



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

Order 02-36

UNIVERSITY OF BRITISH COLUMBIA

Celia Francis, Adjudicator
July 17, 2002

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Summary: Applicant requested copies of reports of outside professional activities of named faculty members. UBC provided severed copies, withholding under ss. 22(1) and 22(3)(d) information on their outside professional activities, use of UBC resources, dates and time spent. UBC found to have applied s. 22 properly to information on outside professional activities, dates and time spent. Section 22 found not to apply to information on any use of UBC resources.

Key Words: personal information – unreasonable invasion of privacy – employment or occupational history – publicly available – supplied in confidence.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 22(1), 22(2)(c) and (f), 22(3)(d).

Authorities Considered: B.C.: Order No. 327-1999, [1999] B.C.I.P.C.D. No. 40; Order 01-53, [2001] B.C.I.P.C.D. No. 56; Order 02-32, [2002] B.C.I.P.C.D. No. 32; Order 02-33, [2002] B.C.I.P.C.D. No. 33.

1.0 INTRODUCTION

[1] The applicant in this case submitted a request under the *Freedom of Information and Protection of Privacy Act* (“Act”) to the public body, the University of British Columbia (“UBC”), for copies of reports on the outside professional activities of six named individuals (five faculty members and one staff member) for the period 1992 to 1997. The applicant said that UBC staff are required under UBC’s conflict of interest policy, Policy #97, to provide these reports annually.

[2] UBC told the applicant that it had no such reports for the named staff member as staff are not required to provide them. With its response, UBC provided copies of 17 pages of reports from 1994-1997 for the five named faculty members. It told the applicant that it had severed from 13 of the pages, under s. 22(1) and s. 22(3)(d) of the Act, any information related to outside professional activities.

[3] The applicant requested a review of this decision under Part 5 of the Act, saying he believed there were other records and disputing the severing under s. 22. Mediation led to the full disclosure of one further record which UBC had apparently inadvertently overlooked in its first response. According to the Portfolio Officer's Fact Report, at the conclusion of mediation, the applicant indicated that only the decision to withhold information was still in issue.

[4] Because the matter did not settle in mediation, a written inquiry was held under Part 5 of the Act. I have dealt with this inquiry, as the delegate of the Information and Privacy Commissioner under s. 49(1) of the Act, by making all findings of fact and law and the necessary order under s. 58.

2.0 ISSUE

[5] The issue in this inquiry is whether UBC was required by s. 22 of the Act to withhold personal information of the third parties. Under s. 57(2) of the Act, the applicant has the burden of proving that disclosure of the disputed information would not result in an unreasonable invasion of the third parties' personal privacy.

[6] I note that, in his submissions, the applicant questions the apparent absence of reports for some individuals for some academic years. UBC comments briefly on this issue in its reply. However, the Portfolio Officer's Fact Report for this inquiry states that, in January 2002, the applicant asked for an inquiry and indicated that the decision to withhold information was still in issue. It quotes the applicant as saying: "I believe I can show to the BC FOI Commissioner that the information withheld by UBC legally belongs to me as policy 97 is there to protect students too as they are part of the university".

[7] The adequacy of UBC's search for records is not mentioned as an issue in the fact report, nor is it listed as an issue in the Notice of Inquiry this Office sent out. UBC's search for relevant records is therefore not properly an issue in this inquiry. Consequently, I have not dealt with it in this decision.

3.0 DISCUSSION

[8] **3.1 Application of s. 22** – Section 22 requires public bodies to withhold personal information if its disclosure would be an unreasonable invasion of a third party's privacy. The Commissioner has dealt with the application of s. 22 in numerous orders. See, for example, paras. 22-24 of Order 01-53, [2001] B.C.I.P.C.D. No. 56. I will not reproduce that discussion here but apply the same principles in this case.

