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Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 62-1995
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INQUIRY RE: A request by a parent for access to records of a Delta School Board meeting relating to disciplinary action against a teacher

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1. Description of the review

As Information and Privacy Commissioner, I conducted an oral inquiry at the Office of the Information and Privacy Commissioner in Victoria on October 20, 1995, under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review in which the applicant sought to challenge a decision by the Delta School Board to withhold information he had requested. This information pertains to disciplinary action taken by the Board against a teacher who had been involved in a physical altercation with the applicant's son on March 14, 1995.

On April 27, 1995 the applicant requested from the School Board all information about the nature of disciplinary action taken against the third party, a teacher, in connection with the incident described above.

On May 31, 1995 the School Board refused to disclose the nature of any disciplinary action recommended or taken, since such disclosure would reveal the substance of deliberations of a meeting of a local public body held *in camera*. The School Board also refused the requested information on the ground that it is part of the teacher's employment history, the disclosure of which would be an unreasonable invasion of his personal privacy.

2. Documentation of the inquiry process

On June 9, 1995 the applicant submitted a request for review of the School Board's decision to the Office of the Information and Privacy Commissioner (the Office).

On July 21, 1995 the Office issued a Notice of Oral Inquiry and a one-page Portfolio Officer's fact report, which was accepted by the parties as accurate for the purpose of conducting this inquiry.

The ninety-day period directed by section 56(6) of the Act for the conduct of the inquiry expired on September 7, 1995. Prior to that date all parties agreed to an extension of time and adjournment for the purpose of permitting adequate preparation for the oral inquiry; this adjournment was to September 29, 1995. A further adjournment to October 20, 1995 occurred, when it became apparent that the applicant would be unable to attend the oral inquiry set for September 29. The applicant requested a further adjournment to allow him to more conveniently meet certain work commitments.
I refused the latter request and directed that the oral inquiry proceed on October 20, 1995.

At the inquiry I received submissions from the applicant, the public body, counsel for the third party, and from two intervenors. The first intervenor was the Freedom of Information and Privacy Association (FIPA), which provided a written submission only. The other intervenor was the "Parent Network," the parent arm of an organization called "Teachers for Excellence." The Parent Network was represented at this inquiry by John Pippus.

3. Issues under review at the inquiry

There are two issues in this inquiry:

1. To the extent that such information arose from an *in camera* meeting of a local public body, does section 12.1 of the Act preclude disclosure of that information?

2. Would it be an unreasonable invasion of the teacher's personal privacy, under section 22 of the Act, to release to the applicant information detailing the disciplinary recommendations and actions taken against the teacher by the School Board?

The relevant portions of the Act read as follows:

Local public body confidences

12.1(1) The head of a local public body may refuse to disclose to an applicant information that would reveal

...

(b) the substance of deliberations of a meeting of its elected officials or of its governing body or a committee of its governing body, if an Act or a regulation under this Act authorizes holding that meeting in the absence of the public.

....

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

(a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,

(b) the disclosure is likely to promote public health and safety or to promote the protection of the environment,

(c) the personal information is relevant to a fair determination of the applicant's rights...

....

(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 ....

(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 ....

4. The record in dispute

The record is a March 30, 1995 memorandum from Judith Halbert, Assistant Superintendent of the Delta School Board, to Dr. R. A. Wickstrom, Superintendent of Schools for the Delta School District. The record was previously disclosed to the applicant in partially severed form; references to disciplinary recommendations were removed. This record was discussed at an *in camera* meeting of the Board held on April 27, 1995.

5. The applicant's case

After an episode involving the applicant's son at a school in Delta on March 14, 1995, the applicant was informed only that disciplinary action was taken against the teacher involved. The applicant remains unhappy about how the School Board handled the episode and, in particular,

believes that he and the public have a right of access to the specific nature of the disciplinary action taken against the teacher under the Act. (See, generally, Exhibit 1)

The applicant wants greater openness and accountability under the Act with respect to how government activities, like those of school boards, are being conducted. In his view, the public interest is being ignored in the running of our schools. (Exhibit 1, p. 13) Thus, for example:

> It is in the public interest to disclose the nature of the disciplinary action taken against anyone entrusted with the custody of your children. Not just teachers ....
>
> The parents should not be kept out of the loop in the educational process. They have the right to know the outcome of any investigation that may affect the safety and emotional well being of their children. (Exhibit 1, p. 14)

In the applicant's view, "the Act should not be used to protect offenders under the name of privacy." I have discussed, below, more specific arguments that the applicant sought to make under the Act. (See Exhibit 1, pp. 16, 17)

6. The Board of School Trustees of School District No. 37's (Delta) case

The Board objected to disclosure of the requested information under sections 12.1 and 22(2)(d) of the Act. I have presented its detailed arguments on sections of the Act below.

