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Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 128-1996
November 5, 1996

INQUIRY RE: A request for records related to successful applicants to the Arbitration Development Program of the Collective Agreement Arbitration Bureau of the Ministry of Labour

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1. Description of the review

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner on July 29, 1996 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of an applicant's request for a review of the Ministry of Labour's decision to refuse access to records held by the Ministry's Collective Agreement Arbitration Bureau (the Bureau).

2. Documentation of the inquiry process

The applicant applied to participate in the Bureau's Arbitrator Development Program. On February 27, 1996 he wrote to the Bureau to request documentation relevant to its selection of eight recommended participants for the Program. His request listed eight separate items.

On March 28, 1996 the Ministry provided the applicant with access to some records but denied access to most other records. On April 16, 1996 the applicant wrote to my Office and requested a review of the Ministry's refusal to give him access to the records in dispute.

3. Issue under review at the inquiry and the burden of proof

The issue under review in this inquiry is the application of section 22 of the Act to the résumés submitted to the Bureau by eight third parties. The relevant portions of section 22 include:

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,

...

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

...

(e) the third party will be exposed unfairly to financial or other harm,

(f) the personal information has been supplied in confidence,

...

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.

(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, ...

Section 57(2) of the Act establishes the burden of proof. Under that section, if the record or part thereof that the applicant is refused access to contains personal information about a party, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.

4. The records in dispute

The records in dispute are résumés submitted to the Bureau by applicants to the Arbitrator Development Program of the Bureau. They are the third parties in this inquiry.

5. The applicant's case

The applicant essentially argues that it is in the public interest for him to be provided, "*in camera*," with the résumés of the third parties "so as to ascertain objectively the limiting of a user paid training course to certain qualified arbitration's [sic] and so as to compare those third parties' qualifications to those of myself." The applicant emphasizes that he has no wish to harm the interests of the successful applicants for the training positions, including their privacy interests.

The applicant states that since almost all of the labour arbitrations now done in this province are conducted on the basis of a referral from the Bureau, failure to allow him training for a possible position on the approved list of arbitrators has harmed his opportunity to earn a livelihood.

6. The reply submission of the Ministry of Labour

Section 83 of the *Labour Relations Code*, SBC 1992, c. 82, establishes the Collective Agreement Arbitration Bureau, which maintains a Register of Arbitrators. (Reply Submission of the Ministry, paragraph 1.03) The Joint Advisory Committee to the Director of the Bureau has recently established an Arbitrator Development Program. A person who successfully completes this training will be placed on the Register, which currently contains forty-six persons. However, parties to a dispute are free to retain arbitrators who are not on the Register. (Reply Submission, 1.04, 1.05)

The applicant was not one of eight chosen to participate in the first Development Program in 1996 out of a pool of about sixty. (Reply Submission, 1.07) On the basis of section 22 of the Act, "the Applicant was denied access to the résumés of the applicants, the résumés of arbitrators presently on the arbitration list, and the résumés of the members of the selection committee." (Reply Submission, 1.09)

The Ministry essentially submits that disclosure of the records requested by the applicant would be an unreasonable invasion of the personal privacy of the third parties, unless the applicant can present clear and compelling evidence to the contrary. (Reply Submission, 4.01, 4.04) Six of the third parties also do not consent to a disclosure that they regard as an invasion of their privacy under section 22 of the Act.

7. Discussion

Alternative forms of dispute resolution

The applicant appears to view his access request as a prelude to some form of judicial review in the Supreme Court of British Columbia of the process by which he was not selected for arbitration training, and that he needs the records in dispute for that purpose. I remind him that the avenue of seeking redress in the courts is open to him and, indeed, he may be able to obtain access to the records in dispute in such a venue. My decision is limited to what can be disclosed to him under the Act. (See Order No. 66-1995, November 27, 1995, p. 3; Order No. 52-1995,

September 15, 1996, p. 5; Order No. 32-1995, January 26, 1995, p. 5; and the Reply Submission, paragraphs 4.21-4.25)

