



OFFICE OF THE
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Order F11-22

BC COLLEGE OF TEACHERS

Jay Fedorak, Adjudicator

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Summary: A journalist requested a list of the names, current certificate status and current practicing status of all teachers registered with the College. The College withheld the information under ss. 20(1) and 22 of FIPPA on the grounds that the information was already publicly available through a searchable database on its website and disclosure would be an unreasonable invasion of the teachers' privacy. Section 20(1) does not apply because the list of names is not available for purchase by the public. Section 22 does not apply because disclosure is authorized by the *Teaching Profession Act* and the information at issue consists of a discretionary benefit similar to a licence. The College must disclose the list including all of the fields, and in the electronic format, he has requested. The College is not required to notify individual teachers about the disclosure.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 2(2), 20(1), 22(4)(c), 22(4)(i), 23(1), 30.4 and 33.1(1)(c); *Teaching Profession Act*, ss. 25, 27.3(2) and 35.

Authorities Considered: **B.C.:** Order F10-37, [2010] B.C.I.P.C.D. No. 55; Decision F07-03, [2007] B.C.I.P.C.D. No. 14; Order 01-53, [2001] B.C.I.P.C.D. No. 56; Order F08-14, [2008] B.C.I.P.C.D. No. 24; Order 00-53, [2000] B.C.I.P.C.D. No. 58; Order 04-20, [2004] B.C.I.P.C.D. No. 20; Order 00-01, [2000] B.C.I.P.C.D. No. 1; Order 01-26, [2001] B.C.I.P.C.D. No. 27; **Alta.:** Order F2005-016, [2006] A.I.P.C.D. No. 40; Order F2002-011, [2002] A.I.P.C.D. No. 43; Order 98-018, [1999] A.I.P.C.D. No. 1.

INTRODUCTION

[1] This case is about a *Vancouver Sun* journalist who seeks a list of the names, current certificate status and current practicing status of all teachers registered with the BC College of Teachers (“College”). He received equivalent lists from other self-governing professions in BC, such as the Law Society and College of Physicians and Surgeons. The College refused access because it said the information is already available to the public through an online database. The College also justified its refusal to disclose the information on the ground that it would be an unreasonable invasion of the teachers’ privacy because the information is likely to be inaccurate or unreliable.

[2] The College also raised a concern about whether disclosing any requested information would require it to notify all teachers in writing and obtain their consent prior to disclosing the information.

ISSUES

[3] The questions I must decide are:

1. Whether the College may refuse to disclose the information because it is already publicly available under s. 20(1) of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”).
2. Whether the College must withhold the information to protect personal privacy under s. 22(1) of FIPPA.
3. Whether the College must notify all third parties prior to disclosing any information under s. 23(1) of FIPPA.

DISCUSSION

[4] **Background**—The *Teaching Profession Act* s. 27.3(2) requires the College to maintain an online registry of authorized teachers, including the teachers’ names, status of their certificates, records of suspensions of their teaching credentials and records of disciplinary action. The College fulfills this requirement by providing a searchable database on its website.

[5] In order to obtain any information, the user must input the name of a teacher. The system provides no facility to scroll through a list of the names of teachers.

[6] The journalist has requested a list containing the requested information of all certificate holders.

[7] It is standard practice that, prior to commencing an inquiry, an OIPC investigator attempts to resolve requests for review informally, through a process the OIPC describes as the “mediation phase”.

[8] **Preliminary Issues**—The College raised two issues in its initial submission that were not included in the Notice of Inquiry: that the journalist’s request did not meet any statutory purpose of FIPPA, and that disclosing the records to the journalist could produce an asset of commercial value. The College requested that, in the event I ordered disclosure of the records, I stipulate conditions of use on the journalist.

[9] Past orders and decisions of the Office of the Information and Privacy Commissioner for British Columbia (“OIPC”) have said parties may raise new issues at the inquiry stage only if permitted to do so.¹ The College did not ask the permission of the OIPC to raise this issue prior to the inquiry. The College also had an opportunity to raise the issues during the mediation phase of the request for review, but, according to the investigator’s fact report, the College did not raise it. It did not explain why it did not do so until its initial submission or why it should be permitted to raise these issues at this late stage. I have decided, therefore, not to permit the College to raise these issues in this inquiry.