7. The teacher's case

The teacher characterized the applicant's request as follows: "It was a request by one individual for specific information relating to one teacher regarding one incident." (Submission of Third Party, p. 1) I have presented its detailed arguments on sections of the Act below.

In terms of balancing competing interests under the Act, the teacher argued that the statutory balancing favours him, "statutorily and ethically."

> The Applicant has received the great bulk of the information he sought; the only matter which has not been disclosed is the exact nature of the discipline given to the Third Party .... In the instant case, the Third Party's privacy has already been invaded to a serious degree. We submit that it would be contrary to the legislative intent of protecting personal privacy to allow any greater invasion. (Submission of Third Party, p. 10)

The Submission of the Freedom of Information and Privacy Association (FIPA)

FIPA primarily supported the desirability of making the School Board more accountable to the public by disclosure in this case. I have presented its detailed arguments on sections of the Act below.

The Submission of the Parent Network

The Parent Network, a committee of Teachers for Excellence, itself a lobby group with a paid membership of parents and teachers, emphasized that the decision in this inquiry should emphasize what is best for the student and parents, not what is best for the teacher. In its view, the current situation with respect to the disclosure of the results of disciplinary hearings against teachers, is a form of collusion between two powerful, monopolistic groups, teachers and school boards, that leave the public out in the cold with respect to what is best for the students.

8. Discussion

Although I ultimately find that this is a relatively straightforward case to decide regarding the question of access to the particular records and information in dispute, the whole issue of disclosure of the results and records of disciplinary proceedings is a matter of first instance for me. Thus I have canvassed the general and specific arguments in considerable detail.

The choice of intervenors

There was some debate at the outset of the inquiry about my decision to include the Parent Network as intervenors in the present inquiry. The B.C. Federation of Teachers questioned whether I should be hearing from a body that may not be officially sanctioned as fully representative of parents with children in public schools. I originally accepted this particular intervenor at the suggestion of the applicant. The portfolio officer handling a particular inquiry normally asks both parties whether they have an interest in suggesting intervenors. I am especially interested in supporting intervenors on the side of applicants who are themselves individuals, since it is a fact of life, illustrated in the present inquiry, that School Boards, School Districts, and unionized school teachers, for example, marshal considerable resources in the form of lawyers and formal submissions that many individual applicants are incapable of obtaining.

In addition to accepting the Parent Network and FIPA as intervenors in the present matter, I reiterate that the final choice of intervenors lies in my hands under sections 54 and 56 of the Act.

The public interest in the disclosure of the results of disciplinary hearings

In an abstract sense, the applicant, FIPA, and the Parent Network have made strong cases for the public's right to know what happens to teachers and other personnel who are disciplined in the public school system. The openness and accountability thrust of the Act covers school and educational matters as fully as other issues of similar significance.

However, as well illustrated and discussed at the oral inquiry, the public interest must be balanced against the privacy interests of third parties. As section 2(1) of the Act states, "[t]he purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy ...." Section 2(1)(e) then provides for "an independent review of decisions made under this Act." That is my role as Information and Privacy Commissioner. Listening to the submissions from all parties, applying the specific exceptions in the Act, and seeking to

balance competing values are my primary tasks. In the present matter, I granted the applicant a public oral inquiry and allowed him to say almost anything that he wished to say (despite a number of objections from counsel), so that he could fully present his views about the public interest in disclosure. In particular, I listened to a great deal of testimony about the treatment of his son that has no direct bearing on what I have to decide about the release of specific records under the Act.

