

[85] The investigation report is organized into five sections: Summary Report; Time Frame and Process; The Complaint; The Facts; The Findings.

[86] Throughout the report, the School District severed, under s. 22, any information which might identify the third party, including that person's name, title, sex, the location at which the applicant and the third party worked and references to the third party's duties and functions. The School District also severed the applicant's allegations and certain information provided by the third party and others in response to the allegations, including general descriptions of the kinds of individuals who provided information. With one or two minor exceptions, the School District did not propose to sever the investigator's conclusion as to whether each allegation was proven. The exceptions that the School District would sever are a few words or phrases that apparently would be severed because they would identify the third party on the basis that they describe the third party's work-related duties or actions.

[87] The School District has made some of its arguments on the information it would sever on an *in camera* basis. In the open parts of its submissions, however, the School

District argues, as it did earlier, that the withheld information – the third party’s name, sex, position and duties, the nature of the allegations and a term used to describe the way the third party treated the applicant on one occasion – would identify the third party. Indeed, concealing the identity of the third party was evidently a chief concern of the School District and appears to have driven much of the severing. The School District further argues that disclosure of the allegations would reveal the third party’s employment history. It argues that disclosure of all this information would result in an unreasonable invasion of the third party’s privacy, for the reasons set out above.

[88] I have already given my reasons for rejecting the argument that the third party’s name and other identifying information – including references to the third party’s duties as an employee – and the applicant’s allegations should be severed. For the reasons discussed above, I find that s. 22 does not require this information to be withheld. These categories of information are the bulk of what the School District would have withheld from the investigation report under s. 22.

[89] As for the terms used to refer to other witnesses, the School District has not addressed these references in its discussion of the proposed severing. In any case, it would not be possible, in my view, to identify specific individuals who were witnesses from the general terms used to refer to witnesses who fall into a particular group. I note that the School District proposed disclosing one of these general terms in the list of interviewees in Appendix A. Moreover, the investigator deposed (in para. 5 of her affidavit) that, in her interviews with the applicant, she had in any case identified to the applicant two groups of people who had provided information about the applicant. One of those groups of people is described by the same general term the School District proposed disclosing in Appendix A. I therefore am not persuaded that disclosure of these general terms, which describe groups to which various witnesses belong, would be an unreasonable invasion of any specific individual’s personal privacy. I find that s. 22 does not apply to these general descriptive terms. There is also some information in the report which is not personal information of any individual, but rather reflects factual findings of the investigator. Section 22 does not apply to this information either.

[90] There are a few exceptions to what I have just said. They involve School District employees who were interviewed by the investigator and identified in the report by job position. Disclosure of their job positions would identify them to the applicant. I am satisfied that, in light of the fact that they supplied personal information in confidence, their job positions must be withheld to protect their identity. Accordingly, for the reasons given below, in the discussion of Appendices C and D, I find that the School District must refuse to disclose portions of the investigation report that would identify anyone who gave personal information of the applicant or the third party in confidence.

[91] To summarize, I find that s. 22 does not require the School District to refuse to disclose the following types of information in the investigation report: the allegations against the third party; identifying information about the third party (including information on this person’s duties and functions); the investigator’s general conclusions that the applicant’s allegations were unsubstantiated; and general terms referring to groups of witnesses.

[92] At the risk of repetition, it is appropriate in this case to deal specifically with the portion of the investigation report, on pp. 9 and 10, under the heading ‘The Findings’. Some of the information the School District would withhold from these pages is information that would identify the third party. For reasons I have already given, that identifying information cannot be withheld from the applicant under s. 22. The same holds, again for the reasons given above, to portions that repeat the applicant’s allegations against the third party.

[93] Nor is the School District required to withhold the information it proposes to sever from the first full paragraph on p. 10 of the investigation report. This information consists of findings of fact by the investigator about what occurred, not in terms of the applicant’s and the third party’s interactions, but in terms of ordinary-course workplace events that involved third parties. These are not findings about whether the applicant or the third party did or did not do something – they are findings about the factual context in which these two individuals interacted in the workplace. In a sense, these findings are historical. They are not personal information of the third party or the applicant. Disclosure of those facts would not unreasonably invade the personal privacy of the third party or anyone else.

Appendix A – List of Individuals Interviewed

[94] This record lists the names and, where applicable, the positions of the witnesses that the investigator interviewed, together with the dates and times of the interviews. It includes the applicant, as complainant, and the third party, as respondent, and a number of other individuals. The School District proposes severing the name and position of the third party, the names and related information of other individuals present at the third party’s interviews, the names of other individuals who were interviewed and both the names and titles, or similar information, of still others who were interviewed.

[95] Again, the applicant knows who the third party is. For the reasons given above, I reject the School District’s contention that the name and other identifying information of the third party in this record must be withheld under s. 22. I find that s. 22 does not apply to this information of the third party.

[96] The School District does not explain why the names of others who attended interviews with the third party fall under s. 22. My reading of the material, including this record, indicates that they attended in work-related capacities and I am not persuaded that this information must be withheld under s. 22 to protect their personal privacy. Of course, if the School District believes this information must be withheld in order to protect the identity of the third party, I reject that proposition for the reasons given above. Section 22 does not apply to this information.

[97] As for the proposed severing of information that would identify the remaining witnesses, the circumstance in s. 22(2)(f) favours withholding this personal information, as was the case in Order 01-07. I find that s. 22 applies to this information.

