



Office of the Information and
Privacy Commissioner of Alberta

Investigation Report F2014-IR-02

*Investigation into the use of teacher names and
email addresses to send Minister's email*

June 27, 2014

Alberta Education

Investigation F6845

(Related complaint files: F6968, F7001, F7003, F7004, F7024, F7112, F7113, F7114, F7115, F7116, F7117, F7118, F7119, F7120, F7121, F7122, F7123, F7124, F7125, F7126, F7127, F7128, F7129, F7130, F7131, F7132, F7133, F7134, F7135, F7137, F7138, F7139 and F7140)

Table of Contents

Introduction.....	2
Background.....	2
Jurisdiction – Application of the FOIP Act to the Registry.....	6
Issues	7
Findings and Recommendations	20
Closing Comments.....	22



Introduction

- [1] On February 6, 2013, the Alberta Minister of Education (the Minister) sent an email directly to 34,328 teachers in Alberta. The media subsequently reported on concerns that the Minister had used contact information from Alberta's Teacher Registry System to send the mass email.¹ In a letter dated February 8, 2013, the Alberta Liberal Opposition asked the Information and Privacy Commissioner (Commissioner) to investigate this matter.
- [2] On February 28, 2013, the Commissioner issued a news release announcing that she had initiated an investigation on her own motion. The Commissioner said:

I have followed the media coverage on this matter and I am mindful of the number of individuals affected (i.e. 30,000 teachers). I would like to ascertain for myself, and the teachers who were contacted, whether or not these emails were sent in compliance with the Freedom of Information and Protection of Privacy Act (the FOIP Act).

- [3] The Commissioner also said the investigation would:
- examine whether Alberta Education complied with the FOIP Act when the Minister sent the emails to the teachers; and
 - make recommendations, if required, to ensure that Alberta Education collects, uses and discloses teacher contact information in accordance with the FOIP Act.
- [4] Under section 53(1)(a) of the FOIP Act, the Commissioner has the power to “conduct investigations to ensure compliance with any provision of this Act”. The Commissioner authorized me to investigate this matter. This report outlines my findings and recommendations.

Background

The Registrar

- [5] Section 94(1) of the *School Act* authorizes the Minister to make regulations establishing a Registrar to carry out certain powers and duties. Section 94(1) reads, in part:

94(1) The Minister may make regulations...

- (g) authorizing the Minister to appoint a Registrar and other officials for the purpose of carrying out powers and duties under the regulations;
- (h) requiring the Registrar to keep registers and records and respecting the information that is to be kept in the registers and records;

¹ Cuthbertson, Richard. (2013, February 8). Mass email to Alberta teachers upsets union. The Calgary Herald. Retrieved on February 22, 2013 from <http://www.calgaryherald.com/news/Mass+email+Alberta+teachers+upsets+union/7935517/story.html#ixzz2MCwHIScx>

Cuthbertson, Richard. (2013, February 8). Education minister accused of privacy breach. The Calgary Herald. Retrieved on February 22, 2013 from <http://www.calgaryherald.com/technology/Education+minister+accused+privacy+breach/7940947/story.html>

- (i) respecting, authorizing and prohibiting the release of information in the Registrar's registers and records;
 - (j) authorizing the Registrar to delegate to any employee under the Minister's administration powers or duties of the Registrar that are specified in the regulations;
- [6] The *Certification of Teachers Regulation (CTR)* and the *Practice Review of Teachers Regulation (PRT)* authorize the Minister to "appoint an individual to act as the Registrar...". Sections 2 and 4 of these regulations respectively read:

The Minister may, in writing, appoint an individual to act as the Registrar for the purposes of this Regulation.

- [7] Under the CTR, the Registrar has powers and duties concerning the certification of teachers. Under the PRT, the Registrar has powers and duties concerning practice reviews of teachers.
- [8] Alberta Education says that "[h]istorically, the Director of the Professional Standards Branch has been appointed" as the Registrar.

The Alberta Teacher Registry

- [9] Section 94(1)(h) of the *School Act* authorizes the Minister to make regulations requiring the Registrar to "keep registers and records".
- [10] Section 15(1) of the CTR states:
- 15(1) The Registrar must establish and maintain a registry of information, including personal information, in respect of individuals who
 - (a) apply for a certificate,
 - (b) request an evaluation of their credentials,
 - (c) are officers,
 - (d) hold a certificate, or
 - (e) held a certificate in Alberta or elsewhere that has expired or been suspended or cancelled.
 - (2) A teacher wishing to be known by another name while holding a certificate must provide the Registrar with evidence of that change in the form prescribed by the Registrar.
 - (3) A teacher must, on the request of and in the form prescribed by the Registrar, provide to the Registrar any information about the teacher that is necessary to maintain the accuracy and completeness of the Registry.
- [11] Alberta Education says the "registry of information" is known as the Alberta Teacher Registry (the Registry), and is maintained through a database known as the Teacher Registry System (TRS).

