

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

**Report on the Investigation into Concerns Regarding the Protection of Student
Personal Information**

May 27, 2003

Edmonton Public Schools

Investigation #2056

I. BACKGROUND TO THIS INVESTIGATION REPORT

[para 1] This report deals with concerns raised to the Commissioner about the practices of some school boards in Alberta insofar as they are obliged to protect student personal information. The specific allegation is that high schools administered by the Edmonton Public School Board and other high schools in other school districts across the Province have allowed a for-profit, private sector corporation to have access to some personal information about Grade 11/12 students and their families.

[para 2] The corporation is DeVry Canada Inc. (“DeVry”), the Canadian component of an international corporate structure based in the U.S.A. It operates the DeVry Institute of Technology in Calgary.

[para 3] Information in this report about DeVry’s practices comes from DeVry and from sources claiming a working familiarity with aspects of DeVry’s operations in Alberta.

[para 4] The information received from sources relates to alleged historical practices up to and including the 2000-2001 school year. The information received from DeVry is current to the 2001-2002 school year.

[para 5] The practices described by sources are said to apply generally across the Province to many, and possibly all, school boards. DeVry reports that its operations run more widely than in one single school district. For the sake of efficiency, the Investigator focused the investigation on activities within one of the Province’s larger urban school districts, consulting with a few high schools about the allegations. The Investigator also met with executive and legal representatives acting for DeVry.

[para 6] The allegation claims that DeVry annually runs a campaign to have itself invited into high schools, where its Educational Recruiters offer to conduct in-class sessions (the “Workshop”) with classes of Grade 11/12 students. The Workshop is a scripted multi-media presentation designed to open up discussion around career choices, highlighting

positive examples from the world of applied technology. Included as a closing element of the Workshop is the distribution of a questionnaire (the “Survey”).

[para 7] It is alleged that garnering the Survey information is the real point of the Workshop, and that the success of DeVry’s Workshop representatives is judged (and duly compensated) from their ability to deliver completed Surveys back to a head office in the U.S.A. The head office analyzes the results and develops sales prospects reports to be followed up by DeVry’s Canadian outside-sales staff. Equipped with information developed from Survey responses, the sales staff approach their prospective student customers outside the school context.

[para 8] This investigation is an action taken by the Commissioner under his general powers in Section 53 of the Freedom of Information and Protection of Privacy Act (the “Act”). While no complaint from any Grade 11/12 student about breach of privacy has been received, the allegations being made are sufficient to warrant formal investigation.

[para 9] The Act places obligations on the heads of public bodies to protect privacy. The Edmonton Public School Board and all other school boards in Alberta are public bodies under the Act. To be clear, DeVry is not a public body, and its actions are not subject to the Act, though they may be subject to legislation governing personal information protection in the private sector. The actions of DeVry are raised in this report as incidental to the central question:

“In the context of hosting the Workshops presented by DeVry, have the schools collected, used or disclosed personal information in breach of the Freedom of Information and Protection of Privacy Act?”

This question is examined in the light of the obligations found in Part 2 of the Act relating to protection of privacy.

II. THE WORKSHOP

[para 10] DeVry delivers the Workshop in a classroom setting, often to CALM (Career and Life Management), Information Technology or English 33 classes. The Workshop features a video that shows young people being oriented to the operations of large transnational corporations. The 21-minute video concludes by establishing linkages between the corporations being profiled and DeVry’s programs.

[para 11] In the Workshop, students are given a brochure prompting them to think in terms of their natural intelligences and how those translate into various occupational streams. A set of charts within the brochure allows readers to fit themselves into the occupational streams based on their answers to situational questions that relate to high-school life. The students keep the brochure, and their answers to the work-up questions are not collected. The brochure contains contact information about DeVry’s operations. The Workshop concludes with distribution and administration of the Survey.

[para 12] A separate booklet about results from DeVry survey activity, full of graphs and charts, is provided by the DeVry reps to the teachers. This booklet looks at student occupational-preference data, said to be drawn from DeVry's own survey work, and includes a chart from Statistics Canada and a chart from an independent career guide. The data includes DeVry's ranking of the prevalence of certain defined natural intelligences in the student population. The data is presented in columns showing details by grade and by gender within grade.

III. THE SURVEY

[para 13] The Survey is a 14x24 cm (5½x9 inch), four-part carbonless form. The student fills out the top page, thereby generating three copy pages.

[para 14] The upper third portion of the form is reserved for identifier information and the date. Students are asked to provide their:

- High school name
- First name
- Last name
- Gender
- Home address
- City
- Province
- Postal code
- Home phone
- Email address

[para 15] The mid portion, taking up more than half of the form, includes twelve questions. The questions are designed for quick completion. Students simply darken small ovals set next to prelisted answers, somewhat like a census form. Students are asked to code their answers to questions about their:

- Grade
- Year and month of graduation
- Computer access location type
- English mark and academic stream
- Math mark and academic stream
- 2 top natural intelligences (derived from the brochure quiz's 8 options)
- Current employment (4 options based on hours being worked per week)
- Post-secondary education goal (7 options)
- 3 most important post-secondary considerations (selecting from 13 factors)
- Family relocation reasons (2 options)
- Factors affecting personal relocation (2 options)

- Top 3 career choices (from 16 occupational streams and 3 sub-streams).