[10] I note, however, that even had I permitted the College to raise these issues, I would have found that they were without merit. The College attempted to argue that it did not have to respond to requests, unless doing so would advance the purpose of making the College more accountable to the public. I agree that the OIPC must consider the general purposes of FIPPA when interpreting specific provisions of FIPPA and evaluating the decisions of public bodies. This does not mean, however, that before applicants receive records, they must first demonstrate how having access would meet the purposes of FIPPA. Nor does it even require applicants to state why they are requesting the information.

[11] With respect to the issue whether journalist could use the information for a commercial purpose, I note that FIPPA places no restrictions on how applicants may use the information they receive in response to a formal request. Whether an applicant sells the information, or discloses it publicly, is not a reason to deny them access, unless a public body can demonstrate financial or economic harm that falls within one of the enumerated grounds in Part 2 of FIPPA.

[12] The journalist also raised an objection regarding the College’s reply submission. The OIPC’s policies regarding submissions require that reply submissions may contain only responses to issues raised by the other parties in their initial submissions. They may not raise new issues. The journalist sent his

¹ See for example Order F10-37, [2010] B.C.I.P.C.D. No. 55; Decision F07-03, [2007] B.C.I.P.C.D. No. 14, and Decision F08-02, [2008] B.C.I.P.C.D. No. 4.

reply submission to the College well in advance of the deadline. The College read the reply submission and addressed, in its reply submission, some of the issues he raised in his reply submission. He also objected to the College raising other new issues in its reply submission. The journalist requested that I disregard the material that the College had raised improperly. The OIPC gave the journalist an opportunity to submit a further reply submission to address these issues, and the College agreed not to respond to it. I find that providing the journalist with the opportunity to file a further reply submission addressed any outstanding issues of administrative fairness. I also note that nothing that the College inappropriately included in its reply submission influenced my ultimate finding on the substantive matters at issue in this inquiry.

[13] Is the information already available for purchase by the public?— FIPPA excuses public bodies from disclosing information that is already available for purchase to the public or will be available within 60 days of the receipt of the applicant's request in accordance with s. 20(1). The College submits that its online registry makes publicly available all of the information the journalist has requested, and that this warrants refusing to disclose the information in response to his request.

[14] The College has misread s. 20(1)(a) of FIPPA. It applies only to information "that is available for purchase by the public". The College does not make a list of teachers available for purchase. This provision of s. 20(1)(a) of FIPPA prevents applicants from using FIPPA to avoid having to pay for information that is otherwise available for a fee. That was not the case here. In addition, s. 20(1)(b) of FIPPA applies only to information that will be published or released to the public within 60 days of the applicant's request. This also was not the case here. Therefore, I find that s. 20(1) of FIPPA does not apply to the requested records.

[15] I would parenthetically note that s. 20(1)(a) must be read together with s. 2(2), in that general purposes of FIPPA include that it should not replace other avenues of access to information, as provided in s. 2(2). If the information is available for purchase, or free of charge, in hardcopy or on a website, it is reasonable for a public body to refer an applicant to these alternative avenues of access rather than continuing to process the formal request. However, I do not see this applying in the present case. The journalist requested a spreadsheet listing the names of all registered teachers, and the online registry does not provide him with access to all of the information he has requested. An online search engine, which permits a viewer to see if a particular individual is a registered teacher, is not the equivalent of disclosing a list of all registered teachers. The journalist wants to know the names of the teachers, as well as their certification status. To use the search function, it is necessary to know the names, first. There is no evidence before me that the journalist already has the names of the approximately 58,000 to 74,000 names necessary to access the requested information through the search engine. All of the information he has

requested might be connected to the search engine on the website, but it remains inaccessible to him. Therefore, the online registry is not an alternative avenue of access for the information the journalist has requested.

[16] Would disclosure be an unreasonable invasion of the teachers' privacy?—FIPPA requires public bodies to withhold personal information where its disclosure would be an unreasonable invasion of a third party's personal privacy. The test for determining whether disclosure would be an unreasonable invasion of privacy is contained in s. 22 of FIPPA.

