OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER

British Columbia
Canada

Order No. 327-1999

INQUIRY REGARDING ACCESS TO UNIVERSITY OF BRITISH COLUMBIA RECORDS

David Loukidelis, Information and Privacy Commissioner
November 4, 1999

Order URL: http://www.oipcbc.org/orders/Order327.html
Office URL: http://www.oipcbc.org

Summary: Applicant made a series of requests for access to his personal information. UBC disclosed large amounts of information, but withheld some third party personal information, information subject to solicitor client privilege, and advice or recommendations. UBC was authorized to withhold privileged information and some advice or recommendations. UBC was required to withhold third party personal information that would identify individuals who gave confidential evaluations of the applicant, but UBC ordered to comply with s. 22(5) duty to provide the applicant with summaries of those evaluations. UBC was found to have fulfilled its duty to assist the applicant. No evidence of bias on the part of UBC employees handling the applicant's access requests at the same time as appeal processes involving the applicant.

Key Words: Duty to assist – advice or recommendations – solicitor client privilege – personal information – confidential evaluation – summary.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 6(1), 13(1), 14, 22(1), 22(2), 22(3)(h), 22(5).

Authorities Considered: B.C.: Order No. 131-1996; Order No. 153-1997.

1.0 INTRODUCTION

The amount of paper involved in this inquiry is considerable. Between February 3, 1998 and August 12, 1998, the applicant made six access to information requests to the University of British Columbia ("UBC") under the *Freedom of Information and Protection of Privacy Act* ("Act"). The applicant's requests primarily involved records of the Faculty of Forestry and the Faculty of Graduate Studies at UBC. It is not necessary to set out the applicant's access requests in any detail for the purposes of this inquiry. They

were both extensive and detailed. They dealt, essentially, with the applicant's time as a graduate student at UBC between 1993 and 1998.

It appears that, in a series of responses, UBC ultimately disclosed over 3,600 pages of records to the applicant. This inquiry deals with the approximately 39 pages of records that were withheld, in part, by UBC. Of those, 23 pages were computer printouts of UBC Faculty of Forestry scholarship rankings for the years 1993 through 1998. UBC severed and withheld from those pages the names, grades and other educational information of other students.

Another five pages were application evaluation sheets relating to an application made by the applicant to the Individual Interdisciplinary Studies Graduate Program at UBC. These records contained evaluations of the applicant's application. As is noted below, the evaluations themselves were, in some cases, withheld from the applicant. In other cases, UBC withheld only the name and other information that might identify the person who gave the evaluation. In those cases, the evaluation itself was disclosed to the applicant.

Apparently because of the large number of records involved, and the fact that two different UBC faculties were involved, UBC on several occasions extended the response time permitted by the Act for access requests. Ultimately, UBC responded in a series of letters to the applicant between March and August 1998. In its responses, UBC said that parts of various records were excepted from disclosure under the Act. UBC relied on ss. 3(1)(b), 13(1), 14 and 22(1) of the Act.

By a letter dated November 3, 1998, the applicant requested a review, under s. 52 of the Act, of UBC's decisions. Because this request was made well outside the 30-day time limit set out in s. 53 of the Act, the applicant requested an extension of that time under s. 53(2)(b). Our office granted that request, with UBC's consent, on January 19, 1999.

In accordance with the policies and procedures of our office, two intervenors delivered written submissions in this inquiry in support of the applicant's position. One submission was from the Graduate Student Society ("GSS") at UBC and the other was from the Alma Mater Society ("AMS") of UBC.

2.0 ISSUES

The first issue dealt with here arises out of the applicant's complaint that UBC failed to fulfill its s. 6(1) duty to assist him. The applicant says, specifically, that UBC did not undertake an adequate search for requested records and that it failed to fulfill its s. 6(1) obligation to use reasonable efforts to respond without delay.

Another issue has to do with the applicant's contention that the UBC employees responsible for handling the applicant's access requests were in a 'conflict of interest'. This allegation was repeated by the AMS and the GSS.

The other issues in this inquiry are as follows:

1. Was UBC authorized to refuse to disclose information that would reveal advice or recommendations developed by or for UBC (s. 13(1))?