- [12] The Registry contains information provided by individuals when they apply for certification as teachers. If an individual provides an email address with his/her application, the email address is included in the Registry. An email address provided by an individual when applying for certification is likely a personal email address since that individual cannot be employed as a teacher, or have a business email address as a teacher, until he/she holds a certificate of qualification.
- [13] The Registry also contains information about teachers that Alberta Education collects from school authorities. Alberta Education says school authorities provide information about their certificated teaching staff via a “secure, electronic submission....twice per year (typically in October and in May)”.
- [14] School authority submissions include the names and addresses of the legal residences of their teachers. School authorities also have the option to provide email addresses for their teachers. This could include an email address the school authority assigned to the teacher (i.e. a business email address) or a personal email address the teacher provided to the school authority.
- [15] Alberta Education says that submissions from school authorities are used to update information in the Registry. Email addresses included in a school authority’s submission (whether the email is a personal email address that the teacher provided to the school authority or a business email address that the school authority assigned to the teacher) will replace any pre-existing email addresses in the Registry.
- [16] In summary, the Registry includes names and contact information (which can include either a business or personal email address) of individuals who apply for certification or who hold/have held certificates of qualification.

The Minister’s February 6, 2013 email

- [17] Alberta Education said its Communications Branch made a request, on behalf of the Minister, to the Professional Standards Branch for a teacher contact list.
- [18] In response to the request, the Professional Standards Branch extracted a file from the TRS with information about 45,284 teachers. Teachers who did not have an associated email address were removed from the extracted file. The result was a final list with the names (first, middle and last name) and email addresses of 34,328 teachers.
- [19] The final list (which was in an Excel spreadsheet) was password protected and sent to “an employee responsible for sending out the email on behalf of the Minister”. Alberta Education confirmed to me that the employee is employed with the Communications Branch and is not an employee with the Minister’s office.
- [20] Alberta Education said an email service called *Mailout Interactive* (whose data is hosted in Canada) was used to send the Minister’s February 6, 2013 email to each of the 34,328 teachers on the final list. The email was sent as a ‘blind copy’. As a result, no teacher’s personal information was revealed to any other email recipient.

[21] The Minister's email to the teachers read as follows:

Good afternoon! I'm personally reaching out to as many teachers as possible to let you know how much the Premier and I appreciate all you do. As I travel the province and meet with teachers, I am encouraged to hear how many of you are implementing the vision of Inspiring Education. Thank you.

Recently, I met with a group of teachers in a staff room in Lac La Biche. We had an excellent conversation and I promised to look into some issues they raised with me. That conversation made me realize that we need to have a more open and transparent way to communicate.

I also know that in order for you to be innovative and creative, you need a less prescriptive curriculum; you need time and space; and you want to ensure kids have equity in terms of access to opportunities and resources. These things will be a priority for me in the coming year because at the end of the day the kids have to come first.

I know we have more work to do. We want to move even more toward the *Inspiring Education* vision and develop changes in curriculum and assessment. We will also have to address the province's fiscal challenges and the ATA contract negotiations. I know many of you would also like to talk about the changing role of the teacher in the 21st century – something that came up often during our two years of *Inspiring Education* consultations. All of this means we need to have open communications and ensure you have access to accurate information.

Especially now. It's my goal to make sure that as we move through this difficult budget time we are investing our limited dollars in the programs that are critical to ensuring the success of our kids, that we are protecting class sizes and inclusion funding as well as jobs for teachers to the greatest extent possible. You have told me that's what is important to you and I am listening.

You will be hearing from me on a regular basis. But, please contact me anytime at education.minister@gov.ab.ca. Please share this information with your colleagues. I know my current list may not be comprehensive and I want to reach as many teachers as possible. So, if you received this from a colleague, it means you aren't on our list. Please email me or go to our existing engagement tools on the web at Engage. A new Teachers' link will help us connect with even more of you. Eventually, this is where we will post ideas for us to share.

I hope you will participate in this dialogue with me.

Talk to you soon.

Jeff

Jeff Johnson
Minister of Education
MLA, Athabasca-Sturgeon-Redwater

Complaints to the Commissioner

[22] Between March 4-13, 2013, the Commissioner received 34 separate complaints from individuals who received the Minister's email. The following is a summary of the issues raised by the complainants:

- unauthorized access to or use of email address for purposes unrelated to and inconsistent with the purpose for which it was collected;
- unauthorized access to or use of email address;
- complainant’s work email address was used;
- complainant’s personal email address was used;
- complainant’s authorization/consent/permission was not provided;
- complainant did not provide email address to the Registrar. How did the Minister get the email address?; and,
- content of the Minister’s message was inappropriate.

[23] Under section 65(3) of the FOIP Act, a person who believes that their own personal information has been collected, used or disclosed by a public body in contravention of Part 2 of the FOIP Act may ask the Commissioner to review that matter. Section 53(2)(e) gives the Commissioner authority to investigate and attempt to resolve complaints regarding the collection, use or disclosure of personal information.

[24] Since the Commissioner has initiated an investigation on her own motion under section 53(1)(a) of the FOIP Act and the subject matters raised by the complainants are encompassed in the Commissioner’s investigation, the Commissioner placed each of the 34 complaints into abeyance pending the conclusion of the Commissioner’s investigation.

Jurisdiction – Application of the FOIP Act to the Registry

[25] Section 4(1) of the FOIP Act states the Act applies to all records in the custody or control of a public body, except those records or information specifically listed in section 4(1)(a) through (u). Section 4(1)(l)(vii) is relevant. It reads

4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following...

