

# **ALBERTA INFORMATION AND PRIVACY COMMISSIONER**

## **Report on Investigation into Complaint Regarding a Public Body's Authority to Collect Personal Information**

**September 10, 2001**

**Alberta Learning**

**Investigation #2104**

### **I. INTRODUCTION**

[para 1.] On February 20, 2001, the Commissioner received a complaint that Alberta Learning (the "Public Body") improperly collected medical information.

[para 2.] Section 51(2)(e) of the *Freedom of Information and Protection of Privacy Act* (the "FOIP Act") authorizes the Commissioner to investigate complaints that personal information has been collected, used or disclosed by a public body in violation of Part 2 of the FOIP Act. Accordingly, the Commissioner authorized me to investigate this matter. This report outlines my findings and recommendations.

### **II. BACKGROUND**

[para 3.] The Complainant has a dispute with a school board ("the School Board") regarding special education funding and services for the Complainant's child ("the Student").

[para 4.] In February 2000, the Complainant asked the Minister of Alberta Learning ("the Minister") to review this matter. In response to the Complainant's request, the Minister determined that the matter was reviewable under section 104 of the *School Act*. The Minister appointed a Ministerial Review Committee ("the Committee") to conduct this review and to make recommendations to the Minister.

[para 5.] During the review process, the Committee invited both the Complainant and the School Board to make written submissions for the Committee's consideration. The Committee also interviewed a number of individuals. On September 20, 2000, the Complainant was advised that the Committee had interviewed a physician and that an interview had been scheduled with another physician.

### **III. COMPLAINANT'S CONCERNS**

[para 6.] The Complainant questioned the Committee's authority to collect medical information about the Student.

[para 7.] The Complainant said the Student is not a minor and that the Student had specifically refused to grant permission to the Committee to contact the Student's physicians or to obtain access to further medical information about the Student. Both the Complainant and the Student believed the Committee had all the information it required for its review.

[para 8.] The Complainant also said both physicians were reluctant to provide information to the Committee without the Student's consent, but were "compelled" to do so as the Committee told them that the Minister had "special powers on review". The Complainant challenged the Committee's authority to compel the physicians to disclose information.

#### **IV. INFORMATION AT ISSUE**

[para 9.] The Committee interviewed the first physician ("Doctor X") on September 19, 2000. The Committee presented a set of questions to which Doctor X provided verbal responses.

[para 10.] The Committee also arranged an interview with a second physician ("Doctor Y"). However, this interview was subsequently cancelled. Therefore, the Committee obtained no information from Doctor Y.

[para 11.] The information at issue for this investigation is the information collected by the Committee from its interview with Doctor X.

[para 12.] "Personal information" is defined in section 1(1)(n) of the FOIP Act as "recorded information about an identifiable individual", including the individual's name, information about the individual's health and health care history, and anyone else's opinions about the individual.

[para 13.] I find the information at issue is the Student's "personal information" as defined by the FOIP Act, and is subject to the collection provisions set out in the FOIP Act.

#### **V. ANALYSIS**

##### **A. General**

[para 14.] In order to fulfill the collection provisions of the FOIP Act, the Public Body must:

1. Have the authority to collect the personal information under section 32 of the FOIP Act; and
2. Collect the information directly from the individual the information is about unless the collection falls within one of the listed exceptions listed under section 33(1) of the FOIP Act.

##### **B. Did the Public Body have authority under section 32 of the FOIP Act to collect personal information about the Student?**

[para 15.] Section 32(a) of the FOIP Act allows a public body to collect personal information if the collection is expressly authorized by an enactment of Alberta or Canada. Section 32(a) reads:

*32 No personal information may be collected by or for a public body unless*

*(a) the collection of that information is expressly authorized by or under an Act of Alberta or Canada,*

[para 16.] Section 8(2) of the *Government Organization Act* states:

*8(2) A Minister may institute inquiries into and collect information and statistics relating to any matter under his administration.*

[para 17.] Section 104(1) of the *School Act* grants parents or students (if the student is 16 years or older) a right to appeal to the Minister on decisions made by a school board on matters such as: placement of a student in a special education program; the expulsion of a student; the amount and payment of fees and costs; etc.

[para 18.] Upon receipt of an appeal, the Minister may conduct a review pursuant to section 105(1) of the *School Act*, which reads:

*105(1) The Minister may review a matter as requested in accordance with this Act and may review the matter in any manner he considers appropriate in the circumstances.*

[para 19.] I find that section 8(2) of the *Government Organization Act* authorizes the Minister to collect information on “any matter under his administration”. Section 105(1) of the *School Act* specifically grants the Minister the authority to conduct a review and the power to control the review process.

[para 20.] I conclude that the Minister is authorized to collect personal information pursuant to section 8(2) of the *Government Organization Act* and section 105(1) of the *School Act*. Therefore, the Minister’s authority to collection personal information is in accordance with section 32(a) of the FOIP Act.