[17] Numerous orders have considered the application of s. 22, for example, Order 01-53.² First, the public body must determine if the information in dispute is personal information. Then, it must consider whether disclosure of any of the information is not an unreasonable invasion of third-party privacy under s. 22(4). If s. 22(4) does not apply, then the public body must determine whether disclosure of the information is presumed to be an unreasonable invasion of third-party privacy under s. 22(3). Finally, it must consider all relevant circumstances, including those listed in s. 22(2), in deciding whether disclosure of the information in dispute would be an unreasonable invasion of third-party privacy. I take the same approach here.

Is it personal information?

[18] The first step in applying s. 22 is to determine whether the requested information is personal information. The journalist has requested the names and certification information of individual teachers. This is the information of identifiable individuals. Therefore, it constitutes personal information. I now turn to whether any provision of s. 22(4) of FIPPA applies.

Is disclosure authorized by an enactment of British Columbia?

[19] Section 22(4)(c) of FIPPA provides that disclosure of personal information is not an unreasonable invasion of a third party's personal privacy "if an enactment of British Columbia or Canada authorizes the disclosure". The parties agree that s. 27.3(2) of the *Teaching Profession Act* authorizes the disclosure of the personal information at issue through the online registry. I concur. Therefore, s. 22(4)(c) applies and disclosure is not an unreasonable invasion of privacy.

[20] The College argues that the purpose of s. 22(4)(c) of FIPPA is merely to avoid conflict between statutes, and that in order for the journalist to obtain access to the information, another provision of FIPPA must apply. That submission ignores the clear words of s. 22(4)(c), which are not limited to FIPPA, but which refer to any federal or provincial enactment that authorizes disclosure. The purpose of s. 22(4)(c) is to work in conjunction with

² [2001] B.C.I.P.C.D. No. 56.

other statutes. It is recognition that, if another statute authorizes disclosure of personal information, such a disclosure does not constitute an unreasonable invasion of privacy.

[21] In this case, a statute requires the College to make the information publicly available online. As a matter of common sense, FIPPA, under s. 22(4)(c), provides that it is not an unreasonable invasion of privacy to disclose the same information in response to an access request, under s. 5.

Does the teaching certification constitute a licence, permit or other similar discretionary benefit?

[22] While the above is sufficient to dispose of the issue, the disclosure would also be authorized under s. 22(4)(i), which provides that a disclosure of personal information is not an unreasonable invasion of personal privacy, “if the disclosure reveals the details of a licence, permit or other similar discretionary benefit granted to the third party by a public body, not including personal information supplied in support of the application for the benefit.”

[23] Previous orders have found that this provision applies in cases that meet the following two conditions:

1. The information must relate to a licence, permit or other form of certification that provides an individual with the legal authorization to engage in some a type of activity that is not otherwise permitted, such as to hunt particular game or to practice a profession.
2. This authority must be given at the discretion of the regulating body.³

[24] The teaching certificates and letters of permission that the College grants to prospective teachers are necessary for them to practice in either the public or independent school system in British Columbia. In law, the certificates and letters of permission constitute a discretionary licence or permit. Certificate holders only enjoy their certification at the discretion of the College. The *Teaching Profession Act*, ss. 25 and 35, gives the College certain discretion in the granting and rescinding of these certifications. Therefore, College certification meets the requirements of s. 22(4)(i) of FIPPA. The College does not dispute this. It merely argues that, if the journalist combined the certification information with other information from other sources, it could result in a violation of the certification holders’ personal privacy. The College does not identify the kinds of information that could be combined with the list in a way that would violate privacy or how this negates the application of s. 22(4)(i). I merely note that where a private person uses information in a fashion that violates private

³ Order F08-14, [2008] B.C.I.P.C.D. No. 24, paras. 22-26; Order 00-53, [2000] B.C.I.P.C.D. No. 58, p. 8; Alberta Orders F2005-016, [2006] A.I.P.C.D. No. 40, F2002-011, [2002] A.I.P.C.D. No. 43, and Order 98-018, [1999] A.I.P.C.D. No. 1.

rights to privacy and reputation of another individual, that other individual retains all his or her rights of legal action.

