

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

**Report on Investigation into Complaint
Regarding Unauthorized Collection of Personal Information**

October 28, 2002

**Calgary Board of Education
Investigation #2415**

I. THE COMPLAINT

[para 1] The Office of the Information and Privacy Commissioner received a complaint regarding the transfer of student records from one school to another.

[para 2] The Complainant's child ("the Child") had attended a private school. The Complainant had concerns with the private school's abilities to meet the Child's educational needs. As a result, the Complainant transferred the Child to a school under the jurisdiction of the Calgary Board of Education ("the CBE").

[para 3] The Complainant said the Child's student records from the private school contained incomplete information and did not want that information sent to the CBE. The Complainant wanted the Child to have a "fresh start" in a new school environment.

[para 4] However, the Child's student records were transferred from the private school to the CBE. The Complainant was told that signed parental consent was not required for the transfer of the records.

[para 5] The Complainant objected to the transfer of the Child's student records from the private school to the CBE and asked the Commissioner:

1. *Do we, as parents have any rights to have this information removed from [the Child's] student records?*
2. *Given the uniqueness of this situation, did the Calgary Board have the authority to collect these files from a private school?*

II. APPLICATION OF THE FOIP ACT

[para 6] The *Freedom of Information and Protection of Privacy Act* ("the FOIP Act") was extended to school boards and charter schools on September 1, 1998. Part 2 of the FOIP Act sets out the provisions under which a public body may collect, use, and disclose personal information.

[para 7] Information contained in the Child's student records is "recorded information about an identifiable individual". Therefore, the information in the Child's student records is "personal information" as defined under section 1(n) of the FOIP Act.

[para 8] The private school "disclosed" personal information when it transferred the Child's student records to the CBE. The CBE "collected" personal information when it obtained the Child's student records from the private school. Therefore, the transfer of the Child's student records involved a disclosure and a collection of personal information.

[para 9] As private schools and private colleges do not fall under the FOIP Act, the disclosure provisions set out in the FOIP Act do not apply to the private school. Therefore, this Office has no jurisdiction to review whether the disclosure of the Child's student records by the private school was or was not in contravention of Part 2 of the FOIP Act.

[para 10] The CBE is an "educational body" as defined by section 1(d)(v) of the FOIP Act and is therefore, subject to the FOIP Act. This Office has the jurisdiction to review whether the CBE's collection of the Child's student records is in accordance with the collection provisions set out in the FOIP Act.

III. ISSUES

[para 11] The issues of this investigation are:

1. Did the CBE collect the Child's personal information in contravention of Part 2 of the FOIP Act?
2. Does the Commissioner have authority to require the CBE to remove information from the Child's student records as requested by the Complainant?

IV. ANALYSIS

A. General

[para 12] In order to fulfill the collection provisions of the FOIP Act, the CBE must:

1. Have the authority to collect personal information under section 33 of the FOIP Act, and
2. Collect information directly from the individual the information is about unless the collection falls within one of the listed exceptions listed under section 34(1) of the FOIP Act.

B. Did the CBE have authority under section 33 of the FOIP Act to collect the Child's student records?

[para 13] Section 33(a) of the FOIP Act allows a public body to collect personal information if the collection is expressly authorized by legislation.

[para 14] The CBE said it is authorized to collect the Child's student records from the private school under section 6(1) of the *Student Record Regulation*, which states:

6(1) If a student transfers to another school in Alberta, the board from which the student transfers shall, on receipt of a written request from that school, send the student record containing the information referred to in section 2(1) and (2) to that school.

[para 15] Section 23(1) of the *School Act* requires that a student record be established and maintained for each student pursuant to the regulations. The *Student Record Regulation* sets out the requirements of the student records. Under section 20 of the *Private Schools Regulation*, section 6 of the *Student Record Regulation* applies to registered private schools and accredited private schools.

[para 16] After reviewing this matter, I concur that the CBE's collection of the Child's student records from the private school is authorized under section 6(1) of the *Student Record Regulation* and is therefore, in accordance with section 33(a) of the FOIP Act.

C. Did the CBE have authority under section 34(1) of the FOIP Act to indirectly collect the Child's student records?

[para 17] Section 34(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 under section 34(1) applies.

[para 18] Consent is one of the exceptions listed (section 34(1)(a)(i)). However, there are other exceptions under section 34(1) that would allow a public body to collect personal information from sources other than the individual the information is about. Section 34(1)(a)(ii) allows a public body to indirectly collect information if another Act or a regulations under another Act authorizes another method of collection.

[para 19] Section 6(1) of the *Student Record Regulation* authorizes the transfer of the student records from one school to another upon the written request of the school receiving the student. I find that section 6(1) of the *Student Record Regulation* provides the CBE with the legislative authority to collect the Child's student records from the private school and is in accordance with section 34(1)(a)(ii) of the FOIP Act. Parental consent was not required as the CBE had legislative authority to indirectly collect the Child's student records from the private school.

D. Does the Commissioner have authority to require the CBE to remove information from the Child's student records as requested by the Complainant?

[para 20] Section 53 of the FOIP Act sets out the general powers of the Commissioner, and section 72 sets out the Commissioner's order-making powers.

[para 21] Section 53 does not grant the Commissioner the power to require a public body to remove personal information from its records.

[para 22] Under section 72(3)(f) of the FOIP Act, the Commissioner may order the head of a public body to destroy personal information it collected. However, this power can only be invoked if the collection was in contravention of the FOIP Act.

[para 23] This investigation has determined that the CBE's collection of the Child's student records from the private school was in compliance with section 33(a) and section 34(1)(a)(ii) of the FOIP Act. As the collection was not in contravention of the FOIP Act, section 72(3)(f) of the FOIP Act would not be applicable.

V. CONCLUSION

[para 24] In summary, I find that the CBE's collection of the Child's student records from the private school complies with section 33(a) and 34(1)(a)(ii) of the FOIP Act. Therefore, no further action is warranted by this Office on this matter.

Submitted by,

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Team Leader, FOIP