(l) a record made from information...

(vii) in a registry operated by a public body if that registry is authorized or recognized by an enactment and public access to the registry is normally permitted;

[26] Section 4(1)(l)(vii) says the FOIP Act does not apply to a record made from information in a registry operated by a public body if that registry is “authorized or recognized by an enactment” and “public access to the registry is normally permitted”. Therefore, if the information extracted from the Registry to create the contact list used to send the Minister’s email falls under section 4(1)(l)(vii), then the FOIP Act does not apply and the Commissioner has no jurisdiction to investigate the use and disclosure of personal information from the Registry.

[27] The Registry was established and is maintained by Alberta Education, a public body as defined by section 1(p)(i) of the FOIP Act. As stated earlier, the Registry is “authorized or recognized” by both the *School Act* and the *Certification of Teachers Regulation (CTR)*. Both the *School Act* and the *CTR* are enactments.

[28] However, with respect to whether “public access to the registry is normally permitted,” Alberta Education stated:

... [n]o information in the Alberta Teacher Registry is made generally available to the public, although in accordance with s. 17 of the [CTR] the Registrar may disclose some information. Summarized statistics are drawn from the Registry and made available to the public on the Alberta Education web site (no identifiable information is included).

[29] The Registry is operated by a public body and is authorized or recognized by enactments. However, public access to the Registry is not “normally permitted”.

[30] Consequently, I find that section 4(1)(I)(vii) of the FOIP Act does not apply to the information extracted from the Registry to create the list used to send the Minister’s email. Therefore, the use and disclosure of personal information extracted from the Registry falls within the FOIP Act, and the Commissioner has jurisdiction to investigate.

Issues

[31] In considering the Commissioner’s objectives, and the concerns raised by the complainants, I have identified the following issues for this investigation:

1. Is the information at issue “personal information” to which the FOIP Act applies?
2. If the information is “personal information”, what are the purposes for which the information was collected by Alberta Education?
3. If the information is “personal information”, was the disclosure by the Professional Standards Branch to the Communications Branch in accordance with section 40 of the FOIP Act?
4. If the information is “personal information”, was the use of the information by the Communications Branch in accordance with section 39 of the FOIP Act?

Issue 1: Is the information at issue “personal information” to which the FOIP Act applies?

[32] The information at issue is the names and email addresses of the 34,328 teachers used to send the Minister’s February 6, 2013 email. Some of the email addresses were business email addresses (that is, email addresses issued by school authorities to their employees); some were personal email addresses.

[33] Section 1(n)(i) of the FOIP Act reads,

1 In this Act, ...

(n) “personal information” means recorded information about an identifiable individual, including

- (i) the individual's name, home or business address or home or business telephone number,

[34] If recorded, an individual's name is personal information.

[35] Several Orders issued by the OIPC have found that an individual's email address is "personal information" (OIPC Orders F2004-004 [p. 23], F2008-016 [p. 75-76], F2008-028 [p. 59-61], and F2012-06 [p. 77]²).

[36] In addition, section 40(1)(bb.1)(i) of the FOIP Act identifies "an individual's name and business contact information, including...e-mail address" as personal information. Section 40(1)(bb.1)(i) reads:

40(1) A public body may disclose personal information only...

(bb.1) if the personal information is information of a type routinely disclosed in a business or professional context and the disclosure

(i) is limited to an individual's name and business contact information, including business title, address, telephone number, facsimile number and e-mail address, and,

(i) does not reveal other personal information about the individual or personal information about another individual

[37] As such, I find that the information at issue is "personal information" to which the FOIP Act applies.

Issue 2: If the information is "personal information", what are the purposes for which the personal information was collected by Alberta Education?

[38] Under the FOIP Act, a public body may use or disclose personal information for the purposes for which that information was collected. A public body may use or disclose the personal information for other purposes only in circumstances set out under section 39 and section 40 of the FOIP Act. Therefore, the purposes for which the personal information was collected are relevant to Alberta Education's use and disclosure of that information.

[39] Alberta Education says it collected teacher names and contact information for the following purposes:

- issuing and administering certificates of qualification;
- establishing and maintaining the Registry; and
- conducting statistical, evaluative and financial analyses and forecasting relating to teachers.

[40] I have reviewed each of these purposes below.

² Orders and Investigation Reports mentioned in this investigation report are available on the OIPC website at www.oipc.ab.ca.

Purpose #1 – issuing and administering certificates of qualification

- [41] The requirements for issuing and administering certificates of qualification are set out in the *School Act*, which states in part:

92(1) Unless otherwise authorized under this Act, a board shall employ as a teacher only an individual who holds a certificate of qualification as a teacher issued under this Act. ...

93 Unless a person holds a certificate of qualification as a teacher issued under this Act, that person is not eligible to hold a supervisory position that directly relates to the teaching functions of a teacher. ...

94(1) The Minister may make regulations

- (a) governing the issuing of certificates of qualification to teachers, including, without limitation, regulations ...
- (b) governing appeals from a decision to refuse to issue a certificate, including, without limitation, regulations ...

