

ALBERTA

INFORMATION AND PRIVACY COMMISSIONER

ORDER 99-019

July 8, 1999

CALGARY BOARD OF EDUCATION

Review Number 1498

I. BACKGROUND

[para 1.] On October 20, 1998, the Applicant complained to my Office that the Calgary Board of Education (the "Public Body") had disclosed the Applicant's personal information in violation of Part 2 of the *Freedom of Information and Protection of Privacy Act* (the "Act").

[para 2.] The Applicant's complaint arose out of the Public Body's alleged disclosure to the Calgary Herald of letters the Applicant had written to a number of the trustees of the Public Body. The letters allegedly contained the Applicant's personal information, consisting of the Applicant's name and address, home and business telephone numbers and the Applicant's opinions or views about the Public Body's policy on safety and security for homosexual youth and staff.

[para 3.] Under section 51(1)(a) and section 51(2)(e) of the Act, I assigned a Portfolio Officer to investigate and attempt to resolve the Applicant's complaint. The Portfolio Officer produced an investigation report, which was sent to the Applicant and the Public Body.

[para 4.] It is my practice to publicly release an investigation report once a public body and an applicant have agreed with the recommendations contained in the report.

[para 5.] While the Public Body was deciding how to implement the recommendations contained in the investigation report, one of the trustees of the Public Body, Trustee Tilston, disagreed with the conclusions and recommendations. By letter dated March 9, 1999, Trustee Tilston served notice on my Office not to release the report publicly, claiming that, to the best of her recollection, the alleged disclosure of the Applicant's personal information occurred the last week of August 1998. To support that claim, Trustee Tilston said that she looked for and found a courier slip dated August 28, 1998, indicating that a package went from the trustees' office to the Calgary Herald on that date. She believed the package contained the Applicant's letters. Since the Act did not apply to educational bodies such as the Public Body before September 1, 1998, Trustee Tilston concluded that I had no jurisdiction in the matter of the Applicant's complaint.

[para 6.] Subsequently, by letter dated March 16, 1999, the Applicant stated that his concerns in the matter had not been resolved to his satisfaction, and requested that I conduct a public inquiry. I proceeded with the Applicant's request under section 62(3) of the Act, which reads:

62(3) A person who believes that the person's own personal information has been collected, used or disclosed in violation of Part 2 of the Act may ask the Commissioner to review that matter.

[para 7.] On April 6, 1999, my Office issued a Notice of Inquiry, which stated that an oral public inquiry would be held on May 31 and June 1, 1999. The Notice of Inquiry was sent to the head of the Public Body, to the Applicant, and to Trustee Tilston (referred to periodically in this Order as the "Affected Party").

[para 8.] The Notice of Inquiry said that the inquiry would be conducted in two parts: (i) the May 31 and June 1, 1999 inquiry would be limited to the issue of whether the Public Body disclosed the Applicant's personal information before or after September 1, 1998, which is the date the Act was extended to and applied to the Public Body (the "jurisdictional issue"); and (ii) if the jurisdictional issue was resolved by a finding that the disclosure occurred on or after September 1, 1998, I would proceed to conduct that part of the inquiry dealing with whether the Public Body had disclosed the Applicant's personal information in violation of Part 2 of the Act.

[para 9.] Before the date set for the inquiry, my Office also provided the parties with a binder containing relevant documents (Tabs 1 to 20) for the inquiry. Two other documents, Tabs 21 and 22, were provided

just before the inquiry date. That binder of documents was marked as Exhibit 1 during the inquiry.