I agree with the Delta School Board that the public interest in this matter has already been served by the disclosures that have taken place: "There is no compelling public interest requiring the release of the information requested." (Outline of Argument of the Public Body, paragraphs 12-40) Such a release could further stigmatize the teacher involved and perhaps hinder his rehabilitation, if such is needed.

The applicant attempted to use section 25 of the Act to require disclosure of the information and records in dispute by the School Board, because of the paramountcy of the public interest in the matter. (Exhibit 1, p. 17) I find that this argument is without merit in the circumstances of the present case, where the School District, as described below, has gone out of its way to be responsive to the needs of the applicant and his family. (See also the Outline of Argument of the Public Body, paragraph 13) Rewriting the history of what happened from the perspective of the student's father and mother is not within the purview of the Act, unless demonstrable errors in personal information contained in the records already disclosed to the applicant need to be corrected.

A public incident

The applicant sought to argue that what happened in the episode involving his son and the teacher was a public incident and therefore the results of what happened thereafter should also be made public to protect the reputations of all of those involved and to inform the public that justice is not only being done but being seen to be done. (Exhibit 1, p. 16)

While this general statement and aspiration have considerable merit, they also have their limitations. The fact of a "public" event on the grounds and facilities of a school does not automatically mandate or legitimate further disclosures to the entire public. In the present inquiry, the applicant was told that the teacher was indeed disciplined and the applicant shared that information with the media, while seeking to make the case that the punishment itself should also be disclosed.

What the applicant has already learned about the episode

The episode happened on March 14, 1995. Ms. Halbert, the Assistant Superintendent, submitted a report on the incident dated March 30, 1995. The Superintendent of the Board of School Trustees of School District No. 37 (Delta) arranged for a meeting of the School Trustees on the matter on April 10, 1995. The teacher and the president of the Delta Teachers' Association participated in the meeting until they were excused, along with the Assistant Superintendent, so that the School Trustees could make their decision at an *in camera* meeting. On April 18, 1995 the Superintendent wrote to the teacher and conveyed the results of the

Board's deliberations. I have reviewed the records of these proceedings that were submitted to me *in camera*. (Affidavit of Dr. R. A. Wickstrom and Exhibits A through F)

I am impressed with the seriousness and thoroughness of the treatment accorded to this unfortunate episode by all of those involved in the matter. There is especially no evidence in the written record of anything remotely approximating a cover-up or the expression of bias. (See also the Outline of Argument of the Public Body, paragraph 34) I am also impressed with the efforts of the school officials to respond to the concerns of the applicant before and after the School Trustees took their decision, especially given the inflammatory rhetoric of the applicant concerning what he regards as an "assault" on his son by the teacher. (See Affidavit of J. Halbert, paragraphs. 3-18, and Exhibits E and H). The School Board concludes that the applicant's "assessment of the incident involving his son is simply not reasonable. He has rejected any constructive attempts to resolve the situation." (Outline of Argument of the Public Body, paragraph 23)

Ms. Halbert's investigative report, the most important document in this affair, runs five pages plus appendices. The applicant has been given everything except a total of 19 lines, and the names of the students she interviewed at the recommendation of the applicant's son, and the specific recommendations that she made with respect to the teacher, which run to eight lines. The information disclosed includes Ms. Halbert's three conclusions, two of which are quite consequential in their judgment about the behaviour and performance of the teacher in the original episode. I have also reviewed the 19 lines of severances and conclude that they are in accordance with section 22(3)(d) of the Act, since they explicitly concern the teacher's "employment history."

Ms. Halbert made three recommendations which the Trustees fully accepted. Her fourth point outlined a particular choice, if the Trustees followed a specific course of action.

The Assistant Superintendent then informed the applicant as follows on May 10, 1995:

> I regret your unwillingness to accept that the disciplinary hearing before the Board and the subsequent disciplinary action taken by the Board were indeed considered very seriously and have significant ramifications for the teacher. (Affidavit of J. Halbert, Exhibit J)

I note further that the applicant wrote to the Minister of Education about the episode at his son's school. (Affidavit of J. Halbert, Exhibit L) Again, I am impressed by what the Minister reported to the applicant:

> I can assure you that the teacher, ... has been disciplined in accordance with the progressive discipline provisions outlined in the contract between the Delta Teachers' Association and the Board of School Trustees. As with all cases of Board imposed discipline, the matter has been filed with the B.C. College of Teachers. Such discipline is significant and any similar re-occurrences would have a most serious impact on the teacher's career. (Exhibit 11)

In my view, both the School Board and the Minister of Education have been very responsive to the needs of the applicant in this matter.