Section 22(2)(e): the third party will be exposed unfairly to financial or other harm,

The Ministry submits that disclosure of the records in dispute might unfairly expose the third parties to financial or other harm, since the applicant wishes to demonstrate that he is better qualified for the Arbitrator Development Program than they are:

> This scrutiny of the Third Parties' private information not only has the potential of unfairly damaging the reputation and stature of the Third Parties generally, and in the labour relations community, but also could directly impact the livelihood of these individuals. (Reply Submission, 4.07)

I agree with the Ministry that this "relevant circumstance" militates against disclosure in the circumstances of this case. (See Order No. 78-1996, January 18, 1996, p. 5; and Order No. 99-1996, April 22, 1996, p. 5) In circumstances such as this case, an applicant has to rely on the integrity of those who manage and administer the Collective Agreement Arbitration Bureau of the Ministry of Labour, after he or she has exhausted any internal appeal process that may exist.

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

The Ministry states that the Arbitration Bureau collects résumés and related personal information "for the sole purpose of evaluating, among the Joint Advisory Committee, the suitability of the applicants for the program." This is treated as confidential information. The Ministry further notes that six of the eight persons selected to participate in the training program refused to disclose their résumés. (Reply Submission, 4.09, 4.11)

I agree with the Ministry that the submission of résumés in a competition of this kind does not include release to the public, whether of successful or unsuccessful candidates, because the résumés are effectively supplied in confidence. However, I regard it as appropriate for the notices of such a competition to indicate that personal information will be treated as supplied in confidence and urge the Arbitration Bureau to do so in future. (See Order No. 70-1995, December 14, 1995, pp. 5, 8; Order No. 83-1996, February 16, 1996, p. 5)

Section 22(2)(h): the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.

I agree with the Ministry that disclosure of the records in dispute may unfairly damage the reputations of the third parties, since one of the applicant's goals is to demonstrate that he has superior qualifications to them. (Reply Submission, 4.10) Persons applying for a benefit may readily disclose personal information that they would not wish to share with the general public or other applicants. This further creates a relevant circumstance militating against disclosure, although I do not place much weight on this factor.

Section 22(3)(d): 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,

The Ministry submits that the résumés of the third parties are clearly information which relates to employment, occupational, or educational history. (Reply Submission, 4.16-4.18) On the basis of this submission, a review of the records in dispute, and my previous Orders, I fully agree with the Ministry's position. (See Order No. 54-1995, September 19, 1995, p. 9)

Section 22(3)(d) creates a presumption that disclosure of the requested information would be an unreasonable invasion of the privacy of the third parties. I have considered above several of the factors listed in section 22(2), which do not support an argument that the presumption in this case has been rebutted.

Decisions of the Ontario Information and Privacy Commissioner

I note with considerable interest that various Orders by the Ontario Information and Privacy Commissioner have rejected the public accountability arguments with respect to the disclosures of the résumés of successful job applicants. See Ontario Order P-273, February 20, 1992 (Assistant Commissioner Tom Mitchinson); Ontario Order P-328, July 15, 1992 (Commissioner Tom Wright); and Order 97, September 28, 1989 (Commissioner Sidney B. Linden).

The applicant seeks to distinguish decisions on the disclosure of résumés in Canada as follows: "They involve applicants for specific public sector jobs as opposed to an application to get access to private sector work that is restricted by the public sector limiting the private sector work to only a select few amongst the qualified private persons." The Ministry's response is that the selection committee included public and private sector representatives and that successful completion of the training program is not the only way for a person to be placed on the Register of Arbitrators. (Reply Submission, 4.13)

8. Order

The applicant has failed to prove that disclosure of the personal information would not constitute an unreasonable invasion of privacy, and thus has not rebutted the presumption in section 22(3)(d) of the Act.

I find that the Ministry of Labour is required to refuse access to the information in dispute under section 22 of the Act. Under section 58(2)(c), I require the head of the Ministry to refuse access to the records in dispute to the applicant.

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David H. Flaherty
Commissioner

November 5, 1996