2. Was UBC authorized to refuse to disclose to the applicant information subject to solicitor client privilege (s. 14)?

3. Was UBC required to refuse to disclose personal information to the applicant by s. 22(1)?

The notice of inquiry in this case indicated that there was a further issue, *i.e.*, whether UBC was correct to decide that certain records were not subject to the Act's access provisions because they were personal notes, communications or draft decisions of a person acting in a judicial or quasi-judicial capacity (s. 3(1)(b) of the Act). In its initial submission, UBC noted (at p. 9) "that s. 3(1)(b) has not been relied upon to sever information from the records at issue" in this inquiry.

It appears from its June 26, 1998 letter to the applicant that UBC relied on this section to withhold several pages from the applicant. It is clear from the portfolio officer's fact report for this inquiry that none of those pages is in dispute here. Having reviewed the records that are in dispute, I have concluded that s. 3(1)(b) is not in issue with respect to those records. Since the applicant has said nothing about the issue in his submissions, and UBC has explicitly said this section is not in issue regarding the disputed records, I make no finding on the point.

3.0 DISCUSSION

3.1 Compliance With Duty To Assist and Time Extensions – Section 6(1) of the Act requires public bodies to "make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely." The applicant says UBC has not done this. UBC agrees that it has the burden of establishing that it fulfilled this duty and says it did so.

UBC made a number of submissions on this issue. It provided me with copies of UBC's internal requests for records arising out of the applicant's access requests. These requests were made by UBC's Office of University Counsel to various UBC departments and staff in an attempt to locate records responsive to the applicant's access requests. UBC made the following argument in paragraph 8 of its initial submission:

> The University submits that the offices listed above have made a thorough search of the records in their possession and have concluded that they do not have any of their files [*sic*] with respect to the Applicant, nor do they have any other records relevant to the Applicant's request, other than those produced to the Applicant … .

UBC also noted that a small number of responsive records had not been provided to the applicant because he had sent an e-mail to UBC on January 1, 1999, asking that his outstanding access requests be closed.

On the question of the timeliness of its responses to the applicant, UBC made the following argument at paragraph 10 of its initial submission:

> The University submits that the 30-day extensions of time were necessary and reasonable given the multiple, repetitive and consecutive requests; the number of offices searched; the large volume of records; the number of third parties consulted across campus; and the limits of our resources.

UBC also noted that, whenever it extended the response time under the Act, it told the applicant, in writing, of his right to complain to the commissioner under s. 42(2)(b) of the Act, but the applicant had not done so. According to UBC's reply submission, for much of the time it was processing the applicant's access requests, one UBC employee was handling all of them. That employee communicated with the applicant, at some points during the process, between three and five times each week, including in writing.

UBC candidly acknowledged, however, that a shortage of staff had resulted in "considerable delays in the processing of access requests" generally. UBC also acknowledged that the shortage of resources had affected its ability to respond to the applicant. Because of its own concerns about its ability to fulfill its obligations under the Act, UBC said that it has been attempting to hire a full-time access and privacy coordinator to assist with administration of the Act.

The applicant clearly feels UBC did not respond in an acceptable manner. He argued that the UBC employee responsible for handling his access requests had taken a lot of vacation while the applicant's requests were being processed. He also said that he had "constantly" requested that this employee, who was working part-time, "get help if possible" in order to speed up the processing of his access requests. The applicant also contended that the processing of his access requests had been delayed by UBC's insistence on not collecting information directly from sources he said he had identified to UBC on numerous occasions. He also argued that UBC had, in numerous cases, duplicated documents within the same file, thus slowing down the processing of his various access requests.

Having carefully reviewed the material before me – including the applicant's detailed and extensive arguments on this point – I have decided UBC met its obligations under s. 6 of the Act. This conclusion relates both to the timeliness of UBC's responses and the completeness of its search for records.

On the question of UBC's response time, it is true UBC extended the response time on a number of occasions and that it took a long time for UBC to respond to all of the applicant's access requests. This is unfortunate, but acceptable in the circumstances of this case. The time taken by UBC is understandable given the intensely detailed nature of the several requests, the large number of records involved, and the number of individuals and departments within UBC that it was necessary to contact for the purposes of the various requests. It is also clear the applicant expected a very high level of service from UBC during its processing of the applicant's various access requests. The material before me indicates the applicant communicated, often by e-mail, on numerous occasions with

the UBC employee who was handling the applicant's access requests. It is reasonable to conclude that at least some of the time spent responding to the applicant's various communications would otherwise have been spent processing access requests.

