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

Order F08-16
(Reconsideration of Order 04-04 and Order 04-05)

THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 68 (NANAIMO-LADYSMITH)

Celia Francis, Senior Adjudicator

October 29, 2008

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Summary: Applicants made access requests to a school district for records relating to complaints they had made about their respective children's teacher. On reconsideration of Order 04-04 and Order 04-05, the school district's investigations into the allegations against the teacher were not investigations into a possible violation of law under s. 22(3)(b). The applicants were not entitled to information the disclosure of which would reveal the substance of *in camera* deliberations by the school district under s. 12(3)(b). They were also not entitled to personal information about the teacher, the disclosure of which would be an unreasonable invasion of third-party privacy under s. 22 and which could not reasonably be severed under s. 4(2). The applicants were otherwise entitled to: non-personal information; their own complaint information against the teacher; and the applicants' or their children's personal information, including the statements or opinions of the teacher or others about the applicants and their children and their interactions with the teacher.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 4(2), 8(2)(b), 12(3)(b), 22(1), 22(2), 22(3)(b), 22(3)(d), 22(3)(g) and 57.

Authorities Considered: B.C.: Order No. 330-1999, [1999] B.C.I.P.C.D. No. 43; Order 01-07, [2001] B.C.I.P.C.D. No. 7; Order 01-12, B.C.I.P.C.D. No. 12; Order 02-01, [2002] B.C.I.P.C.D. No. 1; Order 02-21, [2002] B.C.I.P.C.D. No. 21; Order 03-12, [2003] B.C.I.P.C.D. No. 12; Order 03-16, [2003] B.C.I.P.C.D. No.16; Order 03-41, [2003] B.C.I.P.C.D. No. 41; Order 04-04, [2004] B.C.I.P.C.D. No. 4; Order 04-05, [2004] B.C.I.P.C.D. No. 5; Order F05-02, [2005] B.C.I.P.C.D. No. 2; Order F05-18, [2005] B.C.I.P.C.D. No. 26; Order F05-30, [2005] B.C.I.P.C.D. No. 41; Order F05-31, [2005] B.C.I.P.C.D. No. 42; Order F08-03, [2008] B.C.I.P.C.D. No. 6. **Ont.**: Order PO-1885, [2001] O.I.P.C.D. No. 59.

Cases Considered: B.C.: *B.C. Teachers' Federation, Nanaimo District Teachers' Association et al. v. Information and Privacy Commissioner (B.C.) et al*., [2006] B.C.J. No. 155, 2006 BCSC 131; *Canada (Information Commissioner) v. Canada (Canadian Transportation Accident and Safety Board)*, [2006] F.C.J. No. 704 (Fed. C.A.).

1.0 INTRODUCTION

[1] The applicants were three sets of parents (the "Parents") who made access requests to the Board of Education of School District No. 68 (Nanaimo-Ladysmith) ("School District") under the *Freedom of Information and Protection of Privacy Act* ("FIPPA") for records relating to complaints they made about their respective children's teacher (the "Teacher"). The School District decided to disclose some information on the basis that it was personal information of the Parents or their children or information about investigation methodology. Since each family's personal information was different, three different disclosure packages were involved.

[2] The Teacher and his unions[1] requested the Commissioner to review the School District's decision to give access to any information at all in the requested records. One of the Parents also requested a review on the basis that they were entitled to more information than the School District had decided to disclose. I was delegated authority to hear and decide the inquiries.

[3] My Orders 04-04 and 04-05 (the "Orders")[2] mostly confirmed the School District's decisions and required the School District to disclose severed copies of the requested records to the Parents. For Order 04-04, the records in issue were an investigation report dated February 14, 2002, minutes of a multi-day *in camera* School District meeting (February 26, March 4 and 7, 2002), typed notes about the *in camera* meeting (February 26 and March 4, 2002), a question and answer document about the *in camera* meeting and a one-page email. For Order 04-05, the records in issue were the same February 14, 2002 investigation report and an earlier investigation report dated May 4, 2001.

[4] The Teacher and unions applied to the Supreme Court of British Columbia for judicial review of the Orders. The Court, applying a reasonableness standard of review, upheld the following conclusions in the Orders:[3]

- The Parents and their children's own personal information should be separated (and disclosed to the Parents) from information that was otherwise excepted from disclosure by reason of s. 22(3)(d).[4]

[1] The Nanaimo District Teachers' Association and the British Columbia Teachers' Federation.
[2] [2004] B.C.I.P.C.D. No. 4 and [2004] B.C.I.P.C.D. No. 5.
[3] *B.C. Teachers' Federation, Nanaimo District Teachers' Association et al. v. Information and Privacy Commissioner (B.C.) et al*., [2006] B.C.J. No. 155, 2006 BCSC 131 (the "Reasons").
[4] Reasons, paras. 81-82.

- The exceptions to disclosure in s. 12(3)(b) and s. 13(1) may only be invoked by the School District, at its discretion, and not by the Teacher or unions.[5]

- Information provided by the Teacher or unions because of Article 16 (Discipline and Dismissal Based on Misconduct) of the collective agreement was not supplied in confidence under s. 22(2)(f).[6]

- The information in dispute was not excepted from disclosure under s. 21(1) as confidentially-supplied third-party labour relations information.[7]

[5] The Court allowed the judicial review on other grounds on which it issued directions for reconsideration. This order is my reconsideration of the Orders in accordance with the Court's directions under s. 5 of the *Judicial Review Procedure Act*.

2.0 ISSUES

[6] The Court directed reconsideration of:

1. the applicability of s. 22(3)(b) of FIPPA (personal information that is compiled and identifiable as part of an investigation into a possible violation of law);[8]

2. the disclosure of information described in the Orders as "no one's personal information" and information the Teacher had identified as being not the Parents' or their children's personal information or "no one's personal information".[9]

3.0 DISCUSSION

[7] 3.1 Applicability of Section 22(3)(b)

The Court's directions

[8] Section 22(3)(b) of FIPPA provides that disclosure of personal information is presumed to be an unreasonable invasion of third-party personal privacy if

> (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation,

[5] Reasons, paras. 87-88.
[6] Reasons, para. 90.
[7] Reasons, para. 91.
[8] Reasons, at paras. 87-89, 92.
[9] Reasons, at paras. 83-86, 92.

[9] The Court's directions for reconsideration on the applicability of s. 22(3)(b) were as follows:

> ¶89 Section 22(3)(b) creates a rebuttable presumption that disclosure of personal information relating to the specified investigation is presumed to be an invasion of the privacy of the teacher (in this case). The Commissioner reasoned that he did not have to consider the applicability of this subsection because he had already determined that s. 22(3) applied because of ss. (d), (g), and (h). I cannot understand from the reasons of the Commissioner if he applied the presumption in s. 22(3), or if he decided the presumption was rebutted. It is possible that he applied s. 4, severed the applicant's own information and no-one's information, and then left everything else as not disclosable on the basis of s. 22(3). The reasoning of the Commissioner is not clear on this point. Section 22(3)(b) is a presumption that the teacher is entitled to. The Commissioner unreasonably failed to consider if the whole investigation report was exempt under that section. Accordingly, the Commissioner must reconsider his decision on this ground raised by the Petitioner.

[10] The Teacher argued that s. 22(3)(b) applied to all information in the investigation reports and the records about the School District *in camera* meeting, as personal information compiled and identifiable as part of investigations into possible violations of s. 17 of the *School Act*, the *Teaching Profession Act* and the relevant collective agreement.

[11] The Teacher relied on ss. 15(3), (5) to (7), 16(1) and (3) and 17 of the *School Act*, which read (including s. 15(4)) as follows:

> 15(3) Subject to subsections (4) and (5), a board must not dismiss, suspend or otherwise discipline an employee covered by a collective agreement except for just and reasonable cause.
>
> (4) A board may suspend from the performance of his or her duties an employee who is charged with an offence that the board considers renders the employee unsuitable to perform those duties.
>
> (5) If the superintendent of schools is of the opinion that the welfare of the students is threatened by the presence of an employee, the superintendent may suspend the employee, with pay, from the performance of his or her duties.
>
> (6) When the superintendent suspends an employee under subsection (5), the superintendent must immediately notify the board.
>
> (7) When the board is notified under subsection (6), it must as soon as practicable confirm, vary or revoke the suspension and must, if the board confirms and continues the suspension, determine whether the continuation of the suspension should be with or without pay.
>
> 16(1) If a board dismisses, suspends or otherwise disciplines a member of the college or a person holding a letter of permission to teach issued under section 25(2) of the *Teaching Profession Act*, it must

> (a) without delay, report the dismissal, suspension or other disciplinary action to the council of the college, giving reasons, and
>
> (b) send a copy of the report to the member or the person, as the case may be.
>
> …
>
> (3) A board that has made a report to the college under this section in respect of a member of a college or a person holding a letter of permission to teach issued under section 25(2) of the *Teaching Profession Act* must, without delay after being requested to do so by the college,
>
> (a) provide the college with all of the records available to the board that touch on the matter in respect of which the report was made, and
>
> (b) send a copy of the records referred to in paragraph (a) to the member or the person.
>
> 17(1) A teacher's responsibilities include designing, supervising and assessing educational programs and instructing, assessing and evaluating individual students and groups of students.
>
> (2) Teachers must perform the duties set out in the regulations.

[12] The Teacher's reliance on ss. 16(1) and (3) of the *School Act* was in conjunction with ss. 28 to 40 of the *Teaching Profession Act*. Those provisions govern the investigation and discipline of teachers by the College of Teachers. Section 28(4) of the *Teaching Profession Act*, in particular, provides that, if the College receives a report under s. 16 of the *School Act*, the council or discipline committee of the College may make a preliminary investigation into the conduct or competence of the teacher involved. The Teacher argued that this link between the *School Act* and the discipline process of the College under the *Teaching Profession Act* meant that the School District's investigations were part of any College investigations under the *Teaching Profession Act*.

[13] The Teacher also relied on Articles 15 and 16 of the collective agreement. Article 15 concerns dismissal based on performance. Article 16 concerns discipline and dismissal based on misconduct. The Teacher pointed to ss. 48 and 49 of the *Labour Relations Code*, which provide that a collective agreement is binding on its parties, that a person bound by a collective agreement must comply with it and that failure to do so is a contravention of the *Labour Relations Code*. The Teacher also pointed to s. 5 of the *Offence Act*, which provides that a person who contravenes an enactment (*i.e.*, s. 48 of the *Labour Relations Code*) commits an offence. The Teacher argued that these provisions linking contravention of a collective agreement with contravention of the *Labour Relations Code* and the commission of an offence under the *Offence Act* also lead to the conclusion that a school district investigation into allegations of misconduct by a teacher is an investigation into a possible violation of law.

[14] The School District did not agree that s. 22(3)(b) applied to the requested records, saying that the provisions of the collective agreement did not set out the grounds under which a teacher may be disciplined, but rather the process for dismissal.

[15] I will first address the Teacher's contention that s. 22(3)(b) applies to all of the investigation reports and the records about the School District *in camera* meeting. Implicit in this is the proposition that s. 22(3)(b) applies globally to all records that are compiled and identifiable as part of an investigation into a possible violation of law, which, in my view, it clearly does not do.

[16] Section 22(3), including paragraph (b), applies to personal information about another individual or the disclosure of which would reveal personal information about another individual (in the form of her/his identity) who has confidentially supplied the personal information in issue. Section 22(3) does not apply to non-personal information and it can apply to the applicant's own personal information only when disclosure will also reveal personal information of another individual in circumstances that are an unreasonable invasion of the other individual's personal privacy. I therefore reject the contention that s. 22(3)(b) applies to all information compiled and identifiable as part of an investigation into a possible violation of law.

[17] I will now address whether the investigations the School District conducted were investigations into a possible violation of law under s. 22(3)(b).

[18] In Order No. 330-1999,[10] the Commissioner concluded that workplace investigations do not normally fall under s. 22(3)(b):

> …One does not normally think of an employment-related disciplinary investigation, with no statutory disciplinary flavour, as involving a "prosecution" of a "violation of law". An employer's contractual right – under an individual employment contract or a collective agreement – to discipline an employee for misconduct is not, in my view, a "law" for the purposes of this section. Nor can I accept the Ministry's apparent invitation to extend s. 22(3)(b), by analogy, to this information. If s. 22(3)(b), given its ordinary meaning, does not apply to the disputed information, I have no authority to force it to fit. Nor does the Ministry.[11]

[19] In Order 01-12,[12] the Commissioner concluded that a British Columbia Gaming Commission charitable gaming (bingo) licence compliance review under the *Lottery Act* was an investigation into a possible violation of law under s. 22(3)(b). He said this about the meaning of "law" in s. 22(3)(b):

> Although I do not foreclose the possibility that there may be other kinds of "law" for the purposes of the Act, I consider that "law" refers to (1) a statute or

[10] [1999] B.C.I.P.C.D. No. 43.
[11] At p. 12.
[12] [2001] B.C.I.P.C.D. No. 12.

> regulation enacted by, or under the statutory authority of, the Legislature, Parliament or another legislature, (2) where a penalty or sanction could be imposed for violation of that law. The term "law" includes local government bylaws, which are enacted under statutory authority delegated by the *Local Government Act*. I also consider that the definition of "regulation" in s. 1 of the *Interpretation Act* offers guidance in identifying things that may - where a penalty or sanction could be imposed for their violation - properly be considered a "law" for the purposes of the Act…[13]

[20] An investigation by a self-governing professional body that administers a statutory regulatory regime under which it prefers and prosecutes disciplinary citations and imposes sanctions has been considered an investigation into a possible violation of law under s. 22(3)(b).[14]

[21] In my view, s. 22(3)(b) recognizes the sensitivity of third-party personal information that:

1. was compiled as part of an investigation by an authority that has public responsibility to investigate a possible violation of law and

2. is identifiable as such in the record to which access is requested under FIPPA.

[22] A disciplinary investigation by the College of Teachers under the *Teaching Profession Act* is an investigation by a self-governing professional body responsible for investigating complaints and prosecuting disciplinary citations against members. Section 22(3)(b) applies to third-party personal information that is compiled and identifiable as part of such an investigation.

[23] A workplace investigation into employee performance or conduct is not however an investigation into a possible violation of law under s. 22(3)(b). The fact that a workplace investigation involves allegations or evidence which the employer may or must refer to authorities charged with investigating possible violations of law (police, child protection officials or occupational, professional or other licensing authorities) does not transform the employer's workplace investigation into a direct or proxy investigation into a possible violation of law under s. 22(3)(b).

[24] I fail to see how the prohibition in the *School Act* against a school district disciplining a teacher for other than just and reasonable cause (except suspension in certain circumstances) or how the imposition of responsibilities on teachers in the *School Act* and regulations confers a mandate on school districts to investigate violations of law. I agree with the School District that Articles 15 and 16 of the collective agreement concern the process for dismissal, suspension or other discipline of an employee for just and reasonable cause as

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[13] At para. 17.
[14] Order 02-20, [2002] B.C.I.P.C.D. No. 20, at para. 29, and Order F05-18, [2005] B.C.I.P.C.D. No. 26, at paras. 40-42.

permitted by s. 15(1) of the *School Act*. A school district's ability to discipline a teacher for just and reasonable cause is not limited to the teacher's responsibilities under the *School Act*. The School District's investigations of the Teacher flowed, not from the *School Act* or the *Teaching Profession Act*, but from the collective agreement, Article 16.2 of which reads as follows.

> Where an employee covered by this Agreement is under investigation by the Employer for any cause, the employee and the Association shall be advised in writing of that fact unless such notification would prejudice the investigation, and in any event shall be notified at the earliest opportunity and before any action is taken by the Employer. The employee shall be advised of the right to be accompanied by a representative of the Association at any meeting with the employee in connection with such an investigation.

[25] Even assuming that a collective agreement is a form of "law", it does not give the School District investigative authority under s. 22(3)(b) respecting possible violations of the collective agreement or other laws. In the context of a workplace investigation, the School District is an employer and not an authority with public responsibility for investigating possible contraventions of law.

[26] The *School Act* requires a school district to provide certain information to the College of Teachers, which has an independent regulatory mandate under the *Teaching Profession Act*. This linkage between the *School Act* and *Teaching Profession Act* is not an investigation mandate for school districts and it does not make a school district's workplace investigation part and parcel of any ensuing investigation by the College. School district investigations and College investigations are not extensions of each other.

[27] I conclude that the School District's investigations resulting in the investigation reports in issue were not investigations into a possible violation of law under s. 22(3)(b) of FIPPA. I therefore find that s. 22(3)(b) does not apply here.

[28] **3.2 Information to be Disclosed**

The Court's Directions

[29] The Court inferred that the Orders rested on findings that the records were entirely personal information:

> ¶49 …The Petitioner says that the Commissioner should first have analyzed what was personal information as defined by the Act. The Commissioner did not explicitly do so. I infer from the Commissioner's reasons in both Orders that he must have determined first that all six records were personal information. In any event, based on paragraph 48 of Order 04-04, it does seem as if his decision to disclose the personal information was not premised on the basis that some of the information in

> the investigation report was not the teacher's personal information but rather that …the Commissioner found that disclosure of information that was the applicant's own information was not an unreasonable invasion of the third party's (that is in this case the teacher's) privacy.

[30] The Court also concluded that the Orders were unclear in the classification of some information as "no one's personal information":

> ¶55 It is difficult to determine precisely what portions of the documents were ordered disclosed to the applicants on the grounds of a "no-one's personal information" classification.
>
> ¶56 The Petitioners contend that details of the investigation report are clearly information relating to the investigation of the teacher and how that investigation was carried out, what people were interviewed or documents reviewed and in its entirety cannot be considered anything but personal information relating to the teacher's employment. For example on page three of the Order 04-04 report, the Commissioner marks for disclosure information about the methodology including identification of the category of person interviewed. The Petitioners say that this type of information must be considered personal information of the teacher and the seriousness with which the complaints against him were being treated.
>
> ¶57 In summary, the Petitioners contend that the Commissioner failed to explain why he considered the information classed as "no-one's personal information" or why if it was personal information, its disclosure was proven by the applicants not to be an invasion of the teacher's privacy.

[31] The directions for reconsideration that flowed from these findings read as follows:

> ¶83 The second alleged error concerns information classified by the Commissioner as "no-one's information." (see paragraph 29 of Order 04-04 and paragraph 27 in Order 04-05 set out above)
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> ¶84 The Commissioner failed to explain why he considered the information "no-one's personal information" and not the teacher's personal information. Nor did the Commissioner give any reasons why he decided it was not an invasion of the teacher's personal privacy to disclose the information. The burden of proof was on the applicant to prove that it was not an invasion of the teacher's privacy. I see no reasons that adequately support this part of the Commissioner's decision. Moreover, the Commissioner only listed examples of information considered "no-one's personal information". It is not therefore possible to determine on what basis disclosure of information was made. Examples given by the Petitioners in this category of information that they say is personal information, but was nevertheless ordered disclosed are found on page 3, 4 and 6 of Report dated February 14, 2002, and marked Exhibit A of the in camera affidavit of Maria Dupuis, in 04-05 in which the author of the report describes her methodology. (See also page 2 of the same report but

> marked Exhibit C in which for some reason the number of children interviewed is disclosed to a different parent applicant.) There may well be reasons for all these disclosures but those reasons cannot be discerned from the Orders.
>
> ¶85 Lastly, the Petitioner's assert that some of the information marked for disclosure could not be characterized as either the applicant's own information or no-one's information. There is no explanation in the Commissioner's reasons for ordering such disclosure. One example of such information is found on page 14 of the Report at Exhibit A in Order 04-05 under the heading "The Teacher - Prior Knowledge." The author of the report makes a summary statement of the preceding discussion about the substantive results of those interviews. These interviews were not limited to the applicant's own information and could not be described as no-one's personal information. They are about the teacher. There are no reasons in the Commissioner's Orders that support the decision to disclose this type of information other than the statement that aggregate references to students, staff, or parents being interviewed are marked for disclosure to the applicants. The Commissioner does not explain why aggregate references to interviews and the results of those interviews about the teacher is either not the teacher's personal information or is not excepted from disclosure in s. 22(3)(d). Similarly, on page 15 and 16 of Exhibit A of the in camera affidavit in 04-05, the Commissioner orders information disclosed about the results of interviews of parents who are not applicant parents. I believe these interviews are the views of other parents about the teacher. I conclude that the Commissioner's decision to release information he classified as "no-one's personal information" is not supported by his reasons and requires reconsideration.
>
> ¶86 I do not propose to review the entirety of the reports and other documents that are the subject of this petition. Rather I believe that the appropriate remedy is to return the matter to the Commissioner to reconsider his Orders in light of these reasons. The Commissioner should consider specifying what information is ordered disclosed on what basis. I would expect that the Commissioner would provide some explanation for the information ordered disclosed, if any, consistent with these Reasons for Judgment.

[32] I will address the Court's directions by first explaining my interpretation and application of the relevant terms and provisions in FIPPA. I will then reconsider the application of s. 22 to the information and records in issue, specifying what information must be disclosed and on what basis.

No one's personal information

[33] "No one's personal information" means information that is not personal information. It is not a form of personal information, which, I agree, would be

a contradiction of the definition of "personal information" which is "information about an identifiable individual other than contact information."[15] It is not possible for information that is about no one to be personal information.

[34] Accordingly, although the Court inferred that I must first have determined in the Orders that all of the records in issue were personal information, the references to "no one's personal information" were to information that is not personal information. The Orders did not determine that the records consisted entirely of personal information. To avoid confusion, I have not used the term "no one's personal information" in this reconsideration.

Unreasonable invasion of third-party privacy

[35] The exception in s. 22 applies only to "personal information". Its operation may be summarized as follows:[16]

1. Section 22(1) requires a public body to refuse to disclose personal information to an applicant if disclosure would be an unreasonable invasion of third-party privacy.

2. Section 22(3) creates a rebuttable presumption that the disclosure of personal information of certain kinds or in certain circumstances would be an unreasonable invasion of third-party privacy.

3. Section 22(2) requires the public body to consider all the relevant circumstances, including a series of listed ones, in determining whether a disclosure of personal information constitutes an unreasonable invasion of third-party privacy.

4. Section 22(4) creates a cut out from subsections 22(1), (2) and (3), by conclusively deeming that the disclosure of personal information of certain kinds or in certain circumstances is not an unreasonable invasion of third-party privacy.

5. Because an individual who makes a request for access to information is not a third party to his or her own request, s. 22 denies access to an applicant's own personal information only when its disclosure will also reveal personal information of another individual (the third party), in circumstances that are an unreasonable invasion of that individual's privacy.

[15] FIPPA, Schedule 1, definition of "personal information".
[16] See Adjudication Order No. 2 (June 19, 1997), Bauman J., sitting as an Adjudicator appointed under s. 60 of FIPPA, at pp. 6, 7; *Re Architectural Institute of British Columbia v. British Columbia (Information and Privacy Commissioner)*, [2004] B.C.J. No. 465 (S.C.); Order F05-02, [2004] B.C.I.P.C.D. No. 2, at paras. 50, 51.

6. Section 22(5) requires that, when an applicant is denied access to his or her own personal information that was supplied in confidence by a third-party individual, the public body must provide a summary of the information to the applicant, unless this cannot be done without disclosing the identity of the third party.

Duty to sever

[36] Section 4(2) provides that the right of access to records does not extend to information that is excepted from disclosure under Division 2 of Part 2 of FIPPA, but if excepted information can reasonably be severed from a record[17] then the applicant has the right of access to the remainder of the record. Consequently, only if personal information that is excepted from disclosure under s. 22 can reasonably be severed from the requested record is the applicant entitled to access to the rest of the record, including in some cases the applicant's own personal information.

[37] The result — disentitlement to access — is the same when protected information in a record cannot reasonably be severed under s. 4(2) from the remainder and when personal information is protected from disclosure under s. 22 and cannot be provided in a summary under s. 22(5). Nonetheless, s. 4(2) applies to personal and non-personal information and is not to be confused with the disclosure exception in s. 22, which applies only to personal information.

Burden of proof

[38] Section 57 of FIPPA allocates the burden of proof as follows:

1. At an inquiry into a School District decision to refuse the Parents access to the Parents' or their children's personal information, the School District has the burden to prove that the Parents have no right of access: s. 57(1).

2. At an inquiry into a School District decision to refuse the Parents access to personal information of the Teacher or another third-party individual, the Parents have the burden to prove that disclosure would not be an unreasonable invasion of the third party's privacy: s. 57(2).

3. At an inquiry into a School District decision to give the Parents access to personal information of the Teacher or another third-party individual, the Parents have the burden to prove that disclosure would not be an unreasonable invasion of the third party's privacy: s. 57(3)(a).

4. At a inquiry into a School District decision to give the Parents access to the Parents' or their children's personal information, it is up to the third

[17] See Order 03-16, [2003] B.C.I.P.C.D. No. 16 and Order 03-41, [2003] B.C.I.P.C.D. No. 41 for discussions of reasonable severing.

party (in this case, the Teacher) to prove that the Parents have no right of access: s. 57(3)(b).

5. When the personal information in issue is about both the applicant (the Parents or their children) and a third party (the Teacher or another individual), I would give precedence to the wording in ss. 57(2) and 57(3)(a) because it is specific to personal information of a third party, with the result that the Parents bear the burden of proving that the disclosure of shared personal information would not be an unreasonable invasion of the third-party's privacy.

[39] These inquiries flowed from the Teacher's third-party requests for review of the School District's decisions to give the Parents access to some information in the requested records. Because the Teacher claimed an interest in all of the requested records, the requests for review blocked any disclosure to the Parents.

[40] The Parent in Order 04-04 also made a request for review respecting information the School District refused to disclose. The notice of inquiry for Order 04-04 was therefore framed to put in issue both the information the School District decided to give and to refuse to that Parent.

[41] The two sets of Parents in Order 04-05 did not make requests for review. The notice of inquiry for Order 04-05 was therefore framed, responsive to the Teacher's third-party requests for review, to put in issue the information the School District decided to give to those Parents.

[42] The inquiries were considered together because they involved overlapping records and all the Parents took the position that they were entitled to all the information sought in their access requests. As a result of these circumstances, both Orders considered the Teacher's rights to less disclosure and the Parents' rights to more disclosure in relation to all the information, personal and non-personal, covered by the three access requests.

[43] Applying ss. 57(1) and 57(3)(b): the School District or Teacher has the burden of proving that a Parent has no right of access to non-personal information or to personal information exclusive to that Parent or their child.

[44] Applying ss. 57(2) and 57(3)(a): a Parent has the burden of proving that the disclosure of personal information of the Teacher or another third-party individual (such as another teacher or student) or of shared personal information of the Teacher and Parent (or their child), would not be an unreasonable invasion of the Teacher's or other third party's privacy.

[45] There may be evidence relevant to the rights of access or privacy within the contested records, with the result that an applicant's ability to discharge his or her burden of proof under s. 57 is hampered by lack of knowledge of the contents

of the records in issue. This is acutely so for personal information of the applicant (a Parent or their child) that is intertwined or shared with personal information of a third party (the Teacher), who opposes disclosure and who does have knowledge of the content of the records (in this case through the discipline process under the collective agreement). It is the role of the Commissioner, who has access to all of the requested records in the review and inquiry process under FIPPA, to take the evidentiary value of the contents of the records into account for and against the rights in issue, whether or not a party (such as the Parents) is in a position to know and refer to that evidence in order to discharge a burden of proof under s. 57.

Personal and non-personal information

[46] I do not propose to undertake a reconciliation of the many orders that have grappled with the nature of and distinctions between personal and non-personal information under FIPPA, a good number of which involved workplace investigation reports of one kind or another. I will instead summarize the relevant requirements and considerations, including the fundamental association of personal information and privacy with attributes integral to the individuality of an identifiable person.

[47] "Personal information" is defined in FIPPA as "recorded information about an identifiable individual, other than contact information".[18] "Contact information" is defined as "information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual."[19] The purpose of the exclusion of "contact information" from the definition of "personal information", which was added in 2004,[20] is to clarify that information relating to the ability to communicate with an individual at his or her workplace, in a business capacity, is not personal information. Accordingly, public bodies need not have s. 22 concerns regarding disclosure of such information when it is sought.[21]

[48] Personal information requires an "identifiable" individual. The information must also be "about" an identifiable individual. These two requirements, although they are often referred to together, are discrete elements.

[49] To be "identifiable", the individual must be identified by the information in issue alone (for example, by name, work title or other identifier) or in combination with other available information.

[50] While the word "about", in isolation, undoubtedly has broad general meaning, in access and privacy legislation the requirement for information to be

[18] FIPPA, Schedule 1, definition of "personal information".
[19] FIPPA, Schedule 1, definition of "contact information".
[20] *Freedom of Information and Protection of Privacy Amendment Act*, S.B.C. 2004, c. 64, s. 11.
[21] Order F05-31, [2005] B.C.I.P.C.D. No. 42, at para. 26.

"about" an identifiable individual is tied to the concept of individual privacy. Not everything that an individual says or does is "about" the individual. To conclude otherwise would sweep all manner of information that is not integral to individuality into the definition of "personal information". In a workplace setting, information that describes distinctive physical characteristics of an identifiable employee or events specific to his or her employment history is "about" the employee. However, correspondence is not "about" the employee just because she or he prepared and signed it on behalf of the employer.

[51] Non-personal information takes many forms, including all manner of policies, practices, directives, programs or events, as well as aggregated comments or opinions about such matters, even where responsibility for them attaches to an identifiable official. The inclusion of distinctly non-personal information (such as a schedule or list of activities at a school) in a record that refers to an identifiable individual does not turn the non-personal information into the personal information of the individual.

[52] The same information can be personal to more than one individual. A common workplace example of such shared personal information is a recorded complaint or incident report involving an interaction between two identifiable individuals. The existence and details of a parental complaint about the professional conduct of an identified teacher in relation to the parent's child will be personal information of the teacher and, to the extent that it identifies and is about the parent and child, it will be their personal information too.

[53] Personal information of more than one individual can also be intertwined. Shared personal information and intertwined personal information both involve the personal privacy of more than one identifiable individual being wrapped up together in the same information. The distinction between them can however be blurred. Shared personal information is analyzed in the application of s. 22, not s. 4(2). Intertwined personal information, on the other hand, has been analyzed as a severing issue under s. 4(2) and in terms of the production of a summary of the applicant's personal information under s. 22(5).[22] It has also been incorporated into the application of ss. 22(1) to (4).[23]

[54] In my view, intertwined information, whether it involves personal or non-personal information, technically falls to be analyzed under s. 4(2), as a matter of whether information that is protected from disclosure under FIPPA (such as personal information of a third party, the disclosure of which would be an unreasonable invasion of his or her privacy under s. 22) can reasonably be severed from the remainder of a record to which the applicant is entitled to have access (such as the applicant's own personal information).

[55] There is also the matter of opinions or comments of an aggregate of unidentified individuals. Aggregate opinions or comments about activities, events

[22] Order 03-12, [2003] B.C.I.P.C.D. No. 12, paras. 36-42.
[23] Order 03-12, paras. 36-42.

or practices are not personal information, as they are not about an identifiable individual. Aggregate comments or opinions that are about an identifiable individual, exclusively or as an identifiable member of a small target group, are the personal information of that individual.

[56] To mention but a few orders, I refer to Order 01-53[24] in which the Commissioner recognized that a school district investigation report concerning allegations by an employee (also the applicant) against a fellow employee (a third party to the access request) was not entirely the personal information of the target employee:

> ¶22 …When a public body is considering the application of s. 22, it must first determine whether the information in question is personal information within the Act's definition of "personal information". Although the information that the School District would withhold under s. 22 is personal information, not all of it is the personal information of the third party. Some of it is, in fact, the applicant's personal information, as is admitted by both the School District (p. 11, further initial submission) and the third party (p. 5, further initial submission). Further, some of the information is personal information of witnesses, other than the third party and the applicant, whom the investigator interviewed. The names of these witnesses are their personal information. Some of the information which the School District proposes to withhold is, in my judgement, no one's personal information.

[57] Some other relevant aspects of Order 01-53 were the Commissioner's findings that:

- Statements of the applicant and witnesses and findings of the investigator about the third party's behaviour and actions were the third party's personal information and employment history, the disclosure of which was presumed to be an unreasonable invasion of the third party's privacy under s. 22(3)(d).[25]

- Statements of the third party and witnesses about the applicant's behaviour and actions were the applicant's personal information. This information was also the applicant's employment history under s. 22(3)(d) and, if someone else sought access to it, its disclosure would be presumed to be an unreasonable invasion of the applicant's privacy.[26]

- The applicant's knowledge of the third party's identity and the allegations that the applicant had made against the third party were relevant unlisted circumstances under s. 22(2) favouring disclosure of that information to the applicant, even though it was the third party's personal information and employment history under s. 22(3)(d).[27] (In my view, when personal information is shared between the applicant and a third party, the sensitivity

[24] [2001] B.C.I.P.C.D. No. 56.
[25] Para. 32.
[26] Para. 33.
[27] Paras. 76, 80.

and core quality of the information relative to each of them is also a relevant unlisted consideration under s. 22(2). Where the shared personal information is more intimately tied to the individuality of the applicant than the third party, this may sufficiently favour disclosure to the applicant to rebut a presumed unreasonable invasion of the third party's privacy under s. 22(3).)

[58] I also make note of the following of my own orders:

- In Order F05-02,[28] I discussed the fact that all information relating to the investigation of a complaint against an individual is not the personal information of the individual. I held that an investigation report concerning a complaint against a teacher was not entirely or exclusively the teacher's personal information and that the requirement in s. 4(2) to reasonably sever excepted information and give access to the remainder applied to the records. I also found that student activities and opinions and knowledge of school activities, policies and practices were not personal information. This was because information about a school activity, policy or practice was not personal information, no opinion-holders were identified and the aggregated opinions were not about an individual (identified or not).

- In Order F05-30,[29] I considered information in a report on labour relations within a fire and rescue service. The public body had disclosed most of the report, but withheld aggregate summaries of what interviewees said about workplace issues. I concluded that aggregate comments and opinions about workplace issues by unspecified or general groups in the work force were not personal information. I concluded that aggregate comments and opinions about individuals who were identifiable by name or title, or because they belonged to a small group, were the personal information of those individuals. However, information that was identifying because of the small size of the group and nature of the information involved was generally less privacy invasive than information that was specific to one identifiable individual.

[59] Finally, I refer to Order F08-03[30] in which the Commissioner noted the established stance in Ontario that information associated with an individual in his or her professional or official government capacity is not considered to be "about" the individual because it is not personal in nature, even where the individual is identifiable.[31] The Commissioner also referred to the Federal Court of Appeal's articulation of this limiting principle in *Canada (Information Commissioner) v. Canada (Canadian Transportation Accident Investigation and Safety Board)*.[32] The Court held that communications between ground air traffic controllers and pilots in the air relating to four air occurrences were not information "about" an individual for the purposes of the definition of personal information in the Canada

[28] [2005] B.C.I.P.C.D. No. 2, paras. 34, 44-48. This was another case of a parent of a student requesting access to an investigation report about the parent's complaint against a teacher.
[29] [2005] B.C.I.P.C.D. No. 41.
[30] [2008] B.C.I.P.C.D. No. 6, at paras. 84-87.
[31] See Ontario Order PO-1885, [2001] O.I.P.C.D. No. 59, at para. 1.
[32] [2006] F.C.J. No. 704 (C.A.), leave to appeal refused [2006] S.C.C.A. No. 259.

Privacy Act,[33] even though the speakers were identifiable by the sounds of their voices and other information revealed in the communications. The Court found the threshold definition of "personal information", as information about an identifiable individual that is recorded in any form, must be interpreted in light of concepts of intimacy, identity, dignity and integrity of the individual:

> ¶53 The information at issue is not "about" an individual. As found by the application judge (at para. 18 of her reasons) the content of the communications is limited to the safety and navigation of aircraft, the general operation of aircraft and the exchange of messages on behalf of the public. They contain information about the status of the aircraft, weather conditions, matters associated with air traffic control and the utterances of the pilots and controllers. They are not subjects that engage the right to privacy of individuals.
>
> ¶54 The information contained in the records at issue is of a professional and non-personal nature. The information may have the effect of permitting or leading to the identification of a person. It may assist in a determination as to how he or she has performed his or her task in a given situation. But the information does not thereby qualify as personal information. It is not <u>about</u> an individual, considering that it does not match the concept of "privacy" and the values that concept is meant to protect. It is <u>non</u>-personal information transmitted <u>by</u> an individual in job-related circumstances.
>
> ¶55 …The ATC communications, *when combined with other information*, may well in certain circumstances be *used* as a basis for evaluation of their authors' performances. However, the possibility of such eventual use cannot transform the communications themselves into personal information, when the information contained therein has no personal content.

[60] I now turn to reconsideration of the specific records.

[61] **3.3 Analysis**—Applying my preceding discussion of the operation of s. 22, the duty to sever under s. 4(2), the burden of proof under s. 57 and the nature of and distinctions between personal and non-personal information, I will analyze the information in issue to identify:

- personal and non-personal information
- personal information that is not excepted from disclosure under s. 22 because it is exclusive to the Parents or their children
- personal information about a third party (the Teacher or another third-party individual), the disclosure of which would be an unreasonable invasion of third-party privacy of under s. 22

[33] Section 3 of the Canada *Privacy Act* defines personal information to mean information about an identifiable individual that is recorded in any form. The definition continues with a non-exhaustive list of inclusions, then a list of specific exclusions.

- personal information about a third party (the Teacher or another third-party individual), the disclosure of which would not be an unreasonable invasion of third-party privacy
- whether information, personal or non-personal, that is excepted from disclosure under s. 22 or s. 12(3)(b) can reasonably be severed under s. 4(2)

Investigation report (May 25, 2001)

[62] This seven-page record is in issue only in Order 04-05, where only one of the two sets of Parents requested access to it. The School District found that most of the information on page 1 and small amounts on pages 2 and 7 were required to be disclosed. I upheld this in Order 04-05 on the basis that, except for the names of the Teacher, the investigator and various school officials, which were known to all, this was non-personal information about the methodology of the investigation.

[63] On reconsideration, I have concluded that the Parent in question is not entitled to access to the information in this record that the School District had decided to disclose. My reasons for reaching this conclusion are as follows.

[64] The list of investigation questions that I concluded were investigation methodology in Order 04-05 are sufficiently specific and detailed that they reveal the Teacher's employment history under s. 22(3)(d). Severing under s. 4(2) is not reasonable because it would not result in meaningful disclosure. I also confirm my conclusion in Order 04-05 that witness comments about the Teacher's workplace behaviour are the Teacher's personal information and part of the Teacher's employment history. Disclosure is therefore a presumed unreasonable invasion of the Teacher's privacy.

[65] Disclosure to a complainant of the existence and nature of her or his own complaint, despite this information being personal information of the individual complained against, is not generally an unreasonable invasion of that individual's personal privacy because the complainant is already aware of the details of her or his own complaint.[34] However, if the record in question aggregates or intertwines the information provided by the complainant with other complaints or with complaint information from other sources, then the balance under s. 22 will normally favour protection of the third party's privacy. The Parent in question in Order 04-05 was interviewed for this report. However, the comments of parents and students about the Teacher are aggregated, so it is not possible to ascertain information that is specific to the Parent.

[66] On reconsideration, I conclude that disclosure of information about the investigation and its methodology, which discloses dates of the complaint, investigation interviews and report, as well as the identities of the complainant,

[34] Order 02-01, [2002] B.C.I.P.C.D. No. 1, at paras. 56, 128; Order 01-53, [2001] B.C.I.P.C.D. No. 56, at para. 80.

the investigator, the recipient of the report, the Teacher and two of the witnesses (but not the Parent in question), the aggregated comments about the Teacher by parents and students or the findings of the report, would be an unreasonable invasion of the Teacher's privacy relating to this workplace investigation into allegations about the Teacher's conduct in the workplace. The School District must refuse to disclose all of this report to the Parent in Order 04-05 who requested access to it.

Investigation report (February 14, 2002)

[67] This 44-page report concerns the School District's investigation of complaints against the Teacher and the impact of the Teacher's alleged conduct on students. The whole of the report was requested by all the Parents and is in issue in both Orders. In responding to the access requests, the School District concluded that s. 22(4) did not apply to information in the report. I agreed with this in the Orders and s. 22(4) is not in issue. The School District's intention was to disclose non-personal information and the personal information of the Parents and their children and to withhold the Teacher's employment history personal information.

[68] In the inquiries, the Teacher said all of the report was subject to a presumption of privacy in favour of the Teacher and that protection of the Teacher's privacy was also supported by the factors in ss. 22(2)(e) to (h). The School District said that it had taken into account s. 22(2)(f) (personal information supplied in confidence) and did not consider there were any other relevant factors under s. 22(2).

[69] In the Orders, I found that:

- Some information was non-personal information in the form of terms of reference for the investigation, the investigator's methodology, the documentation reviewed and references to students, staff or parents in the aggregate.

- Some information was students' personal information and education history (s. 22(3)(d)).

- Some information was the Teacher's personal information and employment history (s. 22(3)(d)). A small amount of the Teacher's personal information was personal evaluations of the Teacher (s. 22(3)(g)).

- Some of the students', Parents' and Teacher's personal information was shared.

- The applicability of s. 22(3)(b) (personal information compiled and identifiable as part of an investigation into a possible violation of law) did not need to be

considered. (Following the Court's directions, I have now conducted that consideration and concluded that s. 22(3)(b) does not apply.)

- Section 22(2)(f) was not a relevant circumstance. (The Court upheld the reasonableness of this conclusion.)

- Sections 22(2)(e), (g) and (h) were not relevant circumstances. (This conclusion was not challenged on the judicial review of the Orders.)

- Parents' awareness of the Teacher's personal information that was provided in the Parents' own complaint to the School District was a relevant consideration favouring disclosure of that information to the Parents, even though it is employment history of the Teacher under s. 22(3)(d), because the disclosure would not result in an unreasonable invasion of the Teacher's privacy.

- In Order 04-05, I rejected the Parents' argument that information in the investigation reports had been disclosed in a public hearing and this was a relevant circumstance for disclosure pursuant to the access requests. I accepted that the School District meetings in which the reports were considered were *in camera*, not public, meetings.

- No other relevant circumstances favoured disclosure of the Teacher's personal information that was his employment history or personal evaluations.

[70] I concluded that Parents' and their children's personal information in this report should be separated (and disclosed to the Parents) from information that was otherwise excluded from disclosure under s. 22(3)(d) (and, to a small extent, s. 22(3)(g)). The Court upheld this aspect of the Orders in the following terms:

> ¶81 The Commissioner's decision could reasonably be supported by a logical interpretation of s. 4 and s. 22(3)(d) when read in combination. Although it is not clear from the Commissioner's reasons if the applicant's own information is severed because it was not the personal information of the teacher or because revealing the information is not an unreasonable invasion of the teacher's privacy under s. 22(3)(d), the result is a reasonable interpretation of those sections.
>
> ¶82 Applying a reasonableness standard of review to this issue, I would not disturb the finding of the Commissioner that the applicant's own information should be severed from the information otherwise excluded from disclosure under section 22(3)(d).

[71] Thus, the Court held that, regardless of the above-noted lack of clarity in the path of reasoning in the Orders, the conclusion that Parents' (and their respective children's) personal information should be separated from information otherwise excluded from disclosure under s. 22(3)(d) and disclosed to them was

the result of a reasonable interpretation of FIPPA. My specification on reconsideration of what information must be disclosed, and on what basis, will also serve, though not strictly necessary in view of the Court's holding, to resolve the noted unclearness.

[72] Turning to the specifics of the reconsideration, I do not agree with the Teacher that this report is entirely (or exclusively) the personal information of the Teacher. In my view, it also contains non-personal information and the personal information of others (including, but not limited to, the Parents and their respective children). The task is to apply s. 4(2) and s. 22 to determine what information the School District is required to disclose or withhold.

[73] There is no issue of protecting the Teacher's privacy by denying the existence of the report under s. 8(2)(b) of FIPPA, as the Parents were among the complainants, their children were among the Teacher's students and the Parents were interviewed by the investigator and well aware that their complaints were investigated in connection with the report. I would add that, if the Parents were strangers to the allegations against the Teacher and to the investigation of those allegations as regards the Teacher's students – for example, if the access applicants were journalists – then ss. 8(2)(b), 4(2) and 22 of FIPPA might well require denial of access to all of the report, and its existence. But this would not be because the report is entirely or exclusively the personal information of the Teacher. It would be because disclosure of even the existence of the report would be an unreasonable invasion of the privacy of the Teacher[35] (and possibly others as well) or because personal information of the Teacher (and others) could not reasonably be severed from non-personal information.

Cover Page

[74] The report has a Cover Page indicating it is a report into an investigation of a teacher at the Teacher's school. The Teacher is not identified by name. Indeed, no one is identified by name in the report. The Teacher is referred to as "the teacher", other teachers are referred to by job position (*i.e.*, a teacher), some parents are referred to by number *(e.g.*, parent #1), parents and students are also referred to in the aggregate and School District officials are referred to by job title.

[75] The Cover Page consists of non-personal information to which all the Parents are entitled to have access. The only identifying information on the Cover Page is the names and contact information of the author of the report and her associate. This is "contact information" excluded from the definition of "personal information". I would, in any case, find that this information is not personal information because it is not, in the circumstances, "about" the

[35] This point is discussed in the context of complaint information about lawyers held by the Law Society of British Columbia in Order 02-01, [2002] B.C.I.P.C.D. No. 1, paras. 54-56, 123 & 125-128.

investigator or her associate and, alternatively, if it is personal information, disclosure is not an unreasonable invasion of their privacy.

Table of Contents

[76] The Cover Page is followed by a one-page Table of Contents, which has main headings and some sub-headings. The main headings are: Nature of Referral, Terms of Reference, Methodology, Documentation [that the investigator referred to], Background Information, The Teacher, Teacher's Strengths, Complaints and Allegations, Impact on the Children and Findings. The title and main headings on this page are not personal information; they do not reveal information "about" the Teacher or any other individual. For the same reason, the Parents are also entitled to the sub-headings, except for the last sub-heading under The Teacher, which discloses employment history of the Teacher, and the sub-headings under Complaints and Allegations, which are about the Teacher because they disclose particulars of the allegations against him, including those made by two of the Parents. Disclosure of a sub-heading to the Parent who made the allegation in that sub-heading would not be an unreasonable invasion of the Teacher's privacy. However, since I find that those Parents are entitled to the same information later in the report, where it appears with more detailed information, I decided that it is not reasonable to sever the Table of Contents differently for each Parent. The Parents should instead all receive a uniformly severed Table of Contents.

Nature of the Referral, Terms of Reference, Methodology and Documentation

[77] I have taken a similar approach to the text under the main headings for Nature of the Referral, Terms of Reference, Methodology and Documentation (pages 2 to 6 of the report). The information marked for disclosure to the Parents is not personal information inasmuch as it is not "about" the Teacher or any other identifiable individual. For example, information that is about the nature and terms of the investigator's assignment and about what might be referred to as the investigation plan and methods is required to be disclosed to the Parents. On the other hand, information about the past employment history of the Teacher has been withheld as personal information "about" the Teacher. Particulars of how the Teacher chose to participate in the investigation (*i.e.*, to provide information to and meet with the investigator) have also been withheld. Although this information is arguably mostly "about" the investigation process and only marginally "about" the Teacher, I have erred on the side of protection of the Teacher's privacy. Information about other identifiable third parties (*i.e.*, other students, parents and collaterals who provided documents or were interviewed) has also been withheld as their personal information. My approach was also to err on the side of withholding information from which one could draw inferences about the evidence, or its strength, for or against the Teacher, that came from third parties other than the Parents or from aggregated third parties, on the basis that it is personal information about the Teacher.

Background Information

[78] The text under the heading Background Information is on pages 7 to 13 of the report. The Parents in Order 04-04 (referred to as "parent #1" or "parents #1" in the report) are entitled to have access to blocks of information I have marked on pages 9 and 10. One Parent in Order 04-05 (referred to as "parent #2" in the report) is entitled to access to blocks of information I have marked on pages 10 and 11. These passages are the respective Parents' complaints about the Teacher and their concerns and actions on behalf of their children around the alleged conduct of the Teacher and its impact on their children. A large component of this information is the Parents' allegations about what was done to their children. In my view, this is intertwined and shared information about Parents, child and Teacher. In other words, it is a combination of personal information of Parent/child and Teacher or personal information of each of them that cannot be reasonably separated. The personal information of the Teacher is his employment history; the personal information of each child is his or her educational history. Having regard to concepts of intimacy, identity, dignity and integrity of the individual, I am unable to conclude that the Teacher's employment history information is "about" the Teacher more than the children's educational history information is "about" each of them. This shared and intertwined personal information engages the core of each child's individuality at least as much as the individuality of the Teacher.

[79] Because the marked information is employment history of the Teacher, its disclosure is presumed under s. 22(3)(d) to be an unreasonable invasion of the Teacher's privacy. Disclosure of the children's personal information would be a presumed unreasonable invasion of their privacy, as educational history under s. 22(3)(d), if someone else made an access request for it. The fact that the shared and intertwined personal information includes a substantial amount of the children's educational information is a relevant unlisted consideration under s. 22(2) that favours disclosure to the Parents. So is the fact that these Parents were the source of the personal information about the Teacher. For these reasons, I find that these Parents are entitled to access to the respective marked information on pages 9 to 11, because the disclosure of this information is not an unreasonable invasion of the Teacher's privacy.

[80] All of the Parents are also entitled to access to 2½ lines of text marked on page 12 of the report. This passage is not personal information; it simply identifies a step in the process taken by a School District official and the investigator.

[81] The Parents are not entitled to access to any more information in pages 7 to 13 because it is personal information of the Teacher that is also his employment history under s. 22(3)(d), or it reveals such information, or it is inconsequential snippets of non-personal information (*i.e.*, a reference on page 13 to the position of District Principal of Human Resources being eliminated in late 2001) from which the protected text cannot reasonably or meaningfully be severed.

The Teacher

[82] The text under the heading The Teacher is on pages 14 to 21 of the report. I find that the Parents in Order 04-04 are entitled to access to a block of marked information on page 15 because it is the feelings and concerns of the Parents and child about the prospect of the child being in the Teacher's class in the coming school year. This information is "about" the Parents and child. It is apparent from the text of the passage that the Parents were the investigator's source for this information. I find that these Parents are entitled to access to this information as their own and their child's personal information. To the extent the Parents' and child's feelings and concerns about the child being taught by the Teacher might be marginally "about" the Teacher and his personal information, I find that the Teacher's privacy interest is minimal and is not unreasonably invaded by disclosure.

[83] The School District also decided to disclose a patchwork of other passages under this heading to the various Parents (mostly to the Parents in Order 04-04). On reconsideration I find that these other passages must not be disclosed because they are aggregated, or in a few cases unidentified, student/parent remarks specific to the Teacher. It is one thing to conclude that it is not an unreasonable invasion of the Teacher's privacy to disclose information that is about the Teacher, and is part of his employment history under s. 22(3)(d), to the Parent who provided that particular information to the School District. That Parent is receiving no more information than what he or she already knows and provided about the Teacher, often in the form of the Parent's own observations and opinions. It is quite another thing for Parents to receive aggregated parent/student remarks and complaints about the Teacher, simply because each Parent was a contributor to the aggregated information about the Teacher. This would be a disclosure of other parents' opinions and concerns about the Teacher that is indeed an unreasonable invasion of the Teacher's privacy.

Complaints and Allegations

[84] The text under the heading Complaints and Allegations is on pages 21 to 41 of the report. I find that the Parents in Order 04-04 are entitled to access to the blocks of marked information on pages 22 to 36 and 41. The information is about those Parents' allegations against the Teacher; those Parents', their child's and the Teacher's views about their child, his problems and his interactions with the Teacher; and the evidence of participants and some witnesses to interactions between those Parents, their child and the Teacher. The information marked for release is intertwined and shared information about Parents, child and Teacher, in a combination that cannot be reasonably separated and that is not required to be withheld from the Parents to protect the privacy of the Teacher. The personal information of the Teacher is his employment history; its disclosure is therefore presumed to be an unreasonable invasion of the Teacher's privacy. The personal information of the child is educational history that would be

a presumed unreasonable invasion of the child's privacy, under s. 22(3)(d), if someone else made an access request for it. It also includes a significant component of the child's medical information that would be a presumed unreasonable invasion of the child's privacy, under s. 22(3)(a), if someone else made an access request for it. Having regard to concepts of intimacy, identity, dignity and integrity of the individual, I am unable to conclude that the Teacher's employment history information in the blocks to be disclosed is "about" the Teacher more than the child's educational and medical history information is "about" the child. In my view, this information marked for release engages the core of the child's individuality more than the individuality of the Teacher.

[85] The Teacher's knowledge and views of the child and the child's learning, behavioural and medical problems are very much "about" the child as an individual. In my view, they are only minimally, at best, "about" the Teacher. The Teacher's remarks about classroom events or the Teacher's actions around alleged incidents concerning the child are no more personal to the Teacher than to the child. The fact that the intertwined and shared personal information includes a substantial amount of the child's educational history and sensitive medical information is a relevant unlisted consideration under s. 22(2) that favours disclosure to those Parents. So is the fact that the Parents are well aware of their views of the Teacher that they conveyed to the investigator for the report. For all of these reasons, I find that the Parents in Order 04-04 are entitled to access to the marked information on pages 22 to 36 and 41, because the disclosure of this information is not an unreasonable invasion of the Teacher's privacy and the indicated passages on pages 24 to 34, 36 and 41 that must be withheld can reasonably be severed under s. 4(2).

[86] The passages in pages 24 to 34 and 36 that are marked for withholding from the Parents in Order 04-04 are evaluative remarks by the investigator about the Teacher in relation to the evidence; aggregate evidence or evidence of collaterals about the Teacher and not the child; remarks of the Teacher about his teaching and methods that are not about the child. This is employment history of the Teacher under s. 22(3)(d) concerning which the presumption that disclosure would unreasonably invade the Teacher's privacy has not been rebutted. The evaluative remarks would also fall under s. 22(3)(g) as personnel evaluations of the Teacher. All of pages 21 and 37 to 40 and the top two thirds of page 41, down to the heading Impact on the Children (except for the portions marked for disclosure on page 41, mentioned above), are also required to be withheld from the Parents in Order 04-04 because it is personal information of the Teacher or other parents or their children, or would reveal such information, and the relevant presumptions against disclosure in s. 22(3) have not been rebutted.

[87] I find that one of the Parents in Order 04-05 (parent #2 in the report) is entitled to a block of marked information on page 30. The information is this Parent's child's evidence to the investigator about an interaction the child observed between another child and the Teacher. To the extent that it is "about" the Teacher and his employment history under s. 22(3)(d), or "about" the other

child in the witnessed interaction, I find that the presumption that disclosure would be an unreasonable invasion of the Teacher's, or the other child's, privacy is rebutted by the fact that this information is this Parent's child's account to the investigator of what the child witnessed. I find that this Parent in Order 04-05 is also entitled to access to 2½ lines of marked information on pages 37-38. This information is the feelings and experience of their child as provided by the child to the investigator; it is the child's personal information and not the Teacher's. Finally, this Parent is entitled to access to a block of marked information on page 40. This is the feelings and experiences of their child, as well as the child's account of interactions he had with the Teacher, which I would characterize as intertwined and shared personal information of the child and Teacher. The presumption in s. 22(3)(d) that disclosure of the Teacher's employment history in this passage would unreasonably invade the Teacher's privacy is rebutted by the fact that this information came from the child and is intertwined or shared with the child's personal information that is his educational history.

[88] This Parent in Order 04-05 (parent #2 in the report) is not entitled to access to any more information under the Complaints and Allegations heading because it is personal information of the Teacher and other parents or their children, or would reveal such information; the relevant presumptions against disclosure in s. 22(3) have not been rebutted; and the protected information cannot be reasonably or meaningfully severed from minor snippets of non-personal information (such as a reference to a passage from the school's discipline policy that is on page 36).

