

**ALBERTA  
INFORMATION AND PRIVACY COMMISSIONER**

**Report on the Investigation into Alleged Breach of Privacy by Public Body**

**March 19, 2001**

**Grande Yellowhead Regional Division**

**Investigation #1499**

**The Concern**

In October 1998, a parent ("Ms. X" for purposes of this report) residing within the area served by the Grande Yellowhead Regional Division called the Office of the Information and Privacy Commissioner ("IPC") with her complaint regarding the disclosure of her name and home telephone number to a sales representative. Ms. X followed up that call with a written complaint, received at IPC on October 28<sup>th</sup> and assigned to the undersigned as Investigation Case #1499.

Her complaint described how a community high school had given her name, in its familiar short form, and her phone number, to a sales representative calling from Toronto:

*On the morning of October 14, 1998, I received a phone call asking for me by name ... ..from a man out of Toronto with a marketing firm. This gentleman informed me that he spoke to the (high school), and the teacher liked what he was promoting and that this teacher gave him my name and phone number so I could hear his spiel.*

The letter of complaint draws a contradistinction between this event and the school's refusal to provide Ms. X with personal information about the students in its Grade 12 class.

The IPC Investigator requested confirmation of the event from the public body. On November 27<sup>th</sup> the school division's FOIP Coordinator provided background helpful in putting this dispute in context.

The Investigator learned that Ms. X was a well-known, long-standing and active member of her small-town community. Her home phone number is listed in the public directory for that community under her husband's name, which is also her surname. Ms. X uses the familiar short form of her given name in her community dealings, and is known casually by that name. The school did not have reason to believe that Ms. X was shielding her identity from others. (Ms. X herself does not say that she was trying to keep a low profile.)

Ms. X was also a parent of young persons attending the high school. She and another parent had openly challenged the former Principal's decisions to split the graduation ceremonies into a May formal (dinner-dance) and an August commencement (cap & gown + awards recognition). Ms. X and her ally had lost out in that debate in the previous year, when Ms. X had had a Grade 12 son.

At the time of the complaint, Ms. X had another son progressing through Grade 11. She continued her interest in graduation ceremonies at the school and maintained an active presence in related fund-raising campaigns.

Around September 1998, Ms. X requested that the School Secretary provide her with a listing and contact information about the upcoming graduands. The Secretary refused to provide the list of names, as the school did not see Ms. X's fund-raising work as requiring that personal information about third parties. Ms. X conveyed to the school her displeasure at being denied access to the names.

On October 16 or 19, 1998, the Interim Principal talked on telephone long-distance to a fund-raising items salesperson, and gave to that commercial representative Ms. X's name (short form) and telephone number. The Interim Principal later explained to her FOIP Coordinator that relaying the caller to Ms. X at her home was a conscious decision taken to avoid unnecessary in-school direct contact in a relationship that had become confrontational.

The presence of Ms. X at the school had become fraught with tensions since an event that had happened several weeks earlier when Ms. X had booked a room at this community school, via the community use agent rather than the school office, to organize an after-hours meeting for Grade 12 students, without the knowledge, approval or sponsorship of school authorities. The school viewed this as Ms. X organizing a school meeting outside of school control, an action beyond her normal volunteer capacity.

At the September 30<sup>th</sup> meeting with the students, Ms. X and her associate discussed their own student survey on the advisability of conducting independent graduation ceremonies. The school took the view that Ms. X and her associate were challenging outright the authority of the teachers to decide when the graduation ceremonies (the "grad") should be held.

Ms. X did complain directly to the School Superintendent about these grad disagreements. In that complaint, Ms. X did indicate that she would continue her role with the grad organizing committee, so she had never relinquished that volunteer role. Her complaint to the Superintendent appears directed at having the Superintendent overrule the Interim Principal on her decision to continue the split ceremony model introduced by her predecessor.

Upon learning these circumstances, the Investigator shared with the parties verbally that the actions of the public body (providing Ms. X's contact information to the man from Toronto and refusing to give Ms. X the graduand information) were consistent with the Act.

A year later Ms. X again contacted IPC to say that there may have been a repeat of the disclosure, again to a sales rep from Toronto who contacted her long distance to sell his grad memento/fund-raising products. Ms. X declared in that call that "I am a fundraising volunteer for the kids, not a volunteer for the schools.... They can't have it both ways: how can I be a volunteer if they won't give me the list?" Ms. X indicated that she would like to see a formal report on this whole matter, including a detailed run through the logic applied.

### **Background and Jurisdiction**

Having worked with other cases where serious privacy upsets have left individuals exposed to significant harms, the Investigator finds it difficult to imagine that the Act was proclaimed to address this level of matter. However, the events in this case did happen before the amendments of May 1999 made it explicitly clear that a volunteer performing a function for a public body is, for purposes of the Act, an employee of that public body.

Schools were brought under the Act on September 1, 1998. The alleged disclosure being investigated happened in October 1998. The high school, as a branch of the

larger school division, was a public body under the Act when it passed along Ms. X's name and number. So Ms. X has the right to request an investigation under Section 51(2)(e) of the Act.

Clearly Ms. X views the passing along of her personal information as an unauthorized disclosure, outside the allowable disclosures enumerated in Part 2, section 38 of the Act.