On the issue of the completeness of UBC's responses, I am satisfied, on the basis of the material submitted by UBC in this inquiry, that UBC undertook a reasonable search for records in an attempt to respond completely to the applicant's various requests. In my view, UBC complied with its s. 6(1) obligation to respond "completely" to the applicant.

On the issue of UBC's timeliness, I have decided not to deal with the complaint by the applicant, under s. 42(2)(b) of the Act, about the extensions of time taken by UBC respecting the applicant's various access requests. When each extension was made, UBC told the applicant in writing of his right, under s. 42(2)(b) of the Act, to complain to the commissioner. The applicant chose not to do so in a timely way. He has, however, in effect complained about the extensions in this inquiry. UBC objects to the applicant doing this. Especially in light of the above findings about UBC's response times, I have decided not to deal with the matter under s. 42(2)(b) of the Act.

3.2 Conflict of Interest Allegations – The applicant and the two intervenors, the AMS and the GSS, alleged there was a 'conflict of interest' in UBC's handling of the applicant's various access requests. This allegation appears to stem from the fact that UBC's Office of University Counsel provided advice regarding the applicant's access requests and was also involved in advising UBC in the applicant's academic appeal.

The applicant argued that, because his requests involved his own personal information, there was a "clear conflict of interest/duties" in the role of UBC's legal counsel. The applicant also argued that, because the counsel's office was involved both in the applicant's academic appeal and his access requests, that office "had also the power to restrict or to slow or to deny or to hide documents." The applicant argued that the counsel's office focused on ways to "affect the access of [*sic*] all information available that may undermine their academic case". The applicant claimed that, after his academic appeal at UBC had been dismissed, "the process of withholding, severing and accessing information became even more stringent." (The applicant cited no evidence for this contention.) Last, the applicant made the following argument:

> The office or body or person who has an interest in the resolution or non-resolution of a conflict should not be the decision-maker who makes the determination with respect to the resolution. If the party that has an interest in the resolution knowingly makes the determination of the resolution or if the party knows it has to act, but chooses not to act, then the party is acting in bad faith. No privilege can be claimed outside the rules of good faith as without good faith you are only seeking to avoid accountability for unfair actions.

The submission from the GSS asked that our office "investigate the question of a conflict of interest issue" in UBC's handling of the applicant's access requests. The submission said that the GSS was

> … glad to see that you have taken on the job of looking into this possible conflict in order to ensure that ... [the applicant] has access to all his personal information to which he is legally entitled.

For its part, the AMS said it strongly supported the applicant's claim that UBC "had failed to insure proper handling of FOI requests, specifically regarding conflict of interest issues." The AMS argued that UBC had "failed to uphold the spirit and intent of" ss. 2, 6 and 66 of the Act. The AMS argued that this failure "led to a real or potential conflict of interest which would unreasonably restrict or fetter the rights of an applicant."

The AMS argued that ss. 2, 6 and 66 – as well as other sections of the Act – require the delegate of a head under the Act to "perform statutory duties in the public's (or an applicant's) interest." The AMS noted that the duty to handle access requests had been delegated to the UBC office – the Office of University Counsel – also responsible for representing UBC's legal interests respecting academic appeals. According to the AMS, this presented a conflict of interest because, on the one hand, UBC's lawyers have a duty to represent UBC's interests, while they also have a statutory duty under the Act to "protect the informational rights" of the applicant.

In response, UBC argued that

> … no conflict of interest exists by virtue of the fact that the office of University Counsel (formerly Assoc. V.P. Academic and Legal Affairs) provided legal advice and representation to the University in relation to two matters: the Applicants' [*sic*] appeal to the Senate Committee on Appeals on Academic Standing and his access requests under the Act.