[para 21.] Section 9(1) of the *Government Organization Act* states:

*9(1) A Minister may in writing delegate any power, duty or function conferred or imposed on him by this Act or any other Act or regulation to any person.*

[para 22.] Under section 237 of the *School Act*, the Minister may delegate his review powers to a review committee. Section 237 states:

*237 The Minister may authorize in writing*

*(a) an employee of the Government under the administration of the Minister;*

*(b) a board or an employee of a board, or*

*(c) any other person designated by the Minister,*

*to do any act or thing, perform any duties or exercise any power that the Minister may do, perform or exercise under this Act except the power to make regulations.*

[para 23.] As the Minister delegated his review powers to the Committee, the Committee is authorized to conduct the review and to exercise the same powers as the Minister in conducting the review, including the power to collect information for the purposes of the review.

[para 24.] I said earlier that the Minister’s authority to collect personal information is in accordance with section 32(a) of the FOIP Act. Therefore, as the Minister’s delegate in this case, the Committee’s authority to collect the personal information at issue is also in accordance with section 32(a) of the FOIP Act.

[para 25.] The Complainant said the Committee had sufficient information for its review and did not require the personal information at issue.

[para 26.] In Order 98-002, the Commissioner said:

*"[para 181.] A decision-maker has the right to make the initial determination about the necessity for and the relevance of the information the decision-maker will use to make a decision..."*

[para 27.] In that Order, the Commissioner also said he would give a public body "considerable latitude" in deciding what personal information is necessary and it is not likely that he would interfere provided the determination is not patently unreasonable.

[para 28.] The Public Body said the information collected from Doctor X was relevant to the Committee's review as the Student's medical condition has a bearing on the Student's educational requirements. The Complainant's written submission to the Committee for the purposes of the review included a 1997 letter written by Doctor X. As Doctor X's letter was part of the Complainant's submission for the review, the Committee felt it was appropriate to contact Doctor X as Doctor X was knowledgeable with the Student's situation.

[para 29.] I found no evidence to indicate the Committee's decision to collect the personal information at issue was unreasonable. While the Complainant may disagree with the Committee as to what information is necessary for the review, the Commissioner has ruled that the decision regarding what information is necessary and what information is relevant rests with the decision-maker.

[para 30.] In summary, I find that the Committee's collection of the personal information at issue complies with section 32(a) of the FOIP Act.

### **C. Did the Public Body have authority under section 33 of the FOIP Act to indirectly collect personal information about the Student?**

[para 31.] Section 33(1) of the FOIP Act requires that a public body collect personal information directly from the individual the information is about unless one of the exceptions listed applies. Section 33(1)(a)(ii) of the FOIP Act allows a public body to indirectly collect information if another Act or a regulation under another Act authorizes another method of collection.

[para 32.] Section 105(1) of the *School Act* authorizes the Minister to "*review the matter in any manner he considers appropriate in the circumstances*". I find that section 105(1) of the *School Act* provides the Minister or the Minister's delegate (in this case, the Committee) with legislative authority to collect information from sources other than the individual the information is about.

[para 33.] Therefore, the Committee's authority to indirectly collect the information at issue is in accordance with section 33(1)(a)(ii) of the FOIP Act.

## **VI. PUBLIC BODY'S AUTHORITY TO COMPEL INFORMATION**

[para 34.] The Complainant questioned whether the Committee had the authority to "compel" the physicians to disclose information about the Student.

[para 35.] Part 2 of the FOIP Act sets out the parameters under which personal information may be collected. If a public body's collection of personal information complies with section 32 and section 33(1) of the FOIP Act, then the public body has authority to have that information.

[para 36.] In my view, if a public body has authority to collect the personal information, the means by which it collects that personal information (by compulsion or voluntary) is not a matter for this Office to review under the FOIP Act.

[para 37.] This is consistent with the Commissioner's order making powers that are set out in section 68 of the FOIP Act. The Commissioner may order a public body to perform a duty imposed by the FOIP Act or its regulations (section 68(3)(a)). The Commissioner may also require a public body to stop collecting, using or disclosing personal information in violation of Part 2 of the FOIP Act (section 68(3)(e)). However, the means by which a public body obtains personal information is not addressed in any of the duties set out in the FOIP Act and has no relevance if the public body is authorized to collect that information.

[para 38.] As I have found that the Committee is authorized to collect the personal information at issue, whether or not it had authority to compel information is not an issue for this Office under the FOIP Act.

## **VI. SUMMARY AND CLOSING COMMENTS**

[para 39.] In summary, I find that the Public Body's collection of the information at issue complies with section 32(a) and section 33(1)(a)(ii) of the FOIP Act.

[para 40.] I understand the Complainant has a number of issues and concerns with the Public Body's review process. However, I believe this investigation has addressed those issues that are relevant to the FOIP Act and that are within the Commissioner's jurisdiction. Therefore, I recommend that this case be closed.

Submitted by,

Marylin Mun  
Team Leader, FOIP