Conclusion

[25] As the information at issue is the detail of a discretionary benefit similar to a licence or permit and a statute authorizes the disclosure of the information, I find that ss. 22(4)(c) and 22(4)(i) both apply. This means that disclosure of the requested information is deemed by law not to be an unreasonable invasion of the personal privacy of the third parties and the College must not withhold the information under s. 22. Previous orders have established that, when s. 22(4) applies, there is no need to consider whether any of the provisions of ss. 22(3) or 22(2) apply, as the application of s. 22(4) trumps those provisions.⁴ Therefore, it is unnecessary for me to examine the College's argument that the information at issue is likely to be inaccurate or unreliable.

[26] **Does FIPPA require the College to notify teachers prior to disclosure?**—FIPPA requires a public body to notify third parties whenever the public body has decided to disclose their personal information, but the public body believes that s. 22 of FIPPA still might apply to the information. This requirement is in s. 23(1) of FIPPA.

[27] The College asked that this issue be included in the Notice of Inquiry. It is concerned that, if it is required to disclose the information at issue, it will first be required to notify each of the certification holders. The College submits that such a requirement would be onerous and would cost approximately \$55,000-\$60,000 in postage alone.

[28] The notification requirement only applies in cases where the public body is not certain as to whether s. 22 of FIPPA applies. This gives the affected third parties the opportunity to request a review from the OIPC prior to the public body disclosing the information.

[29] Previous orders have determined that it is up to public bodies to determine whether to notify third parties and to do so at the time of responding to the request. Once a matter has proceeded to an inquiry, former Commissioner Loukidelis declined to permit, or require, a public body to notify third parties or conduct such notification himself.⁵

[30] I have already determined that s. 22 does not apply to the information. Therefore, there is no requirement for the College to notify the affected teachers individually, and the College cannot delay disclosing the information to the journalist pending notification.

⁴ See, for example, Order 04-20, [2004] B.C.I.P.C.D. No. 20, para. 18.

⁵ Order 00-01, [2000] B.C.I.P.C.D. No. 1; Order 01-26, [2001] B.C.I.P.C.D. No. 27, paras. 46-48.

[31] **Other issues**—The Notice of Inquiry included another issue that the College raised in its initial response to the journalist. In that response, the College gave as one of its reasons for denying the journalist access to the requested information that:

Schedule 1 of FOIPPA defines “personal information” as any information about an identifiable individual that is not “contact information”. The certificate status of each teacher falls into this category and can therefore not be released except as authorized by FOIPPA (Sections 30.4 and 33). In the case of the College’s website, authorization is provided under Section 27.3(2) of the *Teaching Profession Act* and Section 33.1(1)(c) of FOIPPA.

[32] The issue identified in the Notice of Inquiry was whether the College “is authorized to disclose personal information pursuant to ss. 22(4)(c) [re s. 27.3(2) of the *Teaching Profession Act*] 22(4)(i), 30.4 and 33.1(1)(c) of FIPPA.”

[33] The reasons why the College raised this issue, and how it is relevant, are not clear. Unfortunately, the College did not explain or otherwise address this issue in its submissions.

[34] I have already dealt with the application of ss. 22(4)(c) and 22(4)(i) of FIPPA and s. 27.3(2) of the *Teaching Profession Act*. These provisions permit the disclosure of the information that the journalist has requested.

[35] Sections 30.4 and 33.1(1)(c) of FIPPA, contained in Part 3, have a different purpose from the provisions governing access requests. The purpose of Part 3 is to enumerate those circumstances where the public body’s disclosure of personal information will not infringe the general prohibition on such disclosure in s. 30.4. One of those purposes is where, as here, the disclosure is pursuant to an access requested governed by Part 2 of FIPPA: s. 33.1(1)(a). The sections, however, have no application to whether access should be granted, which is governed entirely by Part 2.

CONCLUSION

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

1. I require the College to give the journalist access to the information, and in the electronic format he has requested.

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2. I require the College to give the journalist access to this information within 30 days of the date of this order, as FIPPA defines “day”, that is, on or before October 3, 2011 and, concurrently, to copy me on its cover letter to the journalist.

August 19, 2011

ORIGINAL SIGNED BY

Jay Fedorak,
Adjudicator

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