In its reply submission, UBC argued that its in-house legal counsel had "properly exercised his discretion under s. 66 to delegate the duty to assist applicants" at all times relevant to the applicant's access requests. UBC said that the individuals who were responsible at various times for handling the applicant's various requests kept the applicant's access requests and the applicant's academic appeals separate. UBC also noted that, during the period of particularly intense activity on the applicant's access requests, only one UBC employee worked on the applicant's access requests. That employee had no involvement, UBC said, in the applicant's academic appeal. UBC submitted there was "no evidence to support allegations that the Office of University Counsel has acted with any impropriety."

First, despite the use of the term 'conflict of interest', the allegation here is essentially an allegation of actual bias, or a reasonable apprehension of bias, stemming from the dual roles described above. There is no question here of any 'conflict of interest' as that term is ordinarily understood, *i.e.*, a conflict between a person's individual pecuniary or other personal interest and his or her duty to another person or organization. The issue raised is whether the dual role of the Office of University Counsel creates a reasonable apprehension of bias, on the part of that office, in relation to the applicant's access requests.

Having carefully reviewed the evidence and argument before me, I have concluded there was no 'conflict of interest', or bias, of the kind alleged by the applicant and the two intervenors. The fact that the Office of University Counsel has a dual role – and exercised that role here – does not create an actual bias or a reasonable apprehension of bias. There is, at the very least, no evidence of actual bias before me. There is no evidence that any of the access to information decisions made here were biased or were otherwise improperly made.

One point should be made in particular about the AMS's argument. As I understand it, the AMS's argument on this issue, essentially, is that, because employees in the Office of University Counsel owe a duty of loyalty to UBC, they are not seen to be impartial in their decision-making under the Act. But all employees – not just employees who are lawyers – owe a duty of loyalty to their employer. Regardless of which UBC office was responsible for the Act at UBC, the employees in that office would owe a duty of loyalty to UBC and would also have a duty to act properly in making decisions under the Act. This is the case with all public bodies and their employees who are responsible for administering the Act. A good argument can be made that this situation – which is inherent in the Act's structure – was contemplated by the Legislature in passing the Act. Accordingly, the fact that public body employees have duties under the Act, and also have a duty of loyalty to their employer, is not sufficient on its own to create a reasonable apprehension of bias or to make out a case of actual bias.

3.3 Advice or Recommendations – UBC withheld a small amount of information from the applicant under s. 13(1) of the Act. That section provides that a public body "may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister."

A relatively small amount of information was withheld by UBC under s. 13(1). UBC withheld a two-paragraph draft letter to the applicant that had some handwritten changes on it. (This document was numbered by UBC as 300035 for the purposes of processing the applicant's access requests.) UBC also withheld a two-page memorandum written by one UBC in-house legal counsel to another (pp. 300037-300038). UBC also withheld three brief e-mail messages, and one letter, from third parties regarding the applicant's access requests (pp. 500171, 500172, 500188 and 500189). Last, UBC withheld one word from some handwritten notes (p. 500149). (As an aside, UBC is to be commended for having numbered the responsive records. Public bodies should do this wherever possible, since it makes the processing of access requests much easier and probably cheaper. It also makes things much easier in the review and inquiry processes under the Act.)

I will deal first with the correspondence from third parties regarding the applicant's access requests. The material before me indicates that the third party correspondence was created as a result of the third party consultation process initiated by UBC under s. 23 of the Act. In my view, information contained in a record created by a third party as part of the s. 23 process does not qualify for protection under s. 13(1) of the Act. That section protects advice or recommendations developed by or for a public body in the discharge of its ordinary mandate and functions. Third party representations, made in response to a s. 23 notice, respecting the release of personal information or information protected under

s. 21 are not, in the requisite sense, "advice or recommendations" developed by or for the public body. They are representations, made by a third party, regarding the interests of that third party in relation to information contained in requested records.

This does not mean that information contained in such records is unprotected. In this case, UBC withheld any information that could be used to identify the individuals who made the representations. As the discussion below indicates, it is my view the UBC properly withheld this personal information under s. 22(1) of the Act. In most cases, of course, this issue will not arise. Records created during the course of processing an access request will not be responsive to the access request. In the circumstances of this case, however, the applicant's multiple access requests caught these records.