As noted again further below, I find that the applicant has received everything from the School District that he is reasonably entitled to learn under the Act.

The role of the College of Teachers

The disciplinary action of the Board of School Trustees was reported to the professional body of school teachers, as required by section 16 of the *School Act*. If the College of Teachers, established under the *Teaching Profession Act*, were to take disciplinary action itself against the teacher, it is my understanding, based on discussion at the oral inquiry, that the information would be publicly available in its monthly magazine, especially if a teaching certificate was cancelled, as does in fact happen regularly. (See Submission of the Third party, p. 7)

The applicant and the Parent Network argued that other professional bodies, like physicians and lawyers, published the results of disciplinary actions and that the Board of School Trustees should be required to do the same. The plausible response from counsel for other parties is that the relationship of school board and teacher is an employer/ employee relationship, whereas the College of Teachers regulates its members as professionals and, on occasion, withdraws their provincial license to teach. (See Submission of Third Party, p. 9) Thus if a particular hospital disciplined a nurse, the official record of what happened would not be officially disclosed to the public, whereas the withdrawal of a license to practice nursing by the Registered Nurses' Association of British Columbia would be a public matter. Of course, if a school district suspended or terminated a teacher, that fact would be implicitly disclosed to the school community because a teacher would not be present for a period of time or forever.

This distinction in the publication of the results of disciplinary proceedings between the roles of professional body and employer was made explicitly in a comment attached to Exhibit 10, p. 1, submitted by the Parent Network. The obligation of a professional body to publicize the fact that a member was disciplined and is no longer a member or qualified to practice appears to have been established by a recent decision of the Supreme Court of B.C. regarding the Certified General Accountants Association of B.C. (See Exhibit 10, p. 2)

When Tier 3 of the Act is proclaimed, I expect to examine how these disciplinary matters are handled by the self-governing bodies of professions or occupations. (See schedule 3 of the Act)

The applicant's resort to the media

A substantial story about this matter appeared in <u>The Vancouver Sun</u> in advance of this inquiry. I saw the story in the normal course of reading daily newspaper clippings. There are also indications that the matter was covered by the radio media in the lower mainland. At the inquiry, the applicant admitted that he had contacted the media himself. The teacher complained that the media coverage had embarrassed him and unfairly damaged his reputation. (Affidavit of the Teacher, paragraphs 7, 8, 9, and 11 and Exhibit B; see also Submission of Third Party, p. 9)

Although I have no control over what applicants or public bodies do in the media about a request for review, either in advance or after an inquiry, it is my view that the applicant did not help his case by seeking advance publicity, because he has made it relatively easy for the teacher, the School District, and their respective lawyers to show the potentially even more negative consequences of releasing the records and information that the applicant is now seeking. (See Outline of Argument of the Public Body, paragraphs 32, 33) I further note that the applicant had indeed threatened the School Superintendent with involving the press and media, if the "conflict" was not resolved to his satisfaction. (Affidavit of J. Halbert, Exhibit H, letter of the applicant to the School Superintendent, April 28, 1995; and Exhibit I, letter of the applicant to the Assistant School Superintendent, May 8, 1995)

The applicant has clearly regarded this episode as very serious. He reported the event to the Delta Police Department, which conducted an investigation but did not lay charges. The police did interview the teacher. In completing her investigation, the Assistant Superintendent had access to statements from other students taken by the constable involved. (Affidavit of J. Halbert, paragraph 6; and Affidavit of the Teacher, paragraph 6)

Section 12.1: Local public body confidences

I fully accept the argument of the School Board that release of the information sought by the applicant "would reveal to him the substance of the Board's deliberations in this matter, in circumstances where those deliberations occurred during a meeting of the Board which was authorized by the *School Act* to be held, and was held, in the absence of the public." (Outline of Argument of the Public Body, paragraphs 8 and 41-47; see also paragraphs 48-52, which were submitted *in camera*)