### **Questions for the Investigation**

The key question for the Investigator to pursue is:

***Did the school disclose Ms. X's personal information without proper authority, thereby violating her privacy?***

Ms. X has put forward a two-edged proposition, arguing that either the school violated her privacy rights or it denied her access rights by the two actions it took. To my knowledge she has made no FOIP request under Part 1 of the Act, so I cannot here say that she has or does not have a right to access the information about the graduands. However, I will comment on the appropriateness of the school's actions outside of any access request.

### **Summary of Investigation Findings**

The Act has been amended in several respects since these events; the Investigator references the Act as it stood at October 1998, the time of the alleged disclosure. In 1998 the definition given to employee was:

*1(1)(e) "employee", in relation to a public body, includes a person retained under a contract to perform services for the public body;*

On first impression, this definition seemed directed to persons operating under explicit commercial contracts. But, in the training and the practical advice being given in 1998 to administrators about this part of the Act, the definition for deeming employees was extended by logic to all persons contracted to perform a service for the public body. So long as there was an understanding as to what was expected and as to what consideration (reward) was to be exchanged, a contract was seen to exist. So the parent who voluntarily answers school phones at Noon-hour for the privilege of being recognized as "Lunch Secretary" was arguably under a contract, and so deemed an employee for purposes of the Act. That status bound the volunteer to the whole raft of obligations that fall on the head of the public body under Part 2 of the Act to protect people's privacy and treat their personal information carefully. And that status also made it possible for a public body to treat the volunteer as an employee who could be given third-party personal information for consistent uses.

*Note:* The May 1999 FOIP Amendment Act codified this extended interpretation by making explicit reference to volunteers. Now it is immediately evident that "employee" includes "a person who performs a service for the public body as an appointee, **volunteer or student** or under a contract or agency relationship with the public body [s.1(1)(e)]." [Emphasis added]

An employee, whether actual or deemed, has no right of privacy concerning his or her responsibilities as an employee (section 16). Place of employment, and that place's phone number, is logically a subset of responsibilities.

Applying the implications of this definition to Ms. X's two-pronged complaint, the school gave an employee's name and place-of-work contact number to an outside caller representing a relevant enterprise. I do not see this as a disclosure; it is a use of employee information to contact an employee. That use does seem consistent with one reason, possibly among several, for which the school had Ms. X's name and number in its files, or was able to consult the same in the phone book.

So if Ms. X was an employee, then why couldn't she be given the personal information about the students? Clearly here the school had been given good reasons to believe that she wanted that information for non-school purposes. Her declared interest was in using student information to conduct survey activity aimed at political lobbying or at pressuring the school officials into agreeing to her positions. Ms. X was not acting as an employee of the school in that activity, and so should not have had access to the information.

This interpretation relies on the proposition that the volunteer Ms. X. was indeed an employee for purposes of the Act. I examined the alternative interpretation which would hold that Ms. X was not an employee "retained under a contract". In that case, the providing of her information to the salesperson would be a disclosure, and the question to examine would be whether this disclosure constituted an unreasonable invasion of her privacy. I note that the repeal and replacement of the definition of "employee" happened without mention in the passing of Bill 37, the 1999 FOIP Amendment Act. The logic provided by the Government to the draftsmen for Bill 37 pointed out that, as a result of the extension of the FOIP Act to the health and education sectors, it had been recognized that a more comprehensive definition of the term "employee" was needed. The Special select review Committee responsible for proposing amendments to the Act did not list this repeal-and-replacement detail as a change decision in its final report. By all appearances, the replacement definition was done to make explicit and clear matters that previously were too implicit and vague. The new comprehensive definition did not introduce new classes of deemed employees.

The point about whether Ms. X was or was not deemed an employee at the time of the disclosure is now moot; the expanded definition makes explicit reference to volunteers. The training given to school divisions in 1998 would have painted this case as one where the school was dealing with a deemed employee for the purposes of FOIP, and in that light the school acted in accordance with the popularly-understood application of the Act. Given that the Act had only been in force for school divisions for six weeks at the time of the incident under investigation, the school division had had no contrary opinions to consider about how volunteers may not be employees for purposes of the Act. (The question did not arise in any Commissioner's Orders or investigations completed between September 1998 and May 1999 when the new, more comprehensive wording was adopted.)

I believe that Ms. X's relationship with the school, however strained, did bring her under the definition of "employee" in October 1998. Consistent with the view that Ms.

X did fall within the definition of “employee” for the purposes of FOIP under even the previous definition, I find that the provision of her name and number to the man from Toronto was a consistent use, and not a disclosure. As there was no inconsistent use or disclosure, there could be no breach of her privacy.

### **Recommendation and Closing Comments**

The school acted reasonably and cautiously in its dealings with Ms. X’s personal information and in its refusal to turn over to her third-party graduand information. The decisions made by the staff reflect the kind of common sense and respect for rights that this Act was meant to support, and must be seen as proper calls in a trying situation.

I make no specific recommendations. Ms. X’s complaint serves positively to highlight the need for clarity in communications between school staff and volunteers. As matters for the public body to consider without having to respond to the Commissioner, I do suggest that Grande Yellowhead convey this report to the staff involved for their information. I also suggest that the school find ways to make clear to its volunteers how it will use their home contact information in the event it must refer callers to them on school matters.

This investigation is now closed.

Submitted by:

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