- [42] The CTR sets out provisions concerning issuing certificates of qualification, appeals to the Certification Appeal Committee, and the powers of the Registrar and the Minister in relation to certification. Section 6(1) of the CTR states:

6(1) An individual must apply to the Registrar in the manner and form required by the Minister

- (a) for the issuance or re-issuance of a certificate, or
- (b) for an extension of the term of a certificate.

- [43] The Registrar collects personal information directly from individuals when they apply for certification. Alberta Education says the collection of names and contact information is directly related to and necessary for issuing and administering certificates of qualification; although an email address is not mandatory for determining whether an individual is eligible for certification, a means of contacting individuals is necessary.

- [44] When applying for certification, an individual may provide an email address as part of their contact information. However, as stated earlier in this report, an email address provided by an individual when applying for certification is likely a personal email address since that individual cannot be employed as a teacher, or have a business email address as a teacher, until he/she holds a certificate of qualification.

- [45] The notification statement on the application for certification forms reads:

The personal information collected as part of this application for teacher certification is collected pursuant to the provisions of the *Certification of Teachers Regulation* and section 33 of the *Freedom of Information and Protection of Privacy Act (FOIPP Act)*. This information will be used for the purpose of processing your application to determine eligibility for Alberta teacher certification. The personal information will be treated in accordance with the *FOIPP Act*. Questions regarding the collection may be directed to the Registrar, Professional Standards Branch, Alberta Education, 10044 108 Street, Edmonton, Alberta T5J 5E6. Telephone: (780) 427-2045 (Dial 310-0000 to be connected toll-free from anywhere in Alberta).

[46] I accept that Alberta Education collects teacher names and contact information (which can include an email address) for the purpose of issuing and administering certificates of qualification.

Purpose #2 – establishing and maintaining the Registry

[47] As already noted above, section 15(1) of the CTR requires that the Registrar establish and maintain a registry of information that includes personal information of individuals who apply for certification, request an evaluation of their credentials, are officers, hold a certificate, or have held a certificate.

[48] Personal information in the Registry is collected directly from teachers when they apply for certification or generally to maintain the accuracy and completeness of the Registry.

[49] However, as stated earlier in this report, school authorities also provide information about their certificated staff to Alberta Education via a “secure, electronic submission...twice per year (typically in October and in May)”.

[50] Section 3(3)(a) of the CTR authorizes “officers” to collect information from teachers or “other persons” and provide that information to the Registrar for the purpose of establishing and maintaining the Registry. Section 3(3)(a) of the CTR states:

3(3) At the request of the Registrar, an officer shall collect personal information from teachers or from other persons that is necessary for the purposes of

(a) establishing and maintaining the registry referred to in section 15, ...

and shall disclose that information to the Registrar or the Minister.

[51] An “officer” is defined in section 1(e) of the CTR as an “individual appointed under section 3 to act as an officer for the purposes of this Regulation”. As part of this investigation I reviewed a copy of the written appointment of individuals as “officers” under the CTR and confirm that school authorities have individuals (superintendents) appointed as officers under section 3 of the CTR.

[52] Alberta Education has produced a document called the “Certificated Staff Employment Guide” (the Guide) to provide direction to school authorities when submitting information about their certificated staff for the Registry. The Guide instructs school authorities to provide, among other things:

- the teacher’s first and last name (mandatory),
- the address of the teacher’s legal residence (mandatory), and
- the teacher’s email address (optional).

[53] The Guide does not instruct school authorities to provide only the email address assigned by the school authority to the teacher. As a result, school authorities may submit personal email addresses that the teacher provided to the school authority. Alberta Education says that submissions from the school authorities are used to update information in the Registry.

[54] I accept that the collection of teacher names and contact information (which can include email addresses) by Alberta Education is for the purpose of establishing and maintaining the Registry.

Purpose #3 – conducting statistical, evaluative and financial analyses and forecasting relating to teachers

[55] Section 3(3) of the CTR also authorizes officers to collect personal information from teachers or other persons for the purpose of conducting statistical, evaluative and financial analyses and forecasting relating to teachers. Specifically, section 3(3)(b) of the CTR states:

3(3) At the request of the Registrar, an officer shall collect personal information from teachers or from other persons that is necessary for the purposes of...

(b) conducting statistical, evaluative and financial analyses and forecasting relating to teachers, and shall disclose that information to the Registrar or the Minister.

[56] Alberta Education did not explain why the Registrar needs to collect teacher names and email addresses to conduct analyses and forecasting; however, I accept that the authorization for collection under section 3(3)(b) of the CTR can encompass teacher names and email addresses.

[57] In summary, I accept Alberta Education collects personal information such as teacher names and contact information for several purposes. However, other than the notification statement on the application for certification form, Alberta Education did not inform our Office that teachers were notified that their personal information was collected for purposes other than certification. Section 34(2) of the FOIP Act requires that public bodies inform individuals of the purposes for collection when collecting personal information from individuals.

Issue 3: If the information is “personal information”, was the disclosure by the Professional Standards Branch to the Communications Branch in accordance with section 40 of the FOIP Act?

[58] In this case, the Professional Standards Branch of Alberta Education extracted a file from the TRS to create a list containing the names and email addresses of 34,328 teachers. This list was disclosed to Alberta Education’s Communications Branch and was subsequently used to send the Minister’s February 6, 2013 email.

[59] Section 40(1) of the FOIP Act sets out the circumstances in which a public body may disclose personal information. Sections 40(1)(c), (h), (f) and (bb.1) are relevant. I have reviewed each of these provisions below.

Section 40(1)(c) – disclosure for the purpose for which the information was collected or for a consistent purpose

[60] Pursuant to section 40(1)(c) of the FOIP Act, Alberta Education may disclose personal information for the purpose for which the information was collected, or for a use consistent with that purpose. Section 40(1)(c) reads:

40(1) A public body may disclose personal information only

(c) for the purpose for which the information was collected or compiled or for a use consistent with that purpose,...

[61] In my discussion of Issue #2 above, I accepted Alberta Education's position that it collects teacher names and contact information, including email addresses, for the following purposes:

- issuing and administering certificates of qualification;
- establishing and maintaining the Registry; and
- conducting statistical, evaluative and financial analyses and forecasting relating to teachers.

[62] I will now consider whether the Professional Standards Branch disclosed the teacher names and email addresses to Communications for any of these purposes or for a use consistent with these purposes.

[63] Alberta Education said:

The Minister's purpose for sending the email was to inform teachers about matters relevant to them and to invite teachers to send in their ideas for improving education. This aligns with Alberta Education's authority to collect and use information for "evaluative analyses" related to teachers and education.

As outlined above, Alberta Education uses the data in the Registry for detailed evaluative analysis. However, in order to better understand the data, and to develop strategies to address challenges revealed by the data, dialogue is essential...

[64] It is evident to me that the Professional Standards Branch did not disclose the teacher names and email addresses to Communications for the purpose of issuing or administering certificates of qualification, or to establish and maintain the Registry. Instead, I believe Alberta Education is saying that the disclosure to Communications was for the purpose of "conducting statistical, evaluative or financial analyses and forecasting related to teachers", or a use consistent with that purpose.

[65] The *Webster's II New College Dictionary*, 1995 edition, provides the following definitions for analyses and forecasting:

- Analyses: "Separation of an intellectual or substantial whole into its constituent parts for individual study".
- Forecasting: "To estimate or calculate in advance...to predict".

[66] The Professional Standards Branch disclosed teacher names and email addresses to Communications so that Communications could send the Minister's email. The Professional Standards Branch did not disclose teacher names and email addresses to Communications so that Communications could study the information, or use it to predict future events. Therefore, the disclosure of teacher names and email addresses was not for the original purpose for which the information was collected – i.e. conducting analyses and forecasting.

[67] I next considered whether the disclosure of teacher names and email addresses was for a use "consistent with" the purpose of conducting analyses and forecasting.

[68] Section 41 of the FOIP Act defines "consistent purpose" as follows:

41 For the purposes of sections 39(1)(a) and 40(1)(c), a use or disclosure of personal information is consistent with the purpose for which the information was collected or compiled if the use or disclosure

(a) has a reasonable and direct connection to that purpose, and

(b) is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information.

[69] OIPC Order F2012-23 provides some guidance in understanding what is meant by a “consistent purpose”. In that Order, the Adjudicator wrote:

[para 34] ... when deciding whether the purpose of a use or disclosure of personal information is the same as or consistent with the purpose of collection, one should examine the specific purpose; otherwise, a public body would have too wide a latitude to use and disclose personal information simply by characterizing the purposes broadly enough (Order F2006-018 at para. 67).

[70] The following excerpt from the *FOIP Guidelines and Practices 2009* publication is also relevant:

A use or disclosure has a *reasonable and direct connection* to the original purpose if there is a logical and plausible link to the original purpose. A consistent use should grow out of or be derived from the original use; it should not be an unrelated or secondary use of the information, otherwise known as “function creep”.

A use or disclosure is *necessary for performing the statutory duties of, or for operating a program of, the public body* if the public body would be unable to carry out its program without using or disclosing the personal information in the way proposed.

A consistent use or disclosure must meet both of the above conditions to be valid.³

[71] Alberta Education said:

This is a list that was prepared in order for the Minister, who has ultimate oversight over the teaching profession in Alberta, to contact certified teachers. There therefore is a reasonable and direct connection between the creation and maintenance of the list and its use by the Minister to contact those on it to solicit their input on matters concerning them.

Using contact information in Education’s custody to contact teachers about teaching is the very essence of a consistent purpose.

[72] After considering all of the above, I reviewed the Minister’s email to determine whether or not there was a reasonable and direct connection – a logical and plausible link – between using teacher names and email addresses to send the email, and Alberta Education’s original purpose for collecting the information – namely, to conduct analyses and forecasting related to teachers.

[73] In summary, the Minister’s email does the following:

- expresses appreciation and thanks for the work teachers do;

³ Government of Alberta. Service Alberta. Access and Privacy, *FOIP Guidelines and Practices 2009*, (Alberta Queen’s Printer, 2009 ISBN 978-0-7785-8563-3). Page number 295.