[9] The relevant parts of s. 22 read as follows:

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
- ...
- (c) the personal information is relevant to a fair determination of the applicant's rights,
- ...
- (f) the personal information has been supplied in confidence,
- (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,
- (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,

[10] **3.2 Employment or Occupational History of Third Parties** – The records in question are forms entitled “Extra-University Activities”. I will refer to them in this decision as EUA reports. They pertain to the five faculty members named in the applicant's request.

[11] Each form contains three areas completed by the faculty members. In the first, they stated whether or not they had been involved in outside professional activities in the reporting period. In the second, they confirmed that, during that time, they had not engaged in outside work activities that interfered in their university work. UBC, properly in my view, disclosed these first two parts of the reports in all cases.

[12] In the third area, faculty members were asked to provide information on any outside professional activities they had engaged in during the reporting period. In a few cases, faculty members reported no outside professional activities for a particular

academic year and the applicant received complete access to these portions of the EUA reports.

[13] In other cases, faculty members provided information on their outside activities and stated whether these activities had or had not involved use of UBC resources. Faculty members also reported how much time they had devoted to these activities and the dates on which they had engaged in these activities. In all of these cases, UBC withheld details of the activities, any use of UBC resources, dates and the time spent, although it released the relevant headings on the forms.

[14] The withheld information varies with the faculty member but includes activities similar to those given as examples in Policy #97, which I outline below. Faculty members involved here spent anywhere from hours to days on given activities. The notations under “Nature of activity” are sketchy and say little about the actual activities. However, I am satisfied that the information in dispute, as it relates to the outside professional activities, dates and time spent, is the personal information of the third parties and I agree with UBC that it relates to the faculty members’ employment or occupational history. It thus falls under s. 22(3)(d) of the Act and its disclosure is presumed to be an unreasonable invasion of their personal privacy.

[15] I also agree with UBC’s argument that the withheld information does not relate to the faculty members’ work-related activities and that, consequently, it does not fit within s. 22(4)(e).

[16] I do not, however, agree that information related to any use of UBC resources constitutes employment or occupational history of the third parties, as contemplated by s. 22(3)(d). In my view, this information does not reveal details of the third parties’ past work history, leave transactions, disciplinary matters or other items normally associated with employment or occupational history. It also does not reveal details of the outside professional activities the faculty members reported. Rather, it concerns the faculty members’ use (or not) of the public body’s resources in carrying out their extra-university activities. In any case, given the innocuous nature of the particular entries in this area, its disclosure would not, in my view, unreasonably invade the privacy of the third parties and it should be disclosed.

[17] **3.3 Relevant Circumstances** – The applicant did not refer to specific parts of s. 22(2) as applying in his view. However, the main thrust of his submissions concerns his rights in various academic appeals and complaints and, thus, in my view, relates to the circumstance in s. 22(2)(c). He also argued that some of the information in dispute is public and therefore should be disclosed.

[18] UBC also did not specifically cite any parts of s. 22(2) in its submissions. In its reply, however, it did argue generally that nothing in s. 22(2) applied. It also made a brief response to the applicant’s arguments that relate to the circumstance in s. 22(2)(c) and to his argument that the information is public. UBC also made brief references in its initial and reply submissions to arguments which appear to relate to the circumstance in s. 22(2)(f).

[19] The parties raised no other arguments that relate to other relevant circumstances and, in my view, no others are relevant. To the extent that s. 22(2)(a) might be a relevant factor, I believe UBC has, implicitly at least, applied it in disclosing the first two parts of the EUA reports in all cases.

Applicant's rights

[20] The applicant devotes much of his initial submission to the way his academic appeals at UBC, and his complaints about those appeals, were handled and what he seems to perceive as ill treatment of him by various faculty members. He essentially argues that he would have had access to the records in dispute during those appeal and complaint processes, had UBC faculty members investigated his complaints properly at the time. He returns to this theme in his reply.

