

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

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

March 21, 2003

Northland School Division No. 61

Investigation #2608 and #2609

INTRODUCTION

[1.] On November 26, 2002, the Commissioner received two privacy complaints against the Northland School Division No. 61 ("the School Division").

[2.] Both the Complainant and the Complainant's spouse filed separate complaints regarding the School Division's collection of a Child Welfare Record Check from the Complainant. File #2608 and File #2609 were opened respectively. Subsequently, this Office sought and obtained confirmation that the Complainant and the Complainant's spouse decided to jointly file their complaints as co-complainants.

[3.] This report will refer to the Complainant and the Complainant's spouse collectively as "the Complainants" and individually as "the Complainant" and "the Spouse".

THE COMPLAINT

[4.] The Complainants said the Spouse was interviewed on December 19, 2001 via telephone by a principal of a school within the jurisdiction of the School Division. During the interview, the Spouse was told that Child Welfare Record Checks were required from the Spouse and the Complainant as a condition of the Spouse's employment. The record checks were faxed to the school on December 20, 2001 and a formal verbal offer of employment was made to the Spouse the next day.

[5.] The Complainants have no issue with the requirement of a Child Welfare Record Check from the Spouse. However, they question the school's authority to require a Child Welfare Record Check from the Complainant. They said the Complainant was not being offered employment with the school at that time and that the School Division had no written policies requiring Child Welfare Record Checks from family members of employees.

ISSUE

[6.] The issue of this investigation is:

Did the School Division collect personal information in contravention of Part 2 of the *Freedom of Information and Protection of Privacy Act* ("the FOIP Act")?

SCHOOL DIVISION'S RESPONSE TO COMPLAINT

[7.] The School Division said it does not have a written policy with regard to Child Welfare Record Checks. However, it has established a practice to request Child Welfare Record Checks for all regular and casual employees and volunteers who are in contact with students. Offers of employment to teachers are conditional upon receipt of a Child Welfare Record Check. The School Division says Child Welfare Record Checks are part of its screening process to assist with student safety and that the collection is allowed under section 33(c) of the FOIP Act, which states:

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

(c) that information relates directly to and is necessary for an operating program or activity of the public body.

[8.] The School Division said it does not request a Child Welfare Record Check from an employee's spouse. The School Division claimed that the Complainant had expressed interest in employment as a substitute teacher or in other capacities. As a result, the Complainant was verbally asked to provide a Child Welfare Record Check in order to be eligible to be hired as a substitute teacher. The Complainant was employed by the school as a substitute teacher on one occasion in January 2002 and on two occasions in February 2002. The Complainant was also employed by the school to perform some casual labour in May 2002.

ANALYSIS

[9.] I first considered the School Division's authority to collect Child Welfare Record Checks. Under section 45(8) of the *School Act*, school boards are required to provide students with a "safe and caring environment". I accept the School Division's position that the collection of Child Welfare Record Checks when screening prospective employees who will have contact with children is directly related to and necessary for the delivery of its educational services and programs. Therefore, that collection is allowed under section 33(c) of the FOIP Act.

[10.] I then considered whether the record check from the Complainant was collected in accordance with the School Division's authority under section 33(c) of the FOIP Act. In reviewing the Child Welfare Record Check submitted by the Complainant to the school, I noted the following:

- There is a line drawn across the form's standard statement "Because I am applying to work directly with children....". The Complainant wrote on the form that the record check is requested because of the Spouse's teaching job.
- The date of the submission of the request for a record check was made to the regional Children's Services office on December 20, 2001 and processed that same day. The document was transmitted to the school via fax in the afternoon of December 20, 2001.

[11.] The School Division could not provide an explanation as to why the Complainant wrote that the Child Welfare Record Check was requested because of the Spouse's teaching job.

[12.] The School Division could not provide any written documentation relating to the employment of the Complainant other than a copy of the Child Welfare Record Check and the time sheets completed by the Complainant. The School Division said it does not keep records for substitute teachers or casual labour employees except for time sheets and Child Welfare Records, if required.

[13.] The School Division said the discussion between the Complainant and the school principal regarding employment opportunities was "very informal" and that the principal could not recall the exact date. Initially, the School Division indicated the Complainant expressed interest in working as a substitute teacher or in other capacities "during the hiring process" of the Spouse. However, the School Division later indicated that the Complainant approached the school principal regarding employment interests "shortly after" the Spouse started working at the school on January 3, 2002.

[14.] Based on the information before me, I have no option but to conclude that the collection of the Complainant's record check on December 20, 2001 was not in accordance with the School Division's authority under section 33(c) of the FOIP Act. My reasons are as follows:

- The Child Welfare Record Check completed by the Complainant indicates the record check was requested because of the Spouse's teaching job. There is no indication on the face of the record that the Complainant was requesting the record check in order to be considered for any substitute teaching opportunities.
- The Child Welfare Record Check was requested by the Complainant on December 20, 2001. It was processed and transmitted to the school that same day. The timing coincides with the hiring of the Spouse.
- The School Division could not provide any evidence that the Complainant was being hired or was being considered for employment as a substitute teacher when the Child Welfare Record Check was collected by the school on December 20, 2001.

CONCLUDING REMARKS

[15.] In summary, I conclude that the School Division's collection of Child Welfare Record Checks when screening prospective employees who will have contact with children is allowed under section 33(c) of the FOIP Act. However, the collection of the Complainant's Child Welfare Record Check on December 20, 2001 did not appear to be in accordance with the School Division's authority under section 33(c) of the FOIP Act because the School Division was not then screening the Complainant as a prospective employee.

[16] The School Division has authority to collect Child Welfare Record Checks under section 33(c) of the FOIP Act when an employment offer is being considered or extended. While the Complainant was later employed by the school as a substitute teacher in January

2002 and February 2002, there is no evidence that employment was being considered or offered to the Complainant on December 20, 2001.

[17.] To prevent a similar contravention of the FOIP Act in the future, I recommend that the School Division document the dates of verbal offers and requests for Child Welfare Records Checks.

[18.] I recommend that this case can now be closed.

Submitted by,

Marilyn Mun
Team Leader, FOIP