Turning to the draft letter with handwritten changes, UBC argued, at p. 10 of its initial submission, that disclosure of this record would "permit an inference about the advice or recommendations made regarding … [the applicant's] appeal to the Senate Committee on Appeals on Academic Standing". UBC submitted that this record contained "advice provided by faculty members and staff counsel of the University." UBC also argued that

> … its Administration would be prohibited from [*sic*] a full and frank discussion of advice and recommendations if documents such as those sought by the Applicant were subject to disclosure.

There is no way of knowing whether it was necessary for UBC to retain this draft letter in its files, thus making it susceptible to an access request under the Act. It is also not possible, on the material before me, to determine whether UBC could have severed only the handwritten annotations and disclosed the remainder of the draft letter. The final version of that letter is not in the material submitted by the parties, so I had no way of knowing whether the text of the draft differs from the text of the final version in any substantial way.

In any case, I am not going to remit the letter to UBC for reconsideration of the application of s. 13(1). It must be emphasized, for future reference, that where an exception to the right of access is discretionary, public bodies should always consider whether information can be disclosed even if the exception technically applies. The material before me indicates that UBC considered whether to disclose this record – which contains relatively innocuous information – but decided not to, in light of s. 13(1). Accordingly, I find that UBC was authorized to refuse to disclose the information in this record to the applicant and confirm its decision to withhold the record.

By contrast, only a small portion of the two-page memorandum written by one UBC lawyer to another (pp. 30037 and 30038) was properly withheld under s. 13(1). The last sentence of the first paragraph, and the last paragraph, of the memorandum contain information that qualifies for protection under s. 13(1). Apart from those passages, however, the memorandum is almost entirely a recitation of facts. Section 13(2) of the Act precludes a public body from withholding, under s. 13(1), any "factual material". For this reason, I find that UBC was not authorized to refuse to disclose this information under s. 13(1). As the discussion below indicates, however, this information was properly withheld by UBC under s. 14 of the Act.

The last piece of information that needs to be dealt with under s. 13(1) is the one word severed from record 500149. In my view, this is "factual material", based on one individual's assessment of a particular situation. Section 13(2)(a) of the Act says a public body must not refuse, under s. 13(1), to disclose "factual material" to an applicant. For this reason, I find that UBC was not authorized to refuse to disclose this statement under s. 13(1) of the Act. As the discussion below indicates, however, UBC has established that this information is excepted from disclosure under s. 14 of the Act.

3.4 Solicitor Client Privilege – As the discussion so far indicates, UBC withheld some of the records from the applicant under s. 14 of the Act. Specifically, UBC withheld pp. 300035, 300037, 300038 and 500149. Section 14 of the Act provides that a public body "may refuse to disclose to an applicant information that is subject to solicitor client privilege."

In this case, UBC argued, at p. 11 of its initial submission, that the four pages were properly withheld from the applicant because they

> … consist either of communications between the University and its legal counsel or information which would divulge both the existence and the content of advice from the University's legal counsel.

Having reviewed the records to which UBC applied s. 14 of the Act, I am satisfied that UBC was authorized by s. 14 to withhold those records. Those records consist of communications of, or between, lawyers employed by UBC. The material submitted by UBC establishes, in my view, that these communications directly relate to the seeking or giving of legal advice to UBC.

3.5 Third Party Personal Information – The last kind of information in dispute here is personal information. The first type of personal information withheld by UBC under s. 22(1) consists of a number of computer printouts containing personal information of other students at UBC's Faculty of Forestry. The printouts contain the scholarship rankings for those students over a period of several years. They also include other students' grade-point averages and details as to the amounts and sources of funding for other students. UBC severed the personal information of other students from these records and disclosed the severed versions to the applicant, thus giving the applicant access to his own personal information.

Second, UBC withheld third party personal information related to personal evaluations of the applicant's graduate studies application. Having concluded that these evaluations were supplied in confidence, UBC withheld personal information that could have identified the individuals who supplied the evaluations. In some cases, UBC disclosed the evaluations to the applicant, but removed the names of the individuals who supplied them. In two cases, UBC withheld the text of the evaluations as well as the name of the individuals who supplied them. Both of these cases involved handwritten evaluations.

In relation to the third party student information, UBC argued that it was required by s. 22(1) to withhold that information. UBC noted that s. 22(3)(d) provides that a disclosure

of information "is presumed to be an unreasonable invasion of personal privacy" if the personal information "relates to employment, occupational or educational history" of a third party. In this case, the grade-point average and other educational history of individual students was revealed in the relevant records. UBC was correct, in my view, to conclude that s. 22(3)(d) applied to the personal information of other students in these records.