[21] It appears from the applicant's initial submission that at least some of his academic complaints related to alleged conflicts of interest and inappropriate conduct on the part of certain UBC faculty members. Certain faculty members mismanaged his academic program, he alleges, directly as a result of their outside professional activities. Their outside activities interfered with "the proper discharge of their primary university duties to me", he says, and subjected him "to a process fueled partly by the conflict of interest created by their personal/professional interest on [sic] these outside activities; and when given [sic] priority not to their university responsibilities to me, but to their personal/institutional interest linked to their extra-university interests".

[22] Beyond this, the applicant does not explain how the faculty members' outside activities had these alleged adverse impacts on his academic pursuits. Nor does the applicant give any details of any current academic or other proceeding involving his legal rights which might have been underway at the time of his request and in which the records in issue might have been relevant.

[23] The applicant points out that reports of outside professional activities are required by Policy #97. A proper investigation of his complaints of conflict of interest, he seems to argue, would therefore have led to him receiving copies of the EUA reports. Policy #97 gives him the legal right, he argues, to have access to these EUA reports, although he does not point to any part of that (or any other) policy as authorizing such access. The applicant makes similar arguments in his reply. "As the people involved failed me and failed to the integrity of UBC [sic], the information rightfully can be released to me for my proper defense in court", he said. He does not explain what court process he may be involved in nor how the records in dispute would be relevant to his "proper defense in court".

[24] UBC responds, at para. 3 of its reply, that there is "no proceeding under any internal process currently ongoing by which the Applicant is seeking a determination from the University. Any external process which the Applicant may choose to avail himself of will have its own process for disclosure of information which is not dependent upon the provisions of the Act". This latter remark is true, but of course the availability

(or not) of other mechanisms for obtaining records is not relevant to the applicant's rights of access under the Act. Commissioner Loukidelis has made this point a number of times, most recently at para. 7 of Order 02-32, [2002] B.C.I.P.C.D. No. 32.

[25] Nevertheless, the applicant has not shown how he meets the test for s. 22(2)(c) set out in Order 01-53 and summarized recently at para. 29 of Order 02-33, [2002] B.C.I.P.C.D. No. 33, as follows:

... in order for the applicant to successfully argue that s. 22(2)(c) applies, it must, in accordance with the test re-affirmed in Order 01-53, show that the right in question is a legal right, that the right is related to a proceeding which is either under way or is contemplated, that the information sought has some bearing on the determination of the right in question, and that the information is necessary in order to prepare for the proceeding.

[26] The applicant has provided no evidence of any current or contemplated proceeding involving his legal rights. Nor has he explained how the records in dispute would have any bearing on the determination of such rights and how these records are necessary to prepare for any such proceeding. Whether or not the applicant was entitled to copies of the records in dispute in the course of his various academic appeals and complaints (which UBC does not comment on), his submission shows that these issues date back to the mid to late 1990s. I find that s. 22(2)(c) is not relevant here.

Public Information

[27] The applicant says that information on faculty members' projects, companies and publications is publicly available in the faculty's annual report. He argues that some information on faculty members' outside professional activities is already "publicly scattered at UBC". He also acknowledges in his reply that information in the EUA reports is not publicly available but says it should be.

[28] Apparently to illustrate his point that some information on the outside professional activities of the faculty members is publicly available, he attaches to his initial submission extracts from the faculty's annual reports for a number of years, copies of academic papers by some of the faculty members and other items. The activities described in the annual report extracts appear for the most part to relate to the faculty's own programs and involvement in international activities, although there is also some information on "extra-mural funding and sponsored research" by faculty members, including one of those of interest to the applicant. The attachments to the applicant's initial submission are public brochures and documents, UBC responds, at para. 4 of its reply, but this does not convert the information he wants to public status, it argues.

[29] The withheld information on outside professional activities in the records in dispute is minimal, as I mentioned earlier, but it does not appear to overlap with the information in the extracts from the faculty's annual reports nor with the academic papers and other items the applicant provided. Certainly, there is nothing in the materials before me to support the notion that any of the withheld information is publicly available.