The teacher and statutory declarations submitted on his behalf claimed that it is "a universal practice" among school boards in this province to treat the disciplining of teachers as a private manner through *in camera* meetings. (Submission of Third Party, p. 3; and Statutory Declaration of the Teacher, paragraph 4; Statutory Declaration of Alice McQuade, President of the B.C. Teachers' Federation, paragraph 8)

The Freedom of Information and Privacy Association sought to argue that disclosure of the results (the decision or action taken) in this case would not reveal the "substance of deliberations" of an *in camera* meeting. (Submission of FIPA, p. 2) Having had the benefit of reading the documentation actually withheld, I confirm that such would indeed be the result of disclosure. In addition, the applicant has already been provided, in fact, with a considerable amount, two pages out of three, of what was actually written down from deliberations at the *in camera* meeting.

Section 22: Disclosures harmful to personal privacy [of third parties]

The record in dispute in this case is personal information as defined in the Act.

Section 22(2)(a): Subjecting a public body to public scrutiny

The applicant, supported by FIPA and the Parent Network, sought to use this section to obtain access to the information in dispute in this case. (Exhibit 1, p. 16; Submission of FIPA, p. 3) FIPA claims that "[w]here such decisions concern disciplinary actions taken against a public employee, it is in the public interest that the nature of such actions be disclosed."

Based on a review of the records in dispute, I find that the applicant is not entitled to any further information under this section for the purpose of subjecting the School Board to public scrutiny. He has already received more than enough information to establish, in the language of FIPA, that the "authorities have treated misconduct with the appropriate seriousness." (Submission of FIPA, p. 3)

I am pleased that the School Board accepts the need for public scrutiny of its activities in disciplinary proceedings. I agree that, in the circumstances of the present case, it has met these obligations and that the privacy rights of the teacher are now paramount with respect to the specifics of the disciplinary decision. (Outline of Argument of the Public Body, paragraphs 15-19)

The teacher made an appropriate distinction between the applicant's right to scrutinize the "activities," as opposed to the "decisions," of a public body:

> Under this section, the Applicant, for example, has a right to know if his complaint about a teacher was investigated or ignored. He has a right to know if some action was taken ... What he does not have, is the right to know the details of the decision made by the School Board. (Submission of Third Party, p. 5)

The teacher, using what his counsel described as "carefully chosen words," also advanced his own interpretation of the motives of the applicant:

> With respect, it is not public scrutiny which the Applicant wants--it is the right to substitute what he believes is an appropriate punishment for what the Board has done. The Applicant's motive is not public scrutiny--it is to get revenge against a teacher he sees as having wronged his son. The intemperate, even defamatory, language used by the Applicant to describe the Third Party in his correspondence makes that readily apparent ....
>
> The problem, from the Applicant's point of view, is that the investigation did not exonerate his son from blame, and did not result in the removal of the teacher. The Applicant does not want the School Board to be under public scrutiny--he wants the School Board to do what he wants .... (Submission of Third Party, p. 6, especially the examples of the applicant's written language cited therein)

Section 22(2)(b): Promoting public health and safety

The applicant has sought to use this section to obtain access to the information in dispute in this case. (Exhibit 1, p. 16) Based on the evidence submitted to me and a review of the

records in dispute, I find that the applicant is not entitled to any further information under this section for the purpose of promoting the health and safety of his children and other children in public schools.

Section 22(2)(c): A fair determination of the applicant's rights

The applicant sought to use this section to obtain access to the information in dispute in this case. (Exhibit 1, p. 16) His son (who has now left that school) was kept out of a physical education classroom for a period of time; he is concerned now that more of his children will attend the same school and have similar experiences. Since his children are minors, I am prepared to accept his acting for them under this section. Based on the evidence and a review of the records in dispute, I find that the applicant is not entitled to any further information under the section for the purpose of promoting a fair determination of his, or his children's, rights.

Section 22(3)(d): The personal information relates to employment, occupational or educational history

A disclosure of personal information that falls into this category is presumed to be an unreasonable invasion of a third party's personal privacy. I find that the record sought falls under this category. In the context of this particular case, I find that the particular details of the disciplinary actions taken against the teacher are so sensitive that they should not be disclosed on privacy grounds.