Appendix B – Complainant’s Submission and Interview Notes

[98] According to the School District’s supplementary letter of November 10, 2000, Appendix B contains the following types of records: the applicant’s letters to various individuals (including her union representatives and legal counsel); the investigator’s interview notes made in the course of her discussions with the applicant as complainant; the applicant’s own notes relating to her allegations; letters and notes to the applicant from others; and letters between others that were copied to the applicant. There are also what appear to be the applicant’s own notes of meetings she attended with others. I should note that the investigator’s notes of her interviews with the applicant – which the applicant initialled – only contain information given by the applicant in those interviews, *i.e.*, the applicant’s evidence about her version of various events. There are no separate notes or comments by the investigator about other individuals such as the third party. Although the School District does not explain the source of the other records contained in Appendix B – *i.e.*, records other than notes of the investigator’s interviews with the applicant – I infer from the School District’s letter of November 10, 2000, and their inclusion as an appendix to the investigation report, that the applicant herself provided these materials to the investigator.

[99] The School District says its position on these records is the same as its position on the report – it proposes disclosing information on the process used in investigating the allegations, while withholding information which would permit a “reasonably informed” person to identify the third party. This would entail withholding from Appendix B the third party’s name, and the applicant’s allegations, where they would allow the third party’s identification, as well as evidence the applicant provided about what the third party and other people allegedly said and did.

[100] I have already given my reasons for finding that disclosure to the applicant of her allegations against the third party, and identifying information of the third party as set out in the investigation report, would not be an unreasonable invasion of the third party’s privacy. Withholding the same information – her references to others and her statements about what others, including the third party, said and did – from the applicant’s own correspondence and interview notes is not, in my view, required by s. 22. Regardless of whether or not the applicant has retained copies of her own written allegations (which she sent to the School District), or of other letters and related documentation, the fact remains that she created or provided this material and knows the information already. For the reasons given above, therefore, I find that s. 22 does not apply to any of this kind of information in Appendix B. The applicant is entitled to receive all of Appendix B.

Appendix C – Respondent’s Submissions and Interview Notes
Appendix D – Rough Notes from Witness Interviews

[101] The School District describes these two appendices as containing the investigator’s notes of interviews of witnesses, submissions made by the third party to the investigator (as respondent to the complaint), submissions made by the third party’s representative and notes of contacts and discussions with other individuals whom the investigator contacted during the investigation.

[102] The School District proposes to sever and disclose, in non-identifying form, four pages of records from Appendix D containing “expressions of concern about the Applicant’s classroom”, because, it says, these records appear to have been “generated independently of the investigation process”. It also proposes to disclose a letter from a parent to the applicant, as the applicant had received it directly from the parent. I agree with the School District as regards these five pages of records, while noting that I find the School District’s position on the parent’s letter curious in light of the fact that it proposes elsewhere to sever other information known to the applicant (her own correspondence, interview notes and other records containing information provided by her).

[103] In accordance with s. 22(5), the School District proposes summarizing the rest of Appendices C and D in such a way as to protect the identities of those who provided statements. Section 22(5) requires a public body to give an applicant a summary of any confidentially-supplied personal information that the public body has refused to disclose under s. 22. The School District argues that the applicant is entitled only to a summary, under s. 22(5), of the statements about herself made by third parties in a form which would not allow her to identify the individuals who made the statements. It says this is consistent with the expectations of individuals who participated in the interviews and with the approach taken in Order No. 286-1998, [1998] B.C.I.P.C.D. No. 81.

[104] I am satisfied, based on my review of the records and the other material before me, that it is not possible to sever and disclose these records while protecting the identity of those who confidentially supplied the applicant’s personal information to the investigator. Accordingly, I agree that, as regards the applicant’s personal information supplied in confidence by others, the School District must provide the applicant with a summary under s. 22(5) of her personal information supplied in confidence by others, *i.e.*, by the third party and by other witnesses interviewed by the investigator. As the School District indicates in its submissions, the purpose of this exercise is to protect the identity of those who provided the applicant’s personal information to the School District’s investigator. Since the School District has not provided me with a proposed summary, the appropriate order is made below.

4.0 CONCLUSION

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

1. Under s. 58(2)(a) of the Act, I require the School District to give the applicant access to the information withheld by the School District under s. 14 of the Act.
2. Under s. 58(2)(a) of the Act, I require the School District to give the applicant access to:
 - (a) in the investigation report and in Appendix A, the following information: information that records the applicant’s allegations against the third party; information that identifies the third party (including the investigator’s findings); personal information about the applicant; information that

identifies the people who accompanied the third party to interviews by the investigator; and information which is not personal information, in each of the foregoing cases as shown on the severed copies of those records that I have provided to the School District with its copy of this order; and

- (b) all of the Appendix B records;
 - (c) the five pages of records in Appendix D, except information that would identify third parties, as identified by the School District in its severing of those records as provided to me for the purposes of this inquiry.
3. Under s. 58(2)(c) of the Act, with the exception of the five records mentioned in paragraph 2(c) above, I require the School District to refuse to give the applicant access to the information in Appendices C and D, namely:
- (a) personal information of the third party and the applicant, consisting of the personal information supplied to the School District's investigator, by the third party and by witnesses other than the applicant, about the applicant or about the third party; and
 - (b) personal information of witnesses (including the third party), other than the applicant, that would identify those witnesses.
4. Under s. 58(3)(a) of the Act, with the exception of the five pages of records mentioned in paragraph 2(c) above, I require the School District to perform its duty under s. 22(5) of the Act to give the applicant a summary of her personal information, in Appendices C and D, supplied in confidence by the third party or witnesses other than the applicant.

December 21, 2001

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia