

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2002-010

September 17, 2003

ALBERTA LEARNING

Review Number 2270

Office URL: <http://www.oipc.ab.ca>

Summary: The Applicant requested access to the hand-written notes of a named employee of Alberta Learning. The notes related to a complaint made by the Third Party about the welfare of a special-needs student at a specific school. Alberta Learning removed part of the information from the records as non-responsive and severed other information under section 17 of the *Freedom of Information and Protection of Privacy Act* (personal information of a third party).

The Adjudicator found that Alberta Learning had incorrectly identified a small portion of the information removed as non-responsive. However, the Adjudicator found section 17 applied to all of the personal information which was withheld from the Applicant. The decision of the Public Body to withhold the personal information was upheld.

Statutes Considered: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c-F-25, ss. 1(n) [previously section 1(1)(n), 6(2) [number not affected by R.S.A. 2000], 17 [previously section 16], 17(1) [previously section 16(1)], 17(2)(b) [previously section 16(2)(b)], 17(4) [previously section 16(4)], 17(4)(f) [previously section 16(4)(f)], 17(4)(g) [previously section 16(4)(g)], 17(4)(g)(i) [previously section 16(4)(g)(i)], 17(4)(g)(ii) [previously section 16(4)(g)(ii)], 17(5) [previously section 16(5)], 17(5)(a) [previously section 16(5)(a)], 17(5)(c) [previously section 16(5)(c)],

17(5)(e) [previously section 16(5)(e)], 17(5)(f) [previously section 16(5)(f)], 17(5)(g) [previously section 16(5)(g)], 17(5)(h) [previously section 16(5)(h)], 69(3) [previously section 66(3)], 72 [previously section 68]; *Child Welfare Act of Alberta, ss. 4(1), 126(4)*.

Authorities Considered: **AB:** Order 98-007; Order 98-028, Order 2001-001; **ON:** Order P-312.

I. BACKGROUND

[para 1] On June 3, 2001, the Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the “FOIP Act”) to Alberta Learning (the “Public Body”). The access request was as follows:

I would like to know what information [a named employee of the Public Body] may have regarding myself, [the Applicant]. From my knowledge my name is connected to a complaint from a teacher within [a school district] regarding a Special Needs student at [a specific school].

[para 2] The Public Body located eight responsive records, which consisted of the hand-written notes from the “steno-pad” of a named employee of the Public Body. The Public Body sent copies of the eight records to the Applicant, noting that some information had been severed under section 17 [previously section 16] (personal information of a third party) and some information had been removed because it contained information that was non-responsive to the Applicant’s access request.

[para 3] The Applicant requested a review of the Public Body’s decision to sever and remove information from the records. Mediation was authorized but was not successful. The matter was set down for a written inquiry.

[para 4] Three parties were identified in this inquiry: the Applicant, the Public Body and the individual (the Third Party) who made the complaint that was the topic of the Applicant’s request. The named employee of the Public Body who hand-wrote the notes is not a third party in this inquiry.

[para 5] All three parties submitted an initial written brief. The Third Party requested their submission be accepted “in camera”. The Third Party’s submission contained a great deal of personal information, much of which was not directly relevant to the matter in front of me. The Third Party also expressed concern that there would be repercussions if the Applicant learned their identity. For these reasons, and because the identity of the Third Party was in issue before me, I accepted the Third Party’s submission in camera. I also accepted a portion of the Public Body’s submission in camera. This portion contained severed and unsevered copies of the records and specific arguments that contained personal information of the Third Party.

[para 6] The Applicant and Third Party submitted written rebuttals. The Third Party asked that their rebuttal be accepted in camera. This request was also granted. The Public Body did not submit a rebuttal.

[para 7] The Revised Statutes of Alberta (R.S.A. 2000) came into force on January 1, 2002. Consequently, all section numbers referred to in this Order reflect the new numbering. Where a section number is listed, the previous number has also been included as follows: section 17 [previously section 16]. Unless otherwise noted, the text of each section remains the same.

II. RECORDS AT ISSUE

[para 8] The records consist of the eight pages of hand-written notes of the named employee of the Public Body. The pages were numbered 1 to 8 by the Public Body in responding to the Applicant's access request. I will refer to the Public Body's numbering in this Order. The Public Body submitted both severed and unsevered versions of the records with its submission.