I agree with the School Board that "the disputed records contain highly personal information relating to the [teacher's] employment history with the Delta School Board, and accordingly the release of the information would constitute an unreasonable invasion of [the teacher's] privacy. (Outline of Argument of the Public Body, paragraph 8a; see also paragraphs. 9-11 and 29-31) (See also my Order No. 41-1994, May 29, 1995, p. 7)

I agree with the following formulation of the third party:

> Clearly a discipline record is significant information about an employee's performance. It is a form of performance appraisal and it would fall within the 'human resource-related characteristics' of an employment history .... One can think of little which most persons would wish to keep [more] private than their discipline records. (Submission of Third Party, p. 2, and also pp. 4, 5)

Section 22(2)(f): The personal information has been supplied in confidence

The third party states that he was told that the disciplinary proceeding against him was to be private. This expectation of confidentiality is supported by the collective agreement between the Board of School Trustees of School District No. 37 (Delta) and the Delta Teachers' Association, which states:

> B2.5. The Board shall not release to the media or the public information in respect of the discipline or dismissal of an employee except as agreed by the

> Union or by joint release agreed upon by the Board and the Union. (Exhibit 6, p. 9; and Submission of Third Party, pp. 7, 8)

While such a provision now has to be applied in the context of the Act, it does establish the expectations of confidentiality for such matters that are in place across the province. (Statutory Declaration of Alice McQuade, paragraph 5)

The third party advanced a strong policy argument, the need for candour, in favour of private disciplinary proceedings in the first instance:

> Employees who may be having problems in the workplace--including having substance abuse problems, stress flowing from family problems and the like--will simply not reveal those problems to an employer unless they are assured that information will be treated confidentially. (Submission of Third Party, p. 8 and the accompanying text)

The key point is that a significant element of confidentiality in disciplinary proceedings appears to be central to successful employer-employee relations. I accept the third party's arguments on this issue.

Section 22(4)(b): Compelling circumstances affecting anyone's health or safety

The applicant sought to use this section to obtain access to the information in dispute in this case. (Exhibit 1, p. 16) Based on the evidence and a review of the records in dispute, I find that the applicant is not entitled to any further information on the grounds that there are compelling circumstances affecting anyone's health or safety. I find that no such compelling circumstances exist.

Section 22(4)(e): Information is about the third party's position, functions or remuneration as an officer, employee or member of a public body

The applicant sought to use this section to obtain access to the information in dispute in this case. (Exhibit 1, p. 17) Based on the evidence and a review of the records in dispute, I find that the information and records in dispute are not about the teacher's position or functions, as I have generally construed these terms in other orders. (See my Order No. 54-1995, September 19, 1995, p. 9)

The privacy interests of the student

The student involved in this inquiry testified briefly at the oral inquiry. He raised questions about whether students' privacy interests are being appropriately protected in publicizing the results of disciplinary activities. (See also Exhibit 1, p. 6) While I do not prejudge the appropriateness of what happened to information about the disciplining of the student in the present case, since I have only sparse hearsay about the matter, I do believe that students of whatever age have privacy interests in disciplinary matters that deserve respect and

recognition. I would remind students that they have the right to complain to my Office if their personal information is disclosed in what they think is an unauthorized manner.

Sections 57(2) and (3): Burdens of proof

The third party emphasized that, under section 57(2) of the Act, the applicant bears the burden of proving that disclosure of information about him would not be an unreasonable invasion of his personal privacy. (Submission of Applicant, p. 3) In my view, the applicant has not met this burden of proof. (See my Order No. 4-1994, March 1, 1994, p. 9; and Order No. 24, 1994, September 27, 1994, p. 7) Thus I find that disclosure of the personal information in the record in this case would constitute an unreasonable invasion of the teacher's personal privacy.

The public body had the burden of proof under section 57(3) of the Act to prove that section 12.1 applied to the record. I find that the public body met this burden of proof.

9. Order

I find that the Delta School District was authorized to refuse access under section 12.1 of the Act and required to refuse access under section 22(1).

Under section 58(2)(b) of the Act, I confirm the decision of the Delta School District to refuse access to the record in dispute to the applicant.

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David H. Flaherty
Commissioner

November 2, 1994