Further, because the records contain financial information about other students, the presumed unreasonable invasion of personal privacy created by s. 22(3)(f) is also involved here. That section creates a presumed unreasonable invasion of personal privacy if the personal information in question

> … describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness.

The information in issue here would, if disclosed, describe financial information of other students within the meaning of s. 22(3)(f) of the Act.

Under s. 57(2) of the Act, the applicant bears the burden of proving "that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy." In his initial submission, the applicant argued that UBC had not disclosed all of his personal information from these pages. The applicant argued that he required access to his own personal information in order to determine if he qualified for funding. My review of the records leads me to conclude that UBC severed, and withheld, third party personal information while disclosing the applicant's own personal information. With respect to p. 000174 of the disputed records, I can assure the applicant that none of the information severed from that record relates to him. The severed information is personal information of other students. All of the applicant's personal information has been disclosed to him. This is also true with respect to pp. 01860 through 01881.

Having reviewed the material before me, including the applicant's initial and reply submissions, I have decided UBC correctly concluded that the circumstances – including those set out in s. 22(2) of the Act – do not overcome the presumed unreasonable invasion of personal privacy raised by s. 22(3)(d) or (f) in this case. It follows that UBC was required by s. 22(1) to withhold the personal information of other students from the applicant.

Turning to the issue of the confidential personal evaluations, in two cases UBC withheld both the names of the individuals who gave the evaluations and the handwritten text of the evaluations. In one case, UBC withheld the name and signature of the evaluator, but disclosed the typewritten text of the evaluation itself. In two cases, UBC withheld the name and signature of the evaluator, but disclosed the handwritten evaluation itself. It is not clear why UBC treated these evaluations differently. All of the evaluations were provided on UBC Application Evaluation Sheets for UBC's Individual Interdisciplinary Studies Graduate Program. These personal evaluations are, for the purposes of s. 22, "personal information supplied in confidence" about the applicant. Schedule 1 to the Act defines the term "personal information" to include information about the applicant's educational history and "anyone else's opinions about" the applicant. At the very least,

the contents of the various evaluations qualify as information about the applicant's educational history and therefore qualify as the applicant's personal information.

In its submissions, UBC argued that these evaluations had been provided in confidence and that the presumed unreasonable invasion of personal privacy created by s. 22(3)(h) applied. That section provides that a presumed unreasonable invasion of personal privacy arises if 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.

UBC cited Order No. 131-1996 – a decision of my predecessor that involved UBC – for the proposition that this section can apply to confidential personal evaluations of students. UBC also cited Order No. 153-1997 in arguing that the applicant had no need to have access to the names of the individual advisory committee members.

UBC submitted *in camera* material to establish the confidential nature of the personal evaluations in dispute here. It also submitted *in camera* material demonstrating that UBC had attempted, and failed, to obtain the consent of faculty members to release their personal information, *i.e.*, their identities. The material submitted by UBC establishes that the various personal evaluations were supplied in confidence.

It would be preferable, however, in cases where confidentiality is claimed respecting a personal evaluation, for the evaluations to be provided in the context of an explicit confidentiality policy of the public body. This would permit the inquiry to focus primarily on the explicit policy, as opposed to evidence after the fact, that the evaluation was supplied in confidence. Whether it is necessary or desirable for UBC to have a confidentiality policy regarding such evaluations is a matter only UBC can properly determine. Again, however, I am satisfied in the circumstances of this case that the necessary element of confidentiality has been established. On this point, I note that my predecessor made the same finding of confidentiality regarding such personal evaluations of UBC students in Order No. 131-1996.

This means, of course, that the s. 22(3)(h) presumed unreasonable invasion of third party personal privacy has been established. Once again, the applicant bears the burden, under s. 57(2), of proving that these evaluations can be disclosed without unreasonably invading the personal privacy of third parties as set out in s. 22(3)(h) of the Act. Having reviewed the material very carefully, I have concluded that the applicant has not met the burden of proof under s. 57(2) with respect to the identities of the third parties. For one thing, if the entire evaluations were disclosed, they would reveal the identities of the various evaluators, simply because the names of the individuals involved are found on the evaluation forms. Bearing in mind the fact that the applicant has already pursued his rights of appeal at UBC, and having regard to other relevant circumstances under s. 22(2), I find that UBC was required, by s. 22(1) of the Act, to refuse to disclose to the applicant information that "could reasonably be expected to reveal" that identifiable third parties supplied confidential evaluations about the applicant.