- identifies a need for “a more open and transparent way to communicate”;
- states the Minister is aware of certain issues that matter to teachers, and will prioritize them;
- references the *Inspiring Education* vision and financial challenges. Identifies the “changing role of the teacher” as an issue that “came up often during... two years of ... consultations”;
- identifies the Minister’s goals, based on information told to him by teachers;
- states teachers will be hearing from the Minister in the future. Says “please contact me anytime” and provides the Minister’s email address; and
- asks teachers to share the information in the email with colleagues. Notes that those who did not directly receive the email can email the Minister or go to the Engage website where ideas will be posted in future.

- [74] Alberta Education said “the Minister’s purpose for sending the email was to inform teachers about matters relevant to them and to invite teachers to send in their ideas for improving education”. I agree that the content of the email is informative; it communicates what the Minister understands to be current issues in the teaching profession, as well as goals and potential challenges for the future. The email also invites teachers to contact the Minister saying “You will be hearing from me on a regular basis. But, please contact me anytime at ...”. The email does not, however, explicitly ask teachers to “send in their ideas for improving education”, nor does it make any mention of using information provided by teachers to conduct statistical, evaluative or financial analyses or forecasting related to teachers. In fact, the Minister does not refer to any purpose for which he is requesting that teachers contact him other than to state “we need to have a more open and transparent way to communicate” and “I hope you will participate in this dialogue with me”.
- [75] Given the above, I am unable to find that Alberta Education’s stated purpose for sending the email is reasonably and directly connected to conducting analyses or forecasting. To accept Alberta Education’s position that the purpose for sending the email – “to inform teachers about matters relevant to them and to invite teachers to send in their ideas for improving education” – is a consistent purpose would grant Alberta Education too wide a latitude to use and disclose personal information.
- [76] Even if there were a reasonable and direct connection to the original purpose, sending the email would not meet the additional requirement to be “necessary for performing the statutory duties of, or for operating a legally authorized program of”, Alberta Education. This is because there are a variety of means available for Alberta Education to invite and obtain input from teachers. The question also arises about why it was necessary to send an email, when potentially 10,956 teachers did not have an email address.
- [77] Consequently, I find that the disclosure is not for a consistent purpose as defined in section 41 of the FOIP Act.
- [78] As the disclosure of teacher names and email addresses to Communications was not for any of the purposes for which the information was collected in the first place, nor a use consistent with those purposes, I find the disclosure was not authorized by section 40(1)(c) of the FOIP Act.

Section 40(1)(f) – disclosure in accordance with an enactment

[79] Section 40(1)(f) of the FOIP Act authorizes a public body to disclose personal information for a purpose in accordance with an enactment of Alberta or Canada that authorizes or requires the disclosure. Section 40(1)(f) states:

40(1) A public body may disclose personal information only...

(f) for any purpose in accordance with an enactment of Alberta or Canada that authorizes or requires the disclosure,...

[80] Alberta Education said the disclosure of teacher names and email addresses by the Professional Standards Branch to the Communications Branch is in accordance with section 3(3) of the CTR, an enactment that authorizes or requires the disclosure. Section 3(3) of the CTR states:

3(3) At the request of the Registrar, an officer shall collect personal information from teachers or from other persons that is necessary for the purposes of

(a) establishing and maintaining the registry referred to in section 15, and

(b) conducting statistical, evaluative and financial analyses and forecasting relating to teachers,

and shall disclose that information to the Registrar or the Minister.

[81] Section 3(3) of the CTR authorizes an “officer” to collect personal information for specified purposes and to disclose that information to the Registrar or the Minister. Section 1(e) of the CTR defines an “officer” as “an individual appointed under section 3 to act as an officer for the purposes of this Regulation”.

[82] Section 3(3) of the CTR does not authorize or require the Professional Standards Branch, or the Director of the Professional Standards Branch acting as the Registrar, to disclose personal information to the Minister or to Communications Branch for the Minister.

[83] Therefore, I find that the disclosure by the Professional Standards Branch to the Communications Branch was not in accordance with an enactment and was not authorized under section 40(1)(f) of the FOIP Act.

Section 40(1)(h) – disclosure necessary for the performance of the duties of a member of Executive Council

[84] Section 40(1)(h) of the FOIP Act states:

40(1) A public body may disclose personal information only...

(h) to an officer or employee of the public body or to a member of the Executive Council, if the information is necessary for the performance of the duties of the officer, employee or member,

[85] Section 40(1)(h) of the FOIP Act permits a public body to disclose personal information to officers or employees of the public body and to Cabinet members. It does not authorize disclosure to employees or officers of other public bodies, nor does it authorize an employee or member of the Executive Council to have automatic access to all personal information within a public body.

[86] Section 40(1)(h) authorizes disclosure of personal information only if the information is “necessary for the performance of the duties of the officer, employee or member”.

[87] Alberta Education said:

Again, under the *Government Organization Act* and the *School Act*, the Minister has a broad mandate and ultimate accountability for the publicly funded education system and the teaching profession in Alberta. A significant means by which he wishes to fulfill his mandate is by communicating directly with teachers. In alignment with this view, use of the contact list was necessary for the performance of his duties.

[88] Alberta Education also said:

Summarized statistics are drawn from the Registry and made available to the public on the Alberta Education web site (no identifiable information is included).

[89] The Minister is a member of Executive Council. I appreciate that the Minister may wish to communicate directly with teachers. However, in my view, Alberta Education has not established that the disclosure of teacher names and email addresses was “necessary” to perform a “duty” of the Minister.

[90] As Alberta Education’s submission states, the Minister “has discretion in determining how he will fulfill his mandate” and the Minister “wishes to fulfill his mandate ... by communicating directly with all stakeholders”. This suggests direct communication with teachers is not “necessary”, but is instead the Minister’s preference.

[91] Further, there are a variety of means available to the Minister to share information and to invite and obtain input from teachers. The Minister’s email itself notes that information is available and will be made available on Alberta Education’s website and refers to “existing engagement tools on the web at Engage”. Alberta Education also said, in its submission for this investigation, that summarized statistics are made available on its website and no identifiable information is included. In my view, there are myriad other ways the Minister could have achieved his objective of communicating with teachers without using teacher names and email addresses, including through the website, news releases, or public events.

[92] Consequently, I find the disclosure of teacher names and email addresses by the Professional Standards Branch to the Communications Branch was not “necessary for the performance of the duties of the officer, employee or member” and is not authorized under section 40(1)(h) of the FOIP Act.

Section 40(1)(bb.1) – disclosure of business contact information

[93] Section 40(1)(bb.1) of the FOIP Act authorizes disclosure of information routinely disclosed in a business or professional context, including name and business email address, provided the disclosure does not reveal any other personal information about an individual. Section 40(1)(bb.1) of the FOIP Act states:

40(1) A public body may disclose personal information only...

(bb.1) if the personal information is information of a type routinely disclosed in a business or professional context and the disclosure

- (i) is limited to an individual's name and business contact information, including business title, address, telephone number, facsimile number and e-mail address, and,
- (i) does not reveal other personal information about the individual or personal information about another individual

[94] Alberta Education said:

Email addresses are information of a type routinely disclosed in a business or professional context, and are specifically contemplated as information that can be disclosed, and therefore used, without additional authority, provided the disclosure does not reveal other personal information. The information used in this case was limited to names and email addresses and did not reveal any personal information.

[95] I agree that a teacher's name and the business email address assigned by the school authority to the teacher is the type of information that is routinely disclosed in a business or professional context. I also find that the disclosure of names and business email addresses does not reveal any other information about the teacher. Therefore, the disclosure of teacher names and business email addresses is authorized under section 40(1)(bb.1) of the FOIP Act.

[96] I note, however, that Alberta Education (and some of the complainants in this matter) reported that some of the email addresses used to send the Minister's email were personal email addresses, and not business email addresses. A personal email address does not qualify as "information of a type routinely disclosed in a business or professional context" (emphasis added). Section 40(1)(bb.1) of the FOIP Act does not extend to authorize the disclosure of personal email addresses. Therefore, the disclosure of personal email addresses of teachers is not authorized under section 40(1)(bb.1).

Section 40(4) – extent of disclosure

[97] Section 40(4) states:

40(4) A public body may disclose personal information only to the extent necessary to enable the public body to carry out the purposes described in subsections (1), (2) and (3) in a reasonable manner.

[98] Alberta Education informed me that the Professional Standards Branch had extracted a file from the TRS with information about 45,284 teachers and those teachers who did not have an

associated email address were removed from the extracted file. The final list disclosed to the Communications Branch included the names and email addresses of 34,328 teachers.

[99] Alberta Education also said:

All non-essential data was stripped from the file used, leaving only the names and email addresses. When the email was sent, recipients were essentially “blind copied”, i.e. the only name showing in the email was the individual addressee. Using the names in addition to the email addresses allowed for de-duplication of the list and personalization of the email, which was reasonable. There was no disclosure of personal information in the act of sending the email. In addition, recipients could unsubscribe.

[100] I find that the disclosure of teacher names and business email addresses by the Professional Standards Branch to the Communications Branch was limited to information required to send the email. Therefore, the disclosure was limited as required under section 40(4) of the FOIP Act.

[101] Since the disclosure of the personal email addresses of teachers is not authorized under section 40(1)(bb.1), I do not need to consider section 40(4) for personal email addresses.

Issue 4: If the information is “personal information”, was the use of the information by the Communications Branch in accordance with section 39 of the FOIP Act?

[102] Section 39 of the FOIP Act sets out the only circumstances in which a public body may use personal information. Sections 39(1)(a), (b) and (c) are relevant and I have reviewed each of these provisions below.

Section 39(1)(a) – use for the original or a consistent purpose

[103] Section 39(1)(a) authorizes the use of personal information for the purpose for which the information was collected or compiled or a use consistent with that purpose. Section 39(1)(a) of the FOIP Act states:

39(1) A public body may use personal information only

(a) for the purpose for which the information was collected or compiled or for a use consistent with that purpose

[104] For the same reasons discussed in my analysis of section 40(1)(c) of the FOIP Act (disclosure for the purpose for which the information was collected or a use consistent with that purpose), I also find that the Communications Branch’s use of teacher names and email addresses to send the Minister’s email is not authorized by section 39(1)(a) of the FOIP Act.

Section 39(1)(b) – use with consent of the individual

[105] Section 39(1)(b) of the FOIP Act states:

39(1) A public body may use personal information only...