[89] There is no indication that personal information under this heading is specific to the other Parent in Order 04-05 or their child. I find that the other Parent in Order 04-05 is not entitled to access because the information under this heading consists of, or would reveal personal information of, the Teacher and other parents or their children; the relevant presumptions against disclosure in s. 22(3) have not been rebutted; and the protected information cannot reasonably or meaningfully be severed from minor snippets of non-personal information.

Impact on the Children

[90] The text under the heading Impact on the Children is on pages 41 to 42 of the report. I find that the Parents are not entitled to any of the information under this heading because it is aggregate or unidentified parental reports about how the Teacher's alleged conduct affected aggregate or unidentified students. It is not specific to the Parents who made the access requests, or their children, but it is specific to the Teacher as an identifiable individual. This is the employment history of the Teacher under s. 22(3)(d) and the presumption that its disclosure would be an unreasonable invasion of the Teacher's privacy has not been rebutted.

Findings

[91] The text under the heading Findings is on pages 43 and 44 of the report. I find that all the Parents are entitled to access to the signature block of the investigator on page 44 because this is not personal information. It is not "about" the investigator in the circumstances or, if so characterized, its disclosure is clearly not an unreasonable invasion of the investigator's privacy. I find that the Parents are not entitled to any other information on pages 43 and 44 because it is personal information about the Teacher that is his employment history under s. 22(3)(d) and the presumption that disclosure would be an unreasonable invasion of the Teacher's privacy has not been rebutted.

Minutes of the in camera meeting (February 26, March 4 and 7, 2002)

[92] This 12-page record is in issue only in Order 04-04 and only in relation to personal information of the Parent (and child) who made that access request. The School District decided to withhold the entire record under s. 12(3)(b). In Order 04-04, I found that the School District took the wrong approach by failing to consider whether the substance of its *in camera* deliberations revealed in the minutes could be reasonably severed under s. 4(2) from the approximately two lines of text at the bottom of page 5 that are the child's personal information. That information, which the Teacher's representative submitted in the March 4, 2002 *in camera* meeting, is an abbreviated description of specific incidents involving the child that were the basis of the Parent's complaint against the Teacher. It is shared personal information of the Teacher and the child involved. It is also employment history of the Teacher under s. 22(3)(d). In Order 04-04, I required the School District under s. 58(2)(b) to reconsider whether s. 4(2) could be applied so that access could be given to this small amount of information. I also directed the School District to consider its discretion to apply or not s. 12(3)(b) in respect of personal information of the Parent or child.

[93] On reconsideration, I find the information in question (approximately two lines of text on page 5 of the minutes) is excepted from disclosure and not subject to severing under s. 4(2). I have reached this conclusion taking into account the nature and purpose of the *in camera* meeting as a disciplinary hearing for the Teacher to respond to his employer with respect to parental complaints about his workplace conduct, as well as the fact that disclosure would reveal the substance of the *in camera* deliberations of the School District under s. 12(3)(b). With respect to requiring the School District to revisit its discretion to apply s. 12(3)(b) or not, I have concluded this would be a moot exercise because of the inseparability of the personal information of the child and Teacher that was submitted in his defence. I have therefore decided to confirm the decision of the School District to apply s. 12(3)(b) to refuse to give the Parent access to her child's personal information in this record.

Typed notes of the in camera meeting (February 26 and March 4, 2002)

[94] This 16-page record is in issue only in Order 04-04 and only in relation to personal information of the Parent (and child) who made that access request. It is a School District employee's notes of two days of the *in camera* meeting.

[95] The School District said that s. 22(3)(d) applied to most of this record, but it did not apply s. 12(3)(b). In Order 04-04, I held that the Teacher could not raise s. 12(3)(b). The Court upheld the reasonableness of this conclusion. I agreed with the School District that much of the information was personal information of the Teacher, consisting of the Teacher's employment history under s. 22(3)(d). However, I also identified some information, which I marked on the record for disclosure to the Parent because it was the Parent's or child's personal information or the Teacher's personal information in respect of which the s. 22(3)(d) presumption against disclosure had been rebutted.

[96] On reconsideration, I find that the information on page 1 and the top half of page 8 of this record that I marked for disclosure in Order 04-04 is not the personal information of the Parent or child and therefore is not within the scope of the access request. The balance of the information that I had marked for release on pages 2, 6, 7, 8 (bottom half) and 9 to 14 of this record is personal information about the Parent or child, or about them and the Teacher. The Parents' and child's personal information is so intertwined with the Teacher's personal information submitted in his defence that it is not reasonably severable under s. 4(2). The amount of personal information of the Parent or child that might be releasable is so minimal and disconnected as to make the severing of the protected information and disclosure of the remainder an unreasonable exercise in the circumstances.

Q & A record

[97] This seven-page record is in issue only in Order 04-04 and only in relation to personal information of the Parent (and child) who made that access request. It sets out questions the School District asked participants in the *in camera* meeting and the responses to those questions.

[98] In Order 04-04, I concluded the following:

> ¶70 I agree that most of the information in the Q & A document is the teacher's employment history information and therefore falls under s. 22(3)(d). However, after comparing its contents to the investigator's report, I am able to identify some personal information of the applicant and her son. Section 22 does not apply to any of this information. The School District did not say whether it had considered severing this record. I address this portion of the record below in the discussion of s. 12(3)(b).

[99] I concluded that the School District considered the Q & A document in the *in camera* meeting and that its disclosure would reveal the substance of *in camera* deliberations under s. 12(3)(b). Under s. 58(2)(b), I required the School District to reconsider whether protected information could be severed and access could be given to the personal information of the Parent and child. I also directed the School District to consider its discretion to apply or not s. 12(3)(b) in respect of personal information of the Parent or child.

[100] On reconsideration, I find that because the disclosure of the personal information of the Parent or child that is in the Q & A record would reveal the substance of the *in camera* deliberations of the School District under s. 12(3)(b), the information is excepted from disclosure and not subject to severing under s. 4(2). With respect to requiring the School District to revisit its discretion to apply s. 12(3)(b) or not, I find that this would be a moot exercise because of the inseparability of the personal information of the Parent, child and Teacher. As a result, I have decided to confirm the decision of the School District to apply s. 12(3)(b) to refuse to give the Parent access to the personal information of the Parent or child in this record.

Email

[101] This one-page record is in issue only in Order 04-04 and only in relation to personal information of the Parent (and their child) who made that access request. In Order 04-04, I concluded as follows:

> ¶67 I agree with the School District that some of the information in the e-mail is the teacher's employment history information and falls under s. 22(3)(d). No relevant circumstances favour its disclosure, in my view. However, I disagree with the School District on the issue of severing this record. The brief references to the applicant and her child can, in my view, be disclosed to her without unreasonably invading the other parent's privacy. Accordingly, I have prepared a severed copy of the e-mail for disclosure by the School District to the applicant.

[102] On reconsideration, I reconfirm my finding that the 21 words I marked on this record for release to the Parent are personal information of the Parent and her spouse. They are not personal information of the Teacher or anyone else. However, I find this information is sufficiently disconnected from both the context of this record and the relevant actions of the Parent and her spouse, as to be quite meaningless. It is therefore not reasonable under s. 4(2) to sever the protected information (some is personal information of the Teacher and some is personal information of another third party) and disclose the remaining snippets to the Parent.

[103] I therefore confirm the School District's decision to refuse to disclose information in this record to this Parent.

4.0 CONCLUSION

[104] For the reasons given, under s. 58 of the Act, on reconsideration I find that the School District is required to refuse to give the Parents access to the entirety of the investigation report dated May 25, 2001, the minutes and typed notes of the School District's *in camera* meeting, the Q & A record and the email. With respect to the investigation report dated February 14, 2002, I find that the School District is required to give access to the information I have marked for release to the respective Parents (as shown by black print in the three copies of the report provided to the School District with its copy of this order) and is required to refuse to give access to the remainder of the record (as shown by red print in the copies of the record). The School District is ordered to comply with these requirements under FIPPA to give, or refuse to give, the Parents access to the requested records on or before December 11, 2008 and to copy me concurrently with the covering letters and enclosed severed records.

October 29, 2008

ORIGINAL SIGNED BY

Celia Francis
Senior Adjudicator

OIPC File Nos.: 15954,
15955, 15956 and 15959