This does not end the matter. With two exceptions, the Act does not require public bodies to create records in response to access requests. One of those exceptions is found in s. 22(5), which reads as follows:

> 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 the third party who supplied the personal information.

As was said in Order No. 286-1998, at p. 9, the

> … intent of this provision is to convey the information about the applicant to the applicant, without compromising legitimate privacy expectations of third parties who provided the personal information in confidence to the public body.
>
> The only exception to this is where the summary cannot be produced without disclosing the identity of the third party who supplied the personal information.

As is noted above, the personal evaluations qualify as the applicant's "personal information" for the purposes of the Act. Because I have found the personal information at issue was, for the reasons given above, supplied in confidence, it qualifies as confidential personal information for the purposes of s. 22(5). The s. 22(5) obligation to create a summary therefore applies in this case. That section requires a public body to disclose a "summary" of such personal information unless this cannot be done without "disclosing the identity of a third party who supplied the personal information". Again, nothing in the material before me suggests that summaries cannot be prepared and disclosed without disclosing a third party evaluator's identity. UBC disclosed at least one handwritten evaluation and withheld only the signature of the individual involved.

It is ultimately up to UBC to decide how to comply with its duty under s. 22(5). Having said that, my review of the evaluations indicates it should be possible to type the evaluations word-for-word and disclose them to the applicant. I note that UBC has already disclosed the text of some evaluations, including one hand-written evaluation, to the applicant. At the very least, in the unlikely event UBC concludes that accurate transcriptions cannot safely be disclosed, it should be possible for UBC to summarize those evaluations, in reasonable detail, while removing any possible identifying information. As is indicated below in my order on this point, I find that UBC has not complied with its duty, under s. 22(5) of the Act, and must do so in light of the observations just made.

4.0 CONCLUSION

The applicant may well be disappointed with this decision. He should rest assured that I have carefully scrutinized UBC's decisions and actions here. At the end of the day, I have concluded that UBC complied with its obligations under the Act and was, with minor exceptions, correct in its decisions. It should also be noted that UBC has withheld a relatively small amount of information from the applicant, especially when viewed in the context of the thousands of pages of material disclosed to him. Further, the vast

majority of the information withheld from the applicant is personal information of other students and not personal information of the applicant.

For the reasons given above, the following orders are made:

1. Under s. 58(3)(a) of the Act, I require UBC to perform its duty under s. 6(1) of the Act to assist the applicant. However, since I have found that UBC complied with its duty under s. 6(1), I find that UBC has complied with s. 6(1) and has discharged its duty under that section.

2. Under s. 58(2)(b) of the Act, I confirm the decision of UBC that it was authorized to refuse to give access to information under s. 13(1) of the Act. As an exception to this, and subject to the order in paragraph 3, under s. 58(2)(a) of the Act, I require UBC to give the applicant access to the one word severed from p. 500149 of the records and to give the applicant access to pp. 300037 and 300038 (other than the last sentence of the first paragraph, and the last paragraph, of the memorandum set out in pp. 30037 and 30038).

3. Under s. 58(2)(b) of the Act, I confirm the decision of UBC that it was authorized to refuse to give access to information under s. 14 of the Act, including to pp. 300037, 300038 and 500149 of the records.

4. Under s. 58(2)(c) of the Act, I require UBC to refuse to give access to the information withheld by UBC under s. 22(1) of the Act.

5. Under ss. 42(1)(b) and 58(3)(a) of the Act, I order UBC to comply with s. 22(5) of the Act by giving the applicant summaries of the personal information supplied in confidence about him, consisting of the personal evaluations set out in pp. 000726 and 000729, unless the summaries cannot be prepared without disclosing the identity of the third parties who supplied that personal information.

November 4, 1999

David Loukidelis
Information and Privacy Commissioner
for British Columbia