[para 10.] For the May 31 and June 1, 1999 inquiry dealing only with the jurisdictional issue, I issued Notices to Attend on the following individuals, to appear as witnesses at the inquiry:

- three individuals who are all presently trustees of the Public Body (Trustee Tilston, Trustee Pollock and Trustee Lovecchio). I have named these individuals, since they appeared in their public capacity as trustees of the Public Body.
- the Chief Superintendent of the Public Body, who is the head of the Public Body for the purposes of the Act (the “Chief Superintendent”)
- the Superintendent – Finance and Business Services for the Public Body (the “Superintendent – Finance and Business Services”)
- the former secretary to the trustees of the Public Body (the “Secretary”)
- a reporter employed by the Calgary Herald, to whom the Applicant’s personal information had allegedly been disclosed (the “Reporter”)

[para 11.] The Notices to Attend were issued under the authority of section 54(1) of the Act and sections 3 and 4 of the *Public Inquiries Act*, R.S.A. 1980, c. P-29.

[para 12.] During the inquiry, I found it necessary to call another witness employed by the Calgary Herald (the “Calgary Herald employee”). On May 31, 1999, the first day of the inquiry, that witness was served with a Notice to Attend, through her solicitor.

[para 13.] On May 31 and June 1, 1999, I conducted the inquiry on the jurisdictional issue. The Applicant represented himself at the inquiry. The Public Body, the Affected Party and all the other witnesses were represented by solicitors.

[para 14.] At the conclusion of the inquiry on June 1, 1999, I rendered an oral decision on the jurisdictional issue, with written reasons to follow. I decided that the Public Body had disclosed the Applicant’s personal information to the Calgary Herald after September 1, 1998, when the Act applied to the Public Body. This Order sets out my written reasons for that decision.

II. PRELIMINARY MATTERS

[para 15.] There were two preliminary matters that I had to decide at the commencement of the inquiry:

1. Whether I should conduct some or all of the inquiry *in camera*, as opposed to publicly.
2. Whether I had the authority to compel the Reporter to attend and answer questions.

1. *In camera* or public inquiry

[para 16.] The Public Body, the Affected Party (Trustee Tilston), and Trustees Pollock and Lovecchio asked me to consider whether the inquiry should be conducted *in camera* to accommodate not only the privacy concerns relating to the Applicant's personal information, but also the concerns about the potential damage to the trustees' reputations, given the issues of credibility in this inquiry. On the latter point of issues of credibility, there was particular concern about having the inquiry conducted in public, given that I was deciding only the jurisdictional issue. The Public Body further argued that the concerns about damage to reputations could affect full and frank disclosure and make my job more difficult if the inquiry were held in public, and that to hold the inquiry *in camera* would promote full and frank representations.

[para 17.] To support the argument for an *in camera* inquiry, the Public Body cited my Order 98-006, in which I expressed the view that a party should be allowed an *in camera* session for submissions that are of a sensitive or confidential nature. Although I did not advocate that an *in camera* session be allowed in every situation where a party claimed its representations were of a sensitive or confidential nature, in Order 98-006, I accepted that an *in camera* session should be allowed if it is necessary to promote full and open representations.

[para 18.] The Affected Party also argued that section 66(3) of the Act was to be interpreted as imposing a duty upon me to maintain confidentiality throughout the inquiry process, particularly because there is personal information that may be disclosed and because this inquiry was about jurisdiction only. If I decided that I did not have jurisdiction, I would have compelled people to give evidence on a matter over which I did not have jurisdiction. The Affected Party maintained that it is important that matters do not reach the media or the public at large if I ultimately determine that I have no jurisdiction. Therefore, the Affected Party argued that section 66(3) provides a statutory safeguard of the

privacy of an individual who is compelled to give testimony, and dictates the manner in which this inquiry must be held, namely, that I am required to hear the witnesses individually, with no other parties or witnesses present for those representations. Given that witnesses are under compulsion to testify, the Affected Party concluded that the inquiry had to be conducted *in camera*.

[para 19.] Section 66(3) reads:

66(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 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 the representations made to the Commissioner by another person [emphasis added].

[para 20.] I did not agree with the Affected Party's interpretation of section 66(3). In Order 97-009, I reviewed the Ontario Commissioner's interpretation of "no person is entitled" (Ontario Order 164). I agreed with the Ontario Commissioner that those words mean that no person has the right or may insist upon being present during, having access to or commenting on another person's representations to the Commissioner. Section 66(3) does not provide a statutory safeguard of privacy for individuals who are compelled to testify. I also did not agree with the Affected Party's argument that section 55(1) of the Act requires that I interpret section 66(3) differently than I did in Order 97-009.

[para 21.] In Order 97-009, I also said that I am master of my own procedure. Therefore, I decide whether a person will be present during, have access to or comment on representations made to me by another person.

[para 22.] In this case, the Applicant was concerned about disclosing only the personal information related to his home address and telephone number. That concern was resolved *in camera*.

[para 23.] The concerns about harm to the trustees' reputations because of issues of credibility remained prior to establishing my jurisdiction. Therefore, in the unusual circumstances of this case, I decided to accommodate those concerns by hearing the evidence *in camera*.

[para 24.] However, I wanted to provide the Applicant with some opportunity to ask questions of the witnesses, and I stated this concern on the record during the public portion of the inquiry. Since it would be unfair to permit only the Applicant and not the other parties to ask questions, I therefore decided to use a “hybrid” procedure: (i) I would hear the evidence *in camera*; (ii) I would then bring the parties back into the room and have my Counsel briefly summarize the evidence of the particular witness; and (iii) I would then permit the parties to ask that witness some questions. The Public Body and the Affected Party objected to my procedure of summarizing the evidence and allowing the witnesses to be questioned.

[para 25.] In light of the “hybrid” procedure I adopted and my decision on the jurisdictional issue in this inquiry, I have written this Order on the basis of the evidence heard by all the parties, including my Counsel’s summary of the *in camera* evidence. Portions of that evidence heard when all the parties were present have been reproduced in this Order.

2. Authority to compel the Reporter to attend and answer questions

[para 26.] The Reporter brought a preliminary application, questioning my authority to compel him to attend and answer questions in this inquiry. The Reporter’s submission was that “journalist privilege” prevented my compelling him to attend and give evidence. He provided an affidavit in support of that application. The affidavit has been marked as Exhibit 2.

[para 27.] I subsequently ruled that I had the jurisdiction under section 54(1) of the Act and under sections 3 and 4 of the *Public Inquiries Act* to summons the attendance of witnesses, including the Reporter. I then required the Reporter to be sworn, and to put on the record the matters over which he was claiming “journalist privilege”.

III. RECORDS AT ISSUE

[para 28.] The records consist of letters the Applicant sent to the Public Body, and letters from the Public Body responding to the Applicant (the “Applicant’s letters”). The Applicant’s letters are in issue only insofar as the date that the Public Body disclosed the Applicant’s letters. A number of those letters have been included as Tabs 1 to 9 and Tabs 21 and 22 in the binder of materials provided to the parties, which has been marked as Exhibit 1.

IV. ISSUE

[para 29.] The particular jurisdictional issue to be decided in this inquiry is whether the Public Body disclosed the Applicant's personal information before or after September 1, 1998, which is the date the Act was extended to and applied to the Public Body.

[para 30.] The matter of whether the Applicant's letters contained the Applicant's personal information was left to be argued during the second part of the inquiry. Nevertheless, during the *in camera* portion of this inquiry, I reviewed those letters with the Applicant and further satisfied myself on an independent review that the Applicant's letters contained the Applicant's personal information, consisting of at least the Applicant's name and home address, as set out in section 1(1)(n)(i) of the Act.

V. DISCUSSION OF THE ISSUE

[para 31.] I intend to deal with the issue in the following five parts:

1. Who disclosed the Applicant's personal information?
2. To whom was the Applicant's personal information disclosed?
3. What personal information of the Applicant was disclosed?
4. In what way was the Applicant's personal information disclosed?
5. When was the Applicant's personal information disclosed?

1. Who disclosed the Applicant's personal information?

[para 32.] Trustee Tilston testified that the Applicant's letters were sent from the trustees' office to the Calgary Herald. Trustee Tilston said she instructed the trustees' former secretary (the "Secretary") to send the Applicant's letters to the Calgary Herald. Trustee Tilston also testified that, although she gave instructions for the letters to be sent to the Calgary Herald, she did not personally send them. She said she was informed that the release was done by courier. She said she believes that the courier package sent to the Calgary Herald on August 28, 1998, contained both an advertisement to be published in the Calgary Herald and a separate envelope containing the Applicant's letters.

[para 33.] Trustee Tilston also stated that the Applicant's letters were released because it was the Board's belief that the Applicant was not representing himself accurately to the public, and it was in the public interest to know. Trustee Tilston said she became aware of how the Applicant was representing himself through the media and through calls from various constituents. The calls started after the Applicant took out

his nomination papers on August 12, 1998, for the purpose of running as a candidate for public school trustee in the 1998 general election. Trustee Tilston says she had spoken to and had the agreement of the majority of the Board to release the Applicant's letters.

[para 34.] The Secretary's evidence is that she could not say what were the contents of the courier package that was sent to the Calgary Herald on August 28, 1998. She could not say whether or not there was an additional envelope containing the Applicant's letters, and she did not know exactly what were the contents of that envelope. She believes that there may have been an advertisement in the courier package. In response to my question *in camera*, which response I summarized for the parties after the *in camera* session, the Secretary said that she did not recall an occasion where sheaves of letters authored by one person have been sent out in the manner that was alleged.

[para 35.] Trustee Pollock testified that she did not release the Applicant's letters to the Calgary Herald. Trustee Lovecchio also testified that she did not personally release the letters.

[para 36.] The Reporter testified that the Applicant's letters were given to him in person in a manila or a brown envelope. The Reporter testified that he received approximately a dozen letters. He identified the letters appearing at Tabs 1, 3 and 7 as letters he recalled receiving.

[para 37.] However, claiming "journalist privilege", the Reporter refused to answer any questions about the identity of the person who gave him the envelope containing the Applicant's letters or about the source of those letters. During the *in camera* portion of the Reporter's evidence, he produced an affidavit to support his claim for "journalist privilege". That affidavit was marked as Exhibit 2. I did not provide that affidavit to the parties, pending any application I might have to make to the Court of Queen's Bench to compel the Reporter to answer questions about that identity and his source. Consequently, I reserved the right to require the Reporter to answer questions about the identity and his source, in another forum if necessary. That would become necessary only if, at the conclusion of this inquiry, I required that evidence to determine when the Public Body disclosed the Applicant's letters.

[para 38.] The Public Body questioned the Applicant about other persons to whom the Applicant had disclosed the letters. In particular, the Public Body asked the Applicant about the letters the Applicant wrote to trustees, contained at Tabs 1 and 3. As to Tab 1, the Applicant replied that he may have shown that letter to a couple of concerned parents and to one of his co-workers, but he did not give them copies of the letter. As to Tab 3, the Applicant said that one co-worker probably saw a copy of

that letter, but did not get a copy. When asked where he kept the letters, the Applicant replied that they were in an envelope in his briefcase or on his own personal computer at home. He further said that his co-worker did not have access to the letters at any time.

[para 39.] The Chief Superintendent stated that it was the trustees' belief that the Applicant's letters were widely circulated.

[para 40.] I note that the Public Body did not ask the Applicant any questions about the disclosure of Tab 7, which is a letter Trustee Tilston wrote in response to the Applicant's letter to Trustee Tilston (which appears at Tab 6).

[para 41.] The Public Body argued that anyone who had access to the Applicant's letters, such as a co-worker, could have given those letters to the Reporter. If I accepted that argument, I would be forced to ignore Trustee Tilston's testimony that she gave instructions for the letters to be sent to the Calgary Herald. I would be forced to find that someone else (unconnected to the trustees' office) coincidentally disclosed the Applicant's letters to the Calgary Herald close to the time frame in which Trustee Tilston says she gave instructions for the letters to be sent to the Calgary Herald. Furthermore, given that Tab 7 is a letter from Trustee Tilston to the Applicant, the proposition that someone other than the Public Body sent that letter to the Calgary Herald is speculative, and I do not accept it.

[para 42.] The evidence of Trustee Tilston is that she gave instructions for the Applicant's letters to be sent to the Calgary Herald, and the evidence of the Reporter is that he received the Applicant's letters. Those two events occurred sometime within the August/September 1998 time frame. On the evidence of Trustees Tilston, Pollock and Lovecchio and the Secretary, none of them personally sent the letters to the Calgary Herald. However, in this inquiry, it is not necessary that I make a finding as to which specific individual within the Public Body disclosed the Applicant's letters. There is a sufficient nexus between the evidence concerning Trustee Tilston's instructions to disclose and the Calgary Herald's receipt of the letters to find that, on balance, the Public Body disclosed the Applicant's letters to the Calgary Herald.

[para 43.] The stated reason for the Public Body's disclosing the Applicant's letters is the trustees' belief that the Applicant was misrepresenting himself to the media and to the public in his candidacy for public school trustee. I believe that that stated reason was the Public Body's motive for the disclosure and is plausible. The Applicant believes that the motive was to damage his election prospects.

2. To whom was the Applicant's personal information disclosed?

[para 44.] I have found that the Public Body disclosed the Applicant's letters to the Calgary Herald. In this case, I must determine to whom within the Calgary Herald the letters were disclosed. A determination as to whom the Applicant's letters were disclosed has a direct bearing on a determination as to when the letters were disclosed.

[para 45.] Trustee Tilston testified that, although the Applicant's letters were sent from the trustees' office to the Calgary Herald, she does not know exactly to whom at the Calgary Herald the Applicant's letters went. She said that she has no first-hand knowledge of to whom the separate envelope containing the Applicant's letters was addressed. She said that she believes it could have been addressed to one of two named reporters at the Calgary Herald, including the Reporter, or it could have been addressed to just "Education Reporter" or to the newsroom of the Calgary Herald.

[para 46.] The Reporter testified that the Applicant's letters were given to him in person.

[para 47.] The Applicant stated that the Reporter told him in a telephone conversation that the Reporter had received a number of the Applicant's letters. The Applicant points to two documents to support that statement: (i) Tab 10, which is a copy of the Applicant's September 29, 1998 letter to the Public Body, complaining about the Public Body's disclosure of the Applicant's letters to the Reporter at the Calgary Herald; and (ii) Tab 17, which is a copy of the Calgary Herald's December 3, 1998 letter to the Applicant, indicating that the Reporter advised the writer that the Applicant's letters were destroyed after publication because they would identify the source. In my view, both documents are independent evidence pointing to the Reporter as the individual at the Calgary Herald who received the Applicant's letters.

[para 48.] Furthermore, an article appearing in the Calgary Herald on September 30, 1998, a copy of which appears at Tab 12, states that "The Herald obtained leaked copies of several letters [the Applicant] wrote to trustees detailing his opposition to the district's controversial plan to protect homosexual students and staff." That article was written by the Reporter.

[para 49.] Therefore, I find that the Public Body disclosed the Applicant's letters to the Reporter.

3. What personal information of the Applicant was disclosed?

[para 50.] Trustee Tilston testified that, although she gave instructions for the Applicant's letters to be sent to the Calgary Herald, she has no idea what letters were released. Trustees Pollock and Lovecchio also testified that they did not have any first-hand knowledge as to what letters were released.

[para 51.] As previously noted, the Reporter testified that he received approximately a dozen letters. He identified the letters appearing at Tabs 1, 3 and 7 as letters he recalled receiving. The Reporter also said that there were responses from trustees of the Public Body in the letters he received. Tab 7 is Trustee Tilston's reply to one of the Applicant's letters to Trustee Tilston (appearing at Tab 6). Tabs 1 and 3 are letters the Applicant wrote to two other trustees of the Public Body.

[para 52.] The Secretary's evidence is that the Applicant's letters were in a file on the policy on safety and security for homosexual youth and staff. The letters the Reporter identified as ones he received deal with that issue.

[para 53.] Therefore, on balance, I find that the Reporter received at least the letters appearing at Tabs 1, 3 and 7, and I find that the Public Body disclosed to the Reporter at least the letters appearing at those three Tabs.

4. In what way was the Applicant's personal information disclosed?

[para 54.] Although Trustee Tilston testified that she gave instructions for the Applicant's letters to be sent to the Calgary Herald, and that she believes that the release occurred before September 1, 1998, she says only that she was informed that the disclosure of the Applicant's letters to the Calgary Herald was done by courier. As previously noted, Trustee Tilston believes the courier package sent to the Calgary Herald on August 28, 1998, contained both an advertisement to be published in the Calgary Herald and a separate envelope containing the Applicant's letters.

[para 55.] The Secretary acknowledged that it is her handwriting on the courier slips that went to both the Calgary Herald and the Calgary Sun on August 28, 1998. However, as also previously noted, she testified that she does not know what went into the courier package that was sent to the Calgary Herald on that date. She believes there may have been an advertisement in the package. She said that that same advertisement was sent to the Calgary Sun.

[para 56.] The Calgary Herald employee to whom the August 28, 1998 courier package was addressed testified that she received advertisement copy from the Public Body on August 28, 1998. She produced a copy of that advertisement, which has been marked as Exhibit 3.

[para 57.] The Calgary Herald employee reviewed a copy of the August 28, 1998 courier slip, marked as Exhibit 4. That courier slip is directed to her attention and contains her first name. She noted that her practice was to request that information be sent to her attention, "Territory 1", which is what appears on the courier slip marked as Exhibit 4.

[para 58.] However, she testified that she did not sign for receiving the courier package, and she did not recognize the name of the individual who did sign. Her evidence is that when a courier package is delivered to her, it sometimes comes from the mailroom and sometimes from security.

[para 59.] Furthermore, she could not positively identify what was in the courier package delivered with the courier slip marked as Exhibit 4. However, she testified that she did not receive any envelope or material addressed to the newsroom or any particular reporter at the Calgary Herald. She did not recall ever receiving a courier package that included material for someone else at the Calgary Herald.

[para 60.] As previously noted, the Reporter testified that the Applicant's letters were given to him in person in a manila or a brown envelope.

[para 61.] The Applicant believes that the disclosure of the Applicant's letters occurred by fax. The Applicant again points to the letter from the Calgary Herald to the Applicant, a copy of which appears at Tab 17. That letter states merely that the letters were destroyed after publication because they would identify the source. From that statement, I do not draw an inference that the letters were faxed. There is no evidence before me that the Applicant's letters were disclosed by fax. The evidence is to the contrary, in particular the Reporter's evidence that the letters were given to him in person in a manila or brown envelope, and that no one else at the Calgary Herald was privy to the information.

[para 62.] Other than the Reporter, none of the witnesses has given first-hand evidence about how the Applicant's letters were sent from the trustees' office to the Calgary Herald. Because the Reporter refuses to answer questions about the identity of the person who gave him the letters, I infer that the identity of that individual would reveal the source of the letters. Therefore, on balance, I find that the Applicant's letters

were hand-delivered to the Reporter, the Reporter received the letters in person, and the letters were not sent by courier or by fax.

5. When was the Applicant's personal information disclosed?

[para 63.] I have found that the Public Body disclosed to the Reporter the Applicant's letters, consisting of at least those letters at Tabs 1, 3 and 7.

[para 64.] When Trustee Tilston was questioned about the date when she ordered the Applicant's letters to be sent to the Calgary Herald, she testified that she had spoken to and had the agreement of the majority of the Board to release the letters. She said that:

“...[W]e were certain that prior to September 1 these letters were public information, given they were unsolicited letters attempting to influence policy and we were unsure as to the application of the FOIP Act after September 1, so we were insistent they be released prior to that.”

[para 65.] Trustee Pollock testified that the trustees had discussions in August 1998 about disclosing the Applicant's letters. However, she testified that she is not aware of the date of the release of the Applicant's letters. Trustee Lovecchio testified that she has no proof that the Applicant's letters were released in August 1998.

[para 66.] The Secretary's evidence is that she was at the trustees' office on August 28, 1998. About that timeframe, she recalled Trustee Tilston asking her if there was a file on the policy on safety and security for homosexual youth and staff. When questioned about whether she retrieved the file for Trustee Tilston and whether the Applicant's letters were in the file, she responded “Yes”. However, as previously noted, the Secretary's evidence is that she could not say what were the contents of the courier package that was sent to the Calgary Herald on August 28, 1998. She could not say whether or not there was an additional envelope containing the Applicant's letters, and she did not know exactly what were the contents of that envelope.

[para 67.] She further testified that this was a busy time for her as she was trying to get a lot of work done before going away on the weekend. She remembers that there was a big push because of the articles the trustees wanted to get prepared to put into the paper. She says she may have left the courier slips with the trustees. She also said that she believes that prior to leaving the office on August 28, she may have taken the courier slip down to the mailroom and asked that it be sent to the Calgary Herald. In answer to a question as to whether, at any time on or

after September 1, she sent letters from the Applicant to the Reporter at the Calgary Herald, she said “No”.

[para 68.] The Chief Superintendent’s evidence is that she remembered speaking to the Applicant at an evening meeting on September 28, 1998, about whether it was permissible for trustees to release confidential information to the press. She also recalled that, in response to the Applicant’s question about whether the Public Body considered letters sent to the Public Body by concerned citizens or parents to be confidential, she said “Yes”.

[para 69.] The Chief Superintendent further testified that she was not aware of when the letters were released. She became aware of the August 28, 1998 alleged disclosure date when she was in receipt of a copy of the Affected Party’s March 9, 1999 letter sent to my Office. As previously noted, that letter served notice on my Office not to disclose publicly my Office’s investigation report into the matter of the disclosure of the Applicant’s personal information.

[para 70.] The Applicant stated that the Reporter contacted him on September 28, 1998, at which time the Reporter allegedly stated that he had just received the Applicant’s letters.

[para 71.] The Applicant further gave evidence that on August 12, 1998, he picked up his nomination papers to run as a candidate for public school trustee. A copy of that document appears at Tab 19. However, the Applicant says he did not publicly declare his candidacy until September 17, 1998, at which time he sent faxes to the media. A copy of a fax to the media appears at Tab 13. The Applicant testified that he subsequently met with another reporter from the Calgary Herald on September 19, 1998. That reporter wrote an article about the Applicant’s candidacy, which was published in the Calgary Herald on September 21, 1998. A copy of that Calgary Herald article appears at Tab 11. That article states that the Applicant took neither side in the dispute over homosexual literature in Calgary public schools.

[para 72.] The Reporter testified that he received the brown envelope containing the Applicant’s letters two or three days before the article he wrote about the Applicant was published in the Calgary Herald on Wednesday, September 30, 1998. He believed he received the information on Monday, September 28, 1998, but he could not say that with absolute certainty. He believed it was the Monday because he required at least a day to work on the story and get it in finished form. A copy of the September 30, 1998 Calgary Herald article written by the Reporter appears at Tab 12. That article states that the Applicant wrote

to trustees detailing his opposition to the district's controversial plan to protect homosexual students and staff.

[para 73.] When the Reporter was questioned about whether he was involved in earlier coverage when this same issue came up with the Calgary Board of Education prior to September 1, 1998, the Reporter responded that he was. However, in answer to the question as to whether it was possible that he received any letters at that point in time, he responded that he did not receive any letters at that point in time.

[para 74.] The Reporter also testified that he was on holidays from approximately August 20 to September 19, 1998.

[para 75.] Further documentary evidence related to the date of the disclosure of the Applicant's letters appears at Tab 15, which is a copy of Trustee Tilston's cell phone log for calls billed to Trustee Tilston's cell phone from August 20, 1998 to September 30, 1998. On that cell phone log are two calls to the Reporter's telephone number on September 18, 1998, and three calls to the Reporter's telephone number on September 28, 1998.

[para 76.] The Public Body and the Affected Party argued that, given the conflicting evidence about when the letters were released to the Calgary Herald and no direct evidence of any witness about when the Public Body released the letters, this inquiry is without jurisdiction to proceed on the merits. I disagree with that argument.

[para 77.] In effect, the Public Body and the Affected Party are asking that I find that the Public Body disclosed the Applicant's letters to the Calgary Herald before September 1, 1998. To do that, I would have to entirely discount the evidence of the Reporter. I would have to accept that the Applicant's letters that Trustee Tilston said she gave instructions to send to the Calgary Herald were left to languish at the Calgary Herald from approximately August 28, 1998, until the Calgary Herald published the Reporter's article about the Applicant more than a month later on September 30, 1998. In the meantime, another reporter published an article about the Applicant on September 21, 1998. Even taking into consideration that the Reporter was on holidays from August 20 until September 19, I do not believe the Reporter would have delayed writing an article about the Applicant and delayed publishing it until September 30, given the necessity to publish quickly.

[para 78.] I prefer the Reporter's evidence to Trustee Tilston's evidence for a number of reasons. First, the Reporter gave first-hand evidence about the date and the manner in which he received the Applicant's letters. Second, in my view, the Reporter does not have any stake in the

outcome of this inquiry. Third, the Reporter's evidence is corroborated to some extent by evidence of the Chief Superintendent and the Applicant, and to a greater extent by the documentary evidence, as set out in this Order. These factors make the Reporter's evidence more reliable than the evidence of Trustee Tilston.

[para 79.] Furthermore, Trustee Tilston's evidence about the date of the disclosure is not corroborated by the evidence of the Secretary or Trustees Pollock and Lovecchio. The courier slip is evidence only that an advertisement went from the trustees' office to the Calgary Herald on August 28, 1998, not the Applicant's letters.

[para 80.] Finally, I believe that the article about the Applicant, which appeared in the Calgary Herald on September 21, 1998, is pivotal to the trustees' decision to disclose the Applicant's letters because the Applicant was misrepresenting himself, in the trustees' view. I believe that the trustees would have felt compelled to "set the record straight" at that time.

[para 81.] Therefore, on balance, I find that the Public Body disclosed the Applicant's letters to the Reporter on September 28, 1998.

VI. ORDER

[para 82.] I find that the Public Body disclosed the Applicant's personal information to the Calgary Herald after September 1, 1998. Having made this finding, I rule that I have the jurisdiction to consider whether the Public Body disclosed the Applicant's personal information in violation of Part 2 of the Act. That inquiry will be scheduled for a future date.

[para 83.] Since I have decided the jurisdictional issue on the basis of the evidence before me, I do not find it necessary at this time to apply to the Court of Queen's Bench to compel the Reporter to answer questions about the identity of the person who gave him the envelope containing the Applicant's letters or the source of those letters. However, I continue to reserve my right to require the Reporter to answer those questions, in the event that any of the parties apply for judicial review of my decision on the jurisdictional issue.

Robert C. Clark
Information and Privacy Commissioner