III. PRELIMINARY ISSUES

[Para 9] In their written submissions, the Third Party and the Applicant both raised issues that were not contained in the Notice of Inquiry. I will deal with those issues prior to discussion of the issues set out for this inquiry.

1. Do the provisions of the *Child Welfare Act* apply to the records?

[para 10] The Third Party submitted both an initial written brief and a rebuttal. Both were accepted in camera. The Third Party was adamant that they did not want their personal information shared with the Applicant. The Third Party indicated that the complaint was made because of concerns for the welfare of a special-needs student and was not specifically about the Applicant. The Third Party also indicated that they attempted to report the situation to several authorities and were continually referred to someone else. At every level, the Third Party was told that they had a legal responsibility to report the situation under the *Child Welfare Act*. The Third Party was also told that the *Child Welfare Act* protects the name of someone making such a report. The Third Party argued that this protection also applies under the FOIP Act.

[para 11] The applicable sections of the *Child Welfare Act* are as follows:

4(1) Any person who has reasonable and probable grounds to believe and believes that a child is in need of protective services shall forthwith report the matter to a director.

126(4) Notwithstanding subsection (2), the name of a person who reports to a director pursuant to section 4 or 5 shall not be disclosed or communicated to any person without the consent in writing of the Minister.

[para 12] The Third Party indicated that at one point in the referral chain, they reported the situation to Children's Services. Staff at Children's Services made the assessment that this was more properly an employment issue and recommended that the issue be reported to someone at the school, school board or Alberta Learning.

[para 13] The protection afforded by section 126(4) of the *Child Welfare Act* is specific to a report made under that legislation. The records at issue were not created as a result of a report under the *Child Welfare Act*. Therefore, I conclude that section 126(4) does not have a direct application in this inquiry. However, it is very evident from the submissions of the Third Party that they fully believed that their information would remain confidential, no matter to whom they reported. This is direct evidence that personal information contained in the records was supplied to the Public Body by the Third Party, in confidence. I will deal with this further in the discussion of the issues in this inquiry.

2. Is the Applicant entitled to see the written submissions of the Third Party?

[para 14] In his rebuttal, the Applicant expressed concern that I had allowed the Third Party (as an "affected party" to this inquiry) to remain anonymous by accepting their submissions in camera. In his rebuttal, the Applicant stated:

As the victim of slanderous statements I am finding that I have fewer rights than the perpetrator. I feel I deserve an explanation from the Commissioner as to why the "Affected Party" has been allowed to once again hide behind authority and not have his/her argument disclosed to me. Second, as a victim of a malicious attack on my character I will not continue to empower my attacker by referring to them as the "Affected Party". I, in fact, am the Affected Party and in this correspondence will address myself as such, and my attacker as the perpetrator.

[para 15] Section 69(3) [previously section 66(3)] of the FOIP Act states:

69(3) The person who asked for the review, the head of the public body concerned and any other person given a copy of the request for the review must be given an opportunity to make representations to the Commissioner during the inquiry, but no one is entitled to be present during, to have access to or to comment on representations made to the Commissioner by another person.

[para 16] Section 69(3) [previously section 66(3)] requires me, in the conduct of an inquiry, to allow for representations from all of the parties. It does not grant the parties a right to have access to, or comment on, the representations of the other parties. It is the normal practice of this office to exchange all submissions, unless there are specific reasons why some or all of a submission cannot be shared.

[para 17] In this inquiry, it is very obvious that the primary information sought by the Applicant is the identity of the Third Party. Sharing the Third Party's submissions would have given the Applicant that information, thereby negating the need for an inquiry and disclosing personal information which may be afforded the protection of the FOIP Act. For this reason, I accepted the submissions of the Third Party in camera. In reaching my decision, I also considered whether it may be possible to sever information and exchange the remainder. I determined that this was not possible.

IV. ISSUES

[para 18] The Notice of Inquiry set out one issue for this inquiry: Does section 17 [previously section 16] of the FOIP Act apply to the records/information?

