



July 9, 2003

To the parties:

**Request for review by an applicant under s. 52(1) of the *Freedom of Information and Protection of Privacy Act* (“Act”) – Simon Fraser University (“SFU”), public body – O.I.P.C. File No. 16991**

**1. Purpose of this letter** – This decision is in response to SFU’s May 7, 2003 request that I decline to proceed with an inquiry in this matter because, in essence, it presents no arguable issue. After considering the access request, SFU’s response to it, the request for review, SFU’s May 7, 2003 request, the applicant’s response and SFU’s reply, I agree that the applicant’s request for review presents no arguable issue. I have therefore decided not to proceed with an inquiry under s. 56 of the Act in this matter and these are my reasons for reaching that conclusion.

**2. Background** – The applicant requested the names of 44 students who were, to quote her December 10, 2002 access request, “found guilty of plagiarism regarding a BCEC course”. In its December 19, 2002 response to that request, SFU refused, under s. 22(1) of the Act, to disclose those names. SFU decided that the presumed unreasonable invasion of personal privacy created by s. 22(3)(d) of the Act applied, on the basis that disclosure “of the students’ names in relation to this disciplinary finding would reveal details of their educational history.” SFU further considered that none of the relevant circumstances, including those set out in ss. 22(2)(a), (c), (e) and (h) of the Act, favoured disclosure of the names.

On January 3, 2003, the applicant requested a review, under Part 5 of the Act, of SFU’s decision to refuse access. She alleged the SFU students had “forfeited” their privacy by violating copyright and, she alleged, s. 342 of the *Criminal Code*. She said that she is a victim of the plagiarism because the students “seem to have cheapened my degree”, which she suggested amounts to exposure to harm. Her request for review questioned why SFU is not “protecting the rights of the majority of honest students”. She said that SFU, by refusing to disclose the students’ names, was “protecting lawbreakers”, while disclosure of the names could “act as a specific and general deterrent.” SFU’s failure to disclose the names would, she alleged, continue to damage its reputation.

Mediation by a Portfolio Officer was not successful and, on April 28, 2003, this office issued a Notice of Written Inquiry under s. 56 of the Act. The notice stated that the sole issue for the inquiry was whether s. 22 of the Act requires SFU to refuse access. It also stated that, under s. 57(2) of the Act, the applicant has the burden of proof. The Portfolio

Officer's Fact Report that accompanied the notice specified the information in dispute as being the "names of the 44 Simon Fraser University students who were found guilty of plagiarism in a BUEC course."

On May 7, 2003, before the inquiry actually got under way, SFU asked me to decline to proceed. I invited the applicant to respond to SFU's request. She did so and SFU replied.

**3. Discussion** – Section 56(1) of the Act reads as follows:

**Inquiry by commissioner**

**56 (1)** If the matter is not referred to a mediator or is not settled under section 55, the commissioner may conduct an inquiry and decide all questions of fact and law arising in the course of the inquiry.

I accept that the word "may" in s. 56(1), which replaced the word "must" effective April 11, 2002, confers discretion about whether to hold an inquiry respecting a request for review. There may be a variety of reasons why that discretion might be exercised one way or another, but in this case the question is whether I should decline to proceed with an inquiry on the ground that s. 22(1) of the Act clearly protects the requested information and the request for review raises no arguable issue otherwise.

The material before me leaves no doubt that the access request is for third-party "personal information" within the meaning of the Act. It is also clear that the names of the 44 students qualify as information about their "educational history" within the meaning of s. 22(3)(d) of the Act. The access request was for names of those found to have committed plagiarism in a course. Disclosure would inevitably say something about each student's educational history at SFU, *i.e.*, it would indicate that each named individual had been found to have plagiarised something. This reflects on the student's performance as a student. Because disclosure of the students' names would be a disclosure of information that "relates to ... educational history" within the meaning of s. 22(3)(d), this case presents a single, clear issue – whether disclosure of the names of students that SFU determined had plagiarised work would unreasonably invade their personal privacy such that s. 22(1) of the Act prohibits disclosure.

The principles to be applied in s. 22 cases are well established. For example, Order 01-53, [2001] B.C.I.P.C.D. No. 56, sets out the approach to be followed in analyzing and applying s. 22. This decision was made known to the applicant before she responded to SFU's request for me to decline to proceed with an inquiry.

Order 01-53 and numerous other decisions under s. 22 involving personal information that is related to disciplinary processes or outcomes make it abundantly clear that s. 22 will only very rarely allow such information to be disclosed. In Order 02-43, [2002] B.C.I.P.C.D. No. 43, I dealt with a public interest fee waiver request relating to a journalist's request for access to discipline-related records involving faculty and students of the University of Victoria. Although I acknowledged in that case that such

information might be accessible despite s. 22, it is fair to say Order 02-43 also recognizes the hurdles facing anyone who seeks such information.

The material before me does not suggest even an arguable basis for concluding that the requested names, the disclosure of which is presumed to be an unreasonable invasion of personal privacy, can be disclosed under the Act.

In refusing access, SFU concluded that disclosure is not, as contemplated by s. 22(2)(a) of the Act, relevant to a fair determination of anyone's rights. The applicant took issue with this in her request for review and again in her response to SFU's request for me to decline to proceed with an inquiry.. She says her "rights" are affected, that the plagiarism incident has "cheapened" her degree.

SFU points out the word "rights" in s. 22(2)(a) refers to legal rights, not 'rights' in some larger or less precise sense. See Order 01-07, [2001] B.C.I.P.C.D. No. 7. This was also the view of Lynn Smith J. in *Greater Vancouver Mental Health Services Society v. British Columbia (Information and Privacy Commissioner)*, [1999] B.C.J. No. 198. Nothing in the material before me suggests that s. 22(2)(a) could possibly be engaged in this case. In saying this, I have kept in mind various constitutional arguments advanced by the applicant. Specifically, she contends that her freedoms of expression, thought, opinion, belief, speech and press (as well as security of the person) are engaged. There is no plausible basis for this in the circumstances. Nor is there any reason to conclude that other relevant circumstances, including any of those mentioned in s. 22(2) of the Act, have even arguable application here.

Again, the s. 22(3)(d) presumed unreasonable invasion of personal privacy is clear on the face of this case and there is not even an arguable prospect of that presumption being relieved by any of the considerations in s. 22(2). There is no merit in the applicant's request for review or her response to the request to dispense with an inquiry. If an inquiry were held, the outcome would be clear – the applicant would be denied access.

I have decided this is an appropriate case to exercise my discretion to not hold an inquiry under s. 56 of the Act. Consideration of the applicant's request for review is concluded. SFU's response to the access request stands.

Yours sincerely,

David Loukidelis  
Information and Privacy Commissioner  
for British Columbia

cc Maria Dupuis, Registrar of Inquiries