[30] Much of the applicant's argument on this issue relates to his concerns about how UBC monitored faculty members' outside professional activities and, again, how the faculty members' involvement in these activities supposedly led, among other things, to them "mismanaging" his academic program. Near the end of his initial submission, the applicant says that the outside activities of faculty members involved in his academic program have also "caused me a lot of damage family, economically, and professionally wise, and Policy 97 protects me and makes this information available to me when violations to the complete fulfillment of university duties to me take place and in my case". He does not explain how this might be. In its reply, UBC rejects the applicant's argument that Policy #97 is for his benefit. It exists to maintain the integrity of the university, UBC says.

[31] While the public availability of personal information may in some cases be a relevant circumstance favouring disclosure, I find that it does not apply in this case.

Supplied in confidence

[32] UBC said that Policy #97 requires faculty members to submit an annual report of all outside professional activities, whether or not there were any, to their head and that these reports are not publicly available. It added in its reply that the information in the reports is considered confidential by UBC and the faculty member who submits the information.

[33] UBC did not otherwise address the issue of whether the information in dispute had been supplied in confidence. It did not, for example, provide any policies on confidentiality. Nor did it provide any affidavit evidence on this point from the head of the faculty or from the faculty members themselves. UBC did provide a copy of "Policy #97 – Conflict of Interest" with its initial submission but did not point to any part of Policy #97, or any other policy, which might demonstrate the confidential nature of the process for providing the EUA reports.

[34] The version of Policy #97 that UBC provided is 16 pages long and sets out guidelines on the acceptability of conduct in various activities, including "Outside Professional Activities" which the policy says are "extra-University activities which involve the same kind of specialized skills and knowledge that the faculty or staff member practices in the employ of the University". Such activities include "consulting, private contracts, professional practice, directorships on boards when not at UBC's request, being an officer of a company whose business relates to teaching/research interests of faculty, teaching at other institutions ...".

[35] Policy #97 requires faculty members to disclose in writing, to their administrative head on an annual basis, "the extent, the nature, and timing of all outside professional activities" whether or not there were any. It does not, however, say that faculty members are considered to be making this disclosure in confidence nor does it say that UBC will treat this information in confidence. The policy says nothing whatsoever about confidentiality. I note also that Policy #97 does not provide for disclosure of EUA reports to students or others involved in academic appeals.

[36] In Order No. 327-1999, [1999] B.C.I.P.C.D. No. 40, Commissioner Loukidelis dealt with the confidential nature of personal evaluations under s. 22(3)(h). In that case, UBC explicitly argued that faculty members had supplied evaluations in confidence. It apparently also provided *in camera* material in support of its arguments. The Commissioner found that UBC had established that the evaluations had been supplied in confidence, although he added, at p.11:

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.

[37] I do not have the benefit of such arguments or evidence in this case, nor did UBC supply any confidentiality policy it might have developed as a result of the Commissioner's comments in Order No. 327-1999. Indeed, it is difficult to determine from the material before me that UBC is even arguing that the faculty members supplied their EUA reports in confidence and that UBC treated them in confidence. On the basis of the material before me, I am unable to conclude that s. 22(2)(f) applies.

[38] **3.4 Is the Applicant Entitled to More Information?** – I have found that the presumed invasion of privacy in s. 22(3)(d) applies to information related to outside professional activities, dates of those activities and time spent. The applicant has not, in my view, rebutted that presumption. I have also found that the relevant circumstances in this case do not apply. Apart from the information on any use of UBC resources, therefore, the applicant is not entitled to any of the withheld information.

4.0 CONCLUSION

[39] For the reasons given above, I make the following orders:

1. Under s. 58(2)(a), I require UBC to give the applicant access to the information it withheld under ss. 22(1) and 22(3)(d) under the heading "Use of UBC resources".
2. Under s. 58(2)(c), I require UBC to refuse access to the information it has withheld under ss. 22(1) and 22(3)(d) under the headings "Nature of Activity", "Timing" ("Dates" and "Times") and "Overall time commitment".

July 17, 2002

ORIGINAL SIGNED BY

Celia Francis
Adjudicator