[para 19] Information was also removed from each of the eight pages as non-responsive to the Applicant's access request. I note that at some point after the Public Body responded to the Applicant's access request, it revised its severing and changed the designation of some severed passages from section 17 [previously section 16] to non-responsive. I will also review all the information the Public Body said is non-responsive.

IV. DISCUSSION OF THE ISSUES

A. Did the Public Body properly remove non-responsive information from the records?

[para 20] The records consist of notes that describe the substance of telephone messages or conversations. Each notation consists of the date and the name of the caller followed by the author's notes in point-form regarding the call. Many notations also contain the phone number of the caller and a time. All but page 2 of the records contain notations of more than one telephone conversation.

[para 21] The Applicant asked for any information about him held by a named employee of the Public Body. The Applicant's request also described a complaint involving a special-needs student at a specific school. Therefore, I conclude that any information either directly about the Applicant or about the specific complaint referred to in the access request is responsive.

[para 22] I have reviewed the records and find that the following information does not fall into either of the responsive categories:

- Page 1: Notes about two conversations on the top half of the page.
- Page 3: Notes about three conversations on the top three-quarters of the page.
- Page 4: Notes about two conversations on the bottom half of the page.
- Page 5: Notes about two conversations on the top half of the page.
- Page 6: Notes about one conversation at the bottom of the page.

- Page 7: Notes about two conversations at the top and center of the page.
- Page 8: Notes about three conversations covering all but the top three lines on the page.

[para 23] All of the above listed information was removed by the Public Body as non-responsive to the Applicant's access request. I confirm the Public Body's decision to remove and not to disclose this information.

[para 24] In addition to the above listed information, the Public Body also classified the information listed below as non-responsive:

- Page 1: Bottom three lines.
- Page 2: Top line; bottom 2/3 of the page.
- Page 5: Bottom half of the page.
- Page 6: Top 3/4 of the page.

[para 25] The information on these pages relates to two conversations between the named employee of the Public Body and the Third Party. While it is evident that the conversations are not about the Applicant, they do relate to the complaint referred to in his access request. In my view, when determining which information is responsive to a specific request for access, a public body must look at the specific request and then apply a broad interpretation of what records or information is responsive to the request.

[para 26] In this case, the Applicant asked for any information about him in possession of the named employee of the Public Body. In describing what information he was seeking, the Applicant referred to a specific complaint that his name may be associated with. In both of the passages listed at paragraph 25, the specific complaint was the topic of the noted conversations. I also note that the Applicant's name appeared about half-way through the noted conversation on pages 1 and 2 of the records. This line was released to the Applicant. It is not reasonable to conclude that one line is responsive and the rest of the noted conversation is not. Therefore, I find that the described information on pages 1, 2, 5 and 6 is responsive to the Applicant's request. I will therefore consider this information under section 17 as it contains personal information of the Third Party and other identifiable individuals (other third parties for the purpose of section 17 [previously section 16]).

[para 27] All of the information on pages 7 and 8 was either non-responsive or was personal information about the Applicant and released to him by the Public Body. Therefore, there is no need for me to further consider those pages of the records.

B. Does section 17 [previously section 16] of the FOIP Act apply to the records/information?

[para 28] Information was severed by the Public Body under section 17 [previously section 16] on pages 1 to 6 of the records. Section 17 [previously section 16] is a mandatory exception. The Public Body must refuse to disclose personal information of a

third party if the disclosure would be an unreasonable invasion of the third party's personal privacy. For section 17 [previously section 16] to apply, there must be personal information of a third party and the disclosure of the personal information must be an unreasonable invasion of the third party's personal privacy.

1. Is there personal information of a third party?

[para 29] Personal information is defined by section 1(n) [previously section 1(1)(n)] of the FOIP Act. The applicable clauses are as follows:

1 In this Act,

(n) "personal information" means recorded information about an identifiable individual, including

(i) the individual's name, home or business address or home or business telephone number,

...

(viii) anyone else's opinions about the individual, and

(ix) the individual's personal views or opinions, except if they are about someone else;

[para 30] I have reviewed the records and find that the severed portions contain the personal information of the Applicant, the Third Party, and other identifiable individuals, who are also third parties for the purpose of applying section 17 [previously section 16].

[para 31] The Applicant is one of three people referred to in a general fashion in a two-line passage near the top of page 2. Section 6(2) [not affected by RSA 2000] of the FOIP Act states that if information excepted from disclosure can reasonably be severed from a record, an applicant has a right to the remainder of the record. Normally, the Applicant would be entitled to receive information about him. However, the Applicant's personal information is so intertwined with the personal information of third parties that it would be impossible to release the Applicant's personal information without also giving him the personal information of the third parties. I agree with the Public Body's assessment that this information could not be reasonably severed. Therefore, I must consider whether section 17 [previously section 16] applies to the third parties' personal information which is intertwined with the personal information of the Applicant.

2. Would disclosure of the personal information be an unreasonable invasion of the third parties' personal privacy?

[para 32] The relevant portions of section 17 [previously section 16] are as follows:

17(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) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

...

(b) there are compelling circumstances affecting anyone's health or safety and notice of the disclosure is mailed to the last known address of the third party,

...

(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

...

(f) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations,

(g) the personal information consists of the third party's name when

(i) it appears with other personal information about the third party, or

(ii) the disclosure of the name itself would reveal personal information about the third party,

...

(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny,

...

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

...

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

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

(g) the personal information is likely to be inaccurate or unreliable,

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

...

a. The Public Body's Arguments

[para 33] The Public Body argued that the release of the personal information would constitute an unreasonable invasion of the third parties' personal privacy. Consequently, it was the Public Body's position that it must refuse to disclose the personal information which it severed from pages 1 to 6.

[para 34] In support of its decision, the Public Body argued that the following section 17(4) [previously section 16(4)] presumptions applied:

1. Section 17(4)(f) [previously section 16(4)(f)] *personal information consists of personal recommendations or evaluations*. The Public Body argued that where the Applicant's personal information was involved, it was "so very much" intertwined that severing of the records was not reasonable.
2. Section 17(4)(g)(i) [previously section 16(4)(g)(i)] *third party's name appears with other personal information of the third party*. The Public Body argued that the severed information included names of other identifiable individuals and opinions about them, as expressed by the Third Party.
3. Section 17(4)(g)(ii) [previously section 16(4)(g)(ii)] *disclosure of the name itself would reveal personal information of the third party*. The Public Body argued that disclosure would reveal the identity of the Third Party, who expressed concerns, in confidence, about the school environment affecting the student's educational program needs.

[para 35] The severed information contains opinion information that could be viewed as evaluative, as expressed by the Third Party. However, an opinion about someone else is the personal information of the person the opinion is about: see section 1(n)(viii) [previously section 1(1)(n)(viii)]. Most of the personal information relates to other identifiable individuals, not the Applicant. As previously stated, a small amount of the Applicant's information is contained in a two-line passage at the top of page 2 of the records. I have already found that this information could not have been reasonably severed from the records. I agree with the Public Body that section 17(4)(f) [previously section 16(4)(f)] applies to severed information in the records.

[para 36] The Public Body argued that the severed information contains the names of individuals along with personal information such as phone numbers, opinions and statements of fact, as expressed by the Third Party. I agree with the Public Body that section 17(4)(g)(i) [previously section 16(4)(g)(i)] applies to severed information within the records.

[para 37] The Public Body argued that disclosure would reveal the identity of the Third Party, who expressed concerns about the school environment affecting the student's educational program needs. It is also very evident that the Third Party wanted and expected the information to remain confidential. Not only does the Third Party's name appear, it is my opinion that the identity of the Third Party and other identifiable individuals could be determined by the content of the severed portions of the records. I agree with the Public Body that section 17(4)(g)(ii) [previously section 16(4)(g)(ii)] applies to the records.

[para 38] Section 17(5) [previously section 16(5)] sets out a list of considerations that must be taken into account by the Public Body in making its determination about whether the release of personal information would be an unreasonable invasion of personal privacy. The Public Body worked through the considerations contained in section 17(5) [previously section 16(5)] and argued that the following subsections have some application to the severed information in the records:

1. Section 17(5)(a) [previously section 16(5)(a)] - *disclosure desirable for public scrutiny*. The Public Body argued that this subsection does not apply under the circumstances. A concern was investigated by the Public Body's Special Program area to ensure that the educational needs of a student were met.
2. Section 17(5)(e) [previously section 16(5)(e)] - *the third party will be exposed unfairly to financial or other harm*. The Public Body offered arguments in support of this subsection in its in camera submission.
3. Section 17(5)(f) [previously section 16(5)(f)] - *the personal information has been supplied in confidence*. The Public Body argued that there is a great deal of evidence to support that there was an expectation of confidentiality on the part of the Third Party.
4. Section 17(5)(g) [previously section 16(5)(g)] - *the personal information is likely to be inaccurate or unreliable*. The Public Body argues that with the limited information available to it, it was unable to make an accurate assessment about the accuracy of the information offered by the Third Party to the Public Body's employee. Therefore the Public Body decided to err on the side of weighing this factor in favor of non-disclosure.
5. Section 17(5)(h) [previously section 16(5)(h)] - *disclosure may unfairly damage the reputation of any person referred to in the record requested by the Applicant*. The Public Body argued that the information was so intermingled and intertwined that disclosure could adversely affect the reputation and attach to unnamed third parties, the Applicant, or the Third Party. Consequently, the Public Body weighed this consideration in favor of non-disclosure.

[para 39] Application of section 17(5)(a) [previously section 16(5)(a)], as it relates to the need for public scrutiny of the Public Body, would weigh in favor of releasing the personal information. The Public Body has correctly characterized the information as notes about a complaint which was investigated and concluded. There is nothing to indicate that release of the personal information will assist in public scrutiny of the Public Body. I agree with the Public Body and find that section 17(5)(a) [previously section 16(5)(a)] does not apply to the severed information.

[para 40] Application of section 17(5)(e) [previously section 16(5)(e)], as it relates to exposing the Third Party unfairly to financial or other harm, would weigh in favor of not disclosing the personal information. The Public Body offered arguments in their in

camera submission about concern that the release of the information, particularly the Third Party's name, could result in unfair harm to the Third Party. It is evident that the Applicant wishes to commence some form of legal action against the Third Party. Given that the Third Party was reporting a concern about the welfare of a special-needs child and not specifically a misconduct of the Applicant, the Public Body argued that there may be some application of this consideration. The Public Body weighed this consideration against disclosure. I agree with the Public Body's position and give considerable weight to not releasing the personal information contained in the records.

[para 41] Application of section 17(5)(f) [previously section 16(5)(f)], relating to the supply of personal information in confidence, weighs in favor of not disclosing the personal information. The Public Body argued that there is considerable evidence to support the proposition that the information was supplied in confidence.

[para 42] The Third Party also made it very clear in their submission that they believed that there would be adverse consequences if the Applicant received the information. The Third Party outlined occupational changes that had happened since the situation was reported. The Third Party believes that the changes are a direct consequence of the incident.

[para 43] The Third Party's submissions offer direct evidence that the information was given to the Public Body in strict confidence. I find that section 17(5)(f) [previously section 16(5)(f)] applies to the severed information. This consideration weighs heavily against disclosure of the personal information.

[para 44] Application of section 17(5)(g) [previously section 16(5)(g)], as it relates to the likelihood that the information may be inaccurate or unreliable, would weigh against disclosure of the personal information. The Public Body argued that it did not have sufficient information to properly assess and that it erred on the side of weighing in favor of not disclosing. The severed personal information contains a great deal of opinion information. It may or may not be accurate. I find that this consideration does not deserve much weight for or against disclosure.

[para 45] Application of section 17(5)(h) [previously section 16(5)(h)], relating to the unfair damage to anyone's reputation, would weigh against disclosing personal information. The Public Body argued that that the information was so intermingled and intertwined that disclosure could adversely affect the reputation and attach to unnamed third parties, the Applicant, or the Affected Party. Consequently, the Public Body weighed this consideration in favor of not disclosing the personal information. I would agree with the Public Body. However, having reviewed the records, I find that there is little on the face of the records that is likely to cause any serious damage to anyone. Therefore, I would not place much weight on this consideration.

b. The Applicant's Arguments

[para 46] Under section 71(2) [previously section 67(2)] of the FOIP Act, the Applicant has the burden to prove that disclosure of third parties' personal information would not be an unreasonable invasion of the third parties' personal privacy.