- (b) if the individual the information is about has identified the information and consented, in the prescribed manner, to the use

[106] The *FOIP Guidelines and Practices* publication provides the following information:

A public body may use personal information if the individual the information is about has identified the information and has consented, in the prescribed manner, to its use.

Consenting *in the prescribed manner* means that the public body has followed the procedures for obtaining consent set out in section 7 of the FOIP Regulation. This states that consent

- must be in writing; and
- must specify to whom the personal information may be disclosed and how the personal information may be used beyond the original purpose for which the personal information was collected or compiled.⁴

[107] Alberta Education did not provide any evidence or argument that the teachers consented to the use of their names and email addresses to send the Minister's email. Consequently, the use of the information by the Communications Branch is not authorized under section 39(1)(b) of the FOIP Act.

Section 39(1)(c) – use for a purpose for which the information may be disclosed to that public body

[108] Section 39(1)(c) reads:

39(1) A public body may use personal information only

- (a) for a purpose for which the information may be disclosed to that public body under section 40, 42 or 43.

[109] Section 39(1)(c) is linked to section 40 of the FOIP Act.

[110] Earlier in this report, I found that the disclosure of teacher names and business email addresses by the Professional Standards Branch to the Communications Branch was authorized by section 40(1)(bb.1).

[111] In my opinion, section 40(1)(bb.1) allows the disclosure of business contact information for the purpose of contacting individuals in relation to their business/professional capacity. Since the Communications Branch used the teacher names and business email addresses to send the Minister's February 6, 2013 email to teachers in their professional capacity as teachers, I find that the Communications Branch's use of the personal information is authorized under section 39(1)(c) of the FOIP Act.

⁴ Government of Alberta. Service Alberta. Access and Privacy, *FOIP Guidelines and Practices 2009*, (Alberta Queen's Printer, 2009 ISBN 978-0-7785-8563-3). Page number 261.

[112] However, the Communications Branch’s use of personal email addresses is not authorized under section 39(1)(c) since I found no provision under section 40(1) that authorizes the disclosure of the personal email addresses.

Section 39(4) – limited use of personal information

[113] Section 39(4) of the FOIP Act states:

39(4) A public body may use personal information only to the extent necessary to enable the public body to carry out its purpose in a reasonable manner.

[114] Section 39(4) requires a public body to limit its use of personal information to the extent necessary to carry out its purpose in a reasonable manner.

[115] In my analysis of section 40(4) above (limited disclosure of personal information), I said the information disclosed was limited to that which was required to send an email. I also find that the Communications Branch’s use of teacher names and business email addresses was limited to the information necessary to send the Minister’s email as required under section 39(4) of the FOIP Act.

[116] Since I found that the Communications Branch’s use of personal email addresses is not authorized under section 39(1)(a), (b) or (c), I do not need to consider section 39(4) of the FOIP Act for personal email addresses.

Findings and Recommendations

Findings

[117] The findings of my investigation are as follows:

- The information at issue is “personal information” to which the FOIP Act applies.
- Alberta Education collects teacher names and contact information (which can include email addresses) from teachers and school authorities for the purposes of:
 - issuing and administering certificates of qualification;
 - establishing and maintaining the Registry; and
 - conducting statistical, evaluative and financial analyses and forecasting relating to teachers.
- The notification statement on the application for certification forms tells individuals that their personal information is collected for the purpose of certification. Alberta Education provided no indication that individuals are notified of the other purposes for collection as required under section 34(2) of the FOIP Act.

- The disclosure of teacher names and email addresses by the Professional Standards Branch to the Communications Branch for the purpose of sending the Minister’s February 6, 2013 email was not authorized:
 - under section 40(1)(c) of the FOIP Act (for the purpose for which the information was collected or for a consistent purpose);
 - under section 40(1)(f) (for a purpose authorized by an enactment); nor
 - under section 40(1)(h) (necessary for the performance of duties).
- The disclosure of teacher names and business email addresses (that is, the email addresses assigned by the school authorities to their teachers) by the Professional Standards Branch to the Communications Branch is authorized under section 40(1)(bb.1) of the FOIP Act.
- The disclosure of personal email addresses by the Professional Standards Branch to the Communications Branch is not authorized under section 40(1) of the FOIP Act. Therefore, the disclosure of the personal email addresses to the Communications Branch is a contravention of the FOIP Act.
- The disclosure of teacher names and business email addresses by the Professional Standards Branch was limited to the extent necessary to send the email as required under section 40(4) of the FOIP Act.
- The use of teacher names and email addresses by the Communications Branch is not authorized:
 - under section 39(1)(a) of the FOIP Act (for the purpose for which the information was collected or for a consistent purpose).
 - under section 39(1)(b) of the FOIP Act (consent).
- The use of teacher names and business email addresses by the Communications Branch to send the Minister’s email is authorized under section 39(1)(c) of the FOIP Act, since section 40(1)(bb.1) allows the Professional Standards Branch to disclose business contact information to the Communications Branch for the purpose of contacting individuals in their business/professional capacity.
- The Communications Branch’s use of personal email addresses is not authorized under section 39(1)(c) of the FOIP Act. Since the use of