[para 16] The lower portion of the form, taking up the final inch of space, includes two questions. In question 13, the student can code that he or she would like more information about any or all of four broad career streams (all of which relate to DeVry's programs). In question 14, the student can code that he or she would like information about DeVry's programs.

[para 17] Each form has a printed serial number (*e.g.*, 72783161). By the Investigator's calculation, a student who had already worked through the brochure to find his or her natural intelligences, and who is comfortable filling out forms, would take not less than 7 minutes to complete the form. In a classroom setting, the form would require about 10 to 12 minutes to introduce, distribute, and pick-up.

IV. ADMINISTERING THE SURVEY

[para 18] Reps are reminded in DeVry's instructions overview that completion of the Survey is not compulsory, and that, where a teacher requests the Survey not be administered, that wish is to be honoured. However, the detailed script used by the DeVry representatives in conducting their workshops at no point gives the students any choice about doing or not doing the Survey. In terms of practical human dynamics, even if there were such an opportunity built into the script, the students could not comfortably exercise their option to decline participation without confronting their teacher publicly (in cases where the teacher remains present) or without offending their classroom guest.

[para 19] Once completed, the Survey form is split four ways: the student keeps copy 4, and sends the first three copies forward to the DeVry representative. Copy 1 is sent to DeVry headquarters for scanning onto a computer database. Copy 2 is kept by the DeVry rep, and Copy 3 is sent to the rep's manager. If the student had responded to questions 13 or 14 at the end of the form, then a DeVry rep will phone the student. The stated sales objective is to arrange a meeting with the student and his/her parents.

[para 20] DeVry told the Investigator that its compensation to reps considers the number of Workshops arranged. DeVry denies the allegation that bonuses are explicitly tied to the number of Surveys returned. DeVry adds that the number of Surveys collected is a factor in calculating bonus payments. DeVry claims that, in its Canadian operation and in its transnational operations, DeVry does not sell, rent or in any manner give away the personal information gained through the Surveys to parties outside DeVry.

V. THE SCHOOLS' RESPONSIBILITIES

[para 21] All school boards in Alberta fall under the jurisdiction of the FOIP Act. So every high school, and every high-school classroom, lives with the rules and obligations of the Act. Those obligations, insofar as protection of personal privacy is concerned, are laid out

in Part 2 of the Act. In particular, section 38 (“Protection of personal information”) requires vigilance on the part of public bodies:

38 The head of a public body must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or destruction.

[para 22] Like the associated provisions about use and disclosure, section 38 is based on the notion that the public body has acquired custody or established control over the information, and so is an accountable steward of that personal information. In the practice under investigation, the personal information being extracted from the school setting never passes through the school’s hands. The forms are distributed to the students directly by the DeVry rep, and the forms are collected from the students directly by the DeVry rep. By some accounts, there sometimes isn’t even a school official present to witness the information collection activity.

[para 23] Schools are responsible generally for curricular events that happen during classroom time. The Workshops and Survey collection activities happen during classroom time, though it is not clear that there is always a teacher present. Like other school districts, Edmonton Public Schools follows a policy of allowing a teacher to turn the class over to another qualified instructor or appropriate supervisor and temporarily absent himself or herself if the teacher believes the instructor is trustworthy and appropriate.

[para 24] As Investigator I considered the fact that the Survey is collected in a school classroom during school hours, and that a student cannot legitimately not attend the DeVry session. I also considered the fact that the teacher is often present or close by, all of which lends an air of authority and sanction by the school for the collection of personal information by DeVry. However, DeVry clearly is not an “employee” of the school district as defined in the FOIP Act. While the schools facilitate the information collection being done by DeVry, I am unable to conclude that this connection is sufficient to make the schools responsible for this practice under the FOIP Act.

VI. FINDINGS AND RECOMMENDATIONS

[para 25] Schools have not collected the information being harvested by DeVry. They do have some of it in other forms, but no one is suggesting the information being harvested comes from school records. There is no disclosure of information collected and held by the schools, so there can be no breach of the Act by way of disclosure. There is also no breach of the Act by way of illegitimate collection or improper use or negligent information management. So there is no breach of the Act under Part 2. And there is no contravention of any rule in Part 1 as there is no information access request in play here. So there is no breach of the Act.

[para 26] While there is no breach of the Act reported from this investigation, there is a general privacy concern that warrants public-body attention. To that end, the Investigator suggests the following precautions as appropriate to all school boards in Alberta:

Suggestion #1: That any personal information surveys by outside parties be conducted as a voluntary attendance function, so that high-school-aged students can effectively exercise the option of taking part or not taking part without offending or embarrassing teaching staff or guests. Ideally, participating students should be given time enough, in completing such surveys, to allow them to seek the advice of their parents before submitting completed questionnaires to the outside party.

Suggestion # 2: That FOIP Coordinators in every Alberta school board review, in advance, surveys being conducted on school populations, by external parties or by a district's own staff, to insure such surveys comply with privacy protection standards and the principles of the FOIP Act.

[para 27] The Investigator thanks all parties who have provided information, with special appreciation for the interest taken in this matter by officials and staff at Edmonton Public Schools.

Respectfully submitted this 27th day of May, 2003.

John Ennis
Investigator