[para 47] In his initial submission, the Applicant indicated that, as a teacher, his reputation is his "most essential professional quality." He stated that his reputation, and therefore his livelihood, is at risk because of this accusation. The Applicant indicated that the accusation against him has been proven false but that he still has concerns about the damage to his career. His position is that privacy legislation was not meant to protect people who wrongfully accuse innocent people. The Applicant wanted to know the identity of his "accuser" so that he could protect his reputation as a teacher.

[para 48] The Applicant suspects that his accuser is a former teacher at the school where the incident is alleged to have occurred. He indicated that, as a teacher, the accuser would be in violation of the Alberta Teachers Association's (the ATA) code of professional conduct, which he states requires one teacher to inform the other of any complaints first, prior to advising the authorities. The Applicant did not provide me with a copy of the ATA's code. The Applicant argued that it was impossible to report this apparent breach of conduct without knowing the identity of his accuser.

[para 49] The Applicant also argued that the Public Body should have taken section 17(5)(c) [previously section 16(5)(c)] into account in reaching its decision about whether the release of a third party's personal information would constitute an unreasonable invasion of personal privacy. If the personal information is relevant to a fair determination of the applicant's rights, it would weigh in favor of disclosing the personal information.

[para 50] In Order 98-028, the Commissioner adopted the test contained in Ontario Order P-312 relating to the equivalent provision to section 17(5)(c) [previously section 16(5)(c)]. The four-part test is as follows:

- a. the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds;
- b. the right is related to a proceeding which is either existing or contemplated, not one which has already been completed;
- c. the personal information which the applicant is seeking access to has some bearing on or is significant to the determination of the right in question; and
- d. the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

[para 51] The Applicant indicated that he wanted to know the name of his accuser so that he could take civil action against them. The Applicant did not specifically deal

with the criteria set out in the Commissioner's previous order. However, an anticipated civil action could arguably fulfill all of the requirements of the test. A defamation suit would satisfy the requirement that there is a legal right drawn from statute law. The Applicant indicates that the action is contemplated. Information about the allegation would have a bearing on the action and having the name would be required to commence the action. Therefore, I conclude that section 17(5)(c) [previously section 16(5)(c)] has some application to the severed information.

[para 52] Having reached that conclusion, I note that all but a single, intertwined, passage about the Applicant has already been released to him. Consequently, there is little information that would assist the Applicant in his pursuit of legal action except for the Third Party's name. Therefore, under these circumstances, I do not place much weight on the applicability of this provision.

[para 53] In his rebuttal, the Applicant argued that section 17(2)(b) [previously section 16(2)(b)] applies to the severed information in the records. Section 17(2)(b) [previously section 16(2)(b)] states that disclosure of personal information would not be an unreasonable invasion of the Third Party's privacy if there are compelling circumstances affecting anyone's health or safety. In support of his position, the Applicant stated:

There is no question that my health and the health of my family members have been damaged and continues to be damaged by this allegation. The stress of not knowing the identity of the accuser and the complete nature of the accusation has been wearing us all down. We need to know that we are protected from false and malicious allegations, by government policies and the legal system. Our health is dependent upon being free of this stress, and to be free of this stress we need to be empowered to take legal action against our perpetrator.

[para 54] In Order 98-007 and again in Order 2001-001, the Commissioner said that for section 17(2)(b) [previously section 16 (2)(b)] to apply, an applicant must prove two things:

- (i) that there are, indeed, compelling circumstances affecting someone's health or safety, and
- (ii) that there is a causal relationship between disclosing the personal information and the compelling circumstances affecting anyone's health and safety.

[para 55] The Applicant has not offered any evidence to support the statement that there are compelling circumstances affecting his health and that of his family. He simply argued that they are under considerable stress because they do not know the name of a person who made the complaint or the full extent of the allegations.

[para 56] To put this matter into some context, I note that the Third Party's primary concern was for the adequate supervision of a special-needs child. The Applicant was

only involved from the standpoint that there was an implication that the person hired to supervise the special-needs child may have been spending too much time in the Applicant's office. There was never any allegation that the Applicant was involved in some form of abuse of the child.

[para 57] I can understand that an allegation about inappropriate conduct on the part of a teacher can have an adverse effect on their career. In this case, however, the Applicant stated that there had been an investigation which cleared him of any impropriety. The Applicant did not offer any evidence to support the proposition that his career has been or will be damaged. Likewise, the Applicant has not offered any evidence about any adverse health issues. Therefore, it is difficult for me to reach the conclusion that there are compelling circumstances affecting anyone's health. It is also difficult for me to conclude that there is a causal relationship between a health issue and the Applicant learning the name of the Third Party. Therefore, I find that section 17(2)(b) [previously section 16 (2)(b)] does not apply to the severed information.

c. Conclusion

[para 58] In reaching a decision about whether disclosure of the severed personal information would constitute an unreasonable invasion of the third parties' privacy, all of the factors must be weighed. The Public Body has argued that the records fit some of the presumptions under section 17(4) [previously section 16(4)] of the FOIP Act, which make disclosure of the records an unreasonable invasion of a third party's personal privacy. Having reviewed the records, I find specifically that personal information of the Third Party, and other third parties, consists of personal recommendations and evaluations, consists of a third party's name which appears with other personal information of that third party, and disclosure of the name itself would reveal personal information of a third party.

[para 59] The Applicant unsuccessfully argued that section 17(2)(b) [previously section 16(2)(b)] of the FOIP Act applied to the records. Had this section applied, disclosure would not have been an unreasonable invasion of the personal privacy of the Third Party or other third parties and I would have ordered that the Public Body disclose the information to the Applicant. However, I find that there is no application of this section to the records.

[para 60] In weighing the considerations contained in section 17(5) [previously section 16(5)] of the FOIP Act, I have found that several have application to the records. Those that weigh against disclosure are as follows:

- Section 17(5)(e) [previously section 16(5)(e)] as it relates to exposing the Third Party unfairly to financial or other harm. I have given considerable weight to this circumstance, which weighs heavily against disclosure of the personal information.

- Section 17(5)(f) [previously section 16(5)(f)], relating to the supply of personal information in confidence weighs in favor of not disclosing. This circumstance weighs heavily against disclosure of the personal information.
- Section 17(5)(h) [previously section 16(5)(h)], relating to the unfair damage to anyone's reputation would weigh in favor of non-disclosure. However, I would not place much weight on this circumstance.

[para 61] The following consideration weighs in favor of disclosure:

- Section 17(5)(c) [previously section 16(5)(c)], the personal information is relevant to a fair determination of the Applicant's rights. However, under these circumstances, I do not place much weight on the existence of this consideration.

[para 62] I note that the Applicant has been given all of the information which is about him, thereby answering his concern that he be informed of the full extent of the allegations. If there are any further allegations about the Applicant, they are certainly not contained in the records at issue.

[para 63] The name of the Third Party is the only remaining information which the Applicant seeks. The Public Body has offered arguments and evidence that release of the information would constitute an unreasonable invasion of the personal privacy of the Third Party and other identifiable individuals. The Applicant has failed to offer sufficient evidence to support his position that disclosure would not be an unreasonable invasion of their personal privacy.

[para 64] After weighing all of the relevant circumstances, I find that disclosure of the personal information would be an unreasonable invasion of the personal privacy of the Third Party and other third parties. I therefore intend to confirm the Public Body's decision not to disclose that personal information to the Applicant.

V. ORDER

[para 65] I make the following order under section 72 [previously section 68] of the FOIP Act.

[para 66] I find that the Public Body properly removed non-responsive information from page 1 and pages 3 to 8 of the records. I confirm the Public Body's decision not to disclose this information.

[para 67] I find that the Public Body did not properly remove non-responsive information on pages 1, 2, 5 and 6 of the records. I have reviewed that information under section 17 [previously section 16] of the FOIP Act.

[para 68] I find that section 17 [previously section 16] applies to the personal information withheld from the Applicant. I confirm the Public Body's decision not to disclose that personal information.

Dave Bell
Adjudicator