



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

Decision F06-11

**UNIVERSITY OF BRITISH COLUMBIA**

Justine Austin-Olsen, Adjudicator  
November 21, 2006

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**Summary:** The request by UBC that an inquiry under Part 5 of the Act not be held is denied. It is not plain and obvious that there is no arguable issue about the applicability of ss. 22 and 25 to UBC's severing of the record in dispute.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, s. 56.

**Authorities Considered:** B.C.: Order 01-03, [2001] B.C.I.P.C.D. No. 3; Order 02-57, [2002] B.C.I.P.C.D. No. 59.

## 1.0 INTRODUCTION

[1] The University of British Columbia ("UBC") has requested that, pursuant to s. 56 of the *Freedom of Information and Protection of Privacy Act* ("FIPPA"), an inquiry under Part 5 of FIPPA not be held with respect to an access to information request made by the respondent.

[2] I have considered the submissions of the parties and, for the reasons that follow, I have determined that this matter will proceed to inquiry.

## 2.0 DISCUSSION

### ***The access request***

[3] According to the material provided by UBC, the history of the respondent's access request is as follows:<sup>1</sup>

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<sup>1</sup> UBC's initial submission, pp. 1-2.

1. On or about June 9, 2006, UBC received a request from [the respondent] for the final version and the first draft of UBC's reports of the mistaken cutting down of trees on GVRD property behind the UBC Anthropology Museum this year. (the "Report").
2. The letter of acknowledgment was sent to [the respondent] on June 14, 2006.
3. On June 29, 2006 a response was sent to [the respondent], along with a severed version of the Report.
4. On July 24, 2006, UBC received notice from the OIPC regarding a request for review.
5. On October 3, 2006, further to mediation with...the OIPC, UBC provided a further redacted Report to [the respondent].

[4] UBC describes the Report as summarizing the results of the investigation that was conducted,<sup>2</sup>

...to determine why the vegetation was removed, who did it, what disciplinary action should be assessed and what actions are required to ensure such an incident did not occur again.

### ***The parties' positions***

[5] Given my decision that an inquiry will be held, it would not be appropriate for me to comment on the merit of the arguments made by the parties. As such, what follows is simply a summary of the positions taken by UBC and the respondent in this application.

[6] In its application UBC submits that the information severed from the Report is all personal information of third parties that is subject to the presumption in s. 22(3)(d). That is, it is personal information that "relates to employment, occupational or educational history," the disclosure of which is presumed to unreasonably invade the personal privacy of those individuals. UBC cites several orders from this Office in support of its contention that s. 22(3)(d) applies and says that there are no relevant factors that would mitigate or outweigh the presumption against disclosure of this information to the respondent.

[7] The respondent, among other things, submits that some of the information that has been severed must be disclosed on the basis that it is information captured by s. 22(4)(e), that is, "the information is about the third party's position, functions or remuneration as an...employee...of a public body." The respondent also says that "the public interest override" in s. 25 applies in this case.<sup>3</sup>

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<sup>2</sup> UBC's initial submission, p. 2.

<sup>3</sup> Respondent's initial submission, p. 2.

[8] UBC made a reply submission on the merits of the respondent's position.

### **Discussion**

[9] Section 56(1) of FIPPA reads as follows:

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.

[10] Section 56 confers discretion as to whether to hold a Part 5 inquiry respecting a request for review. As noted in earlier decisions, there are a variety of reasons why this discretion might be exercised in favour of not holding an inquiry. These include circumstances where the principles of abuse of process, *res judicata* or issue estoppel clearly apply.<sup>4</sup> Other circumstances are where it is plain and obvious that the records in dispute are subject to an exception to disclosure or that they fall outside FIPPA's scope. In each case, however, it must be clear that there is no arguable issue which merits adjudication in an inquiry.

[11] In an application of this kind under s. 56, it is the party asking that an inquiry not be held (in this case UBC) who bears the burden of demonstrating why that request should be granted. The respondent does not bear an equal burden of demonstrating why an inquiry should be held. This reflects the policy of this Office that, when mediation is unsuccessful, the matter in dispute is referred for an inquiry.

[12] As I have indicated, I make no comment on the merits of the arguments made by the parties in this application. I will say only that, having reviewed the Report and having considered the submissions of the parties, it is not plain and obvious that there is no arguable issue about the applicability of ss. 22 and 25 of FIPPA to all of the information UBC has severed from the Report.

## **4.0 CONCLUSION**

[13] For the reasons given above, this matter will proceed to inquiry under Part 5 of FIPPA.

November 21, 2006

### **ORIGINAL SIGNED BY**

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Justine Austin-Olsen  
Adjudicator

OIPC File: F06-29276

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<sup>4</sup> Order 01-03, [2001] B.C.I.P.C.D. No. 3; Order 02-57, [2002] B.C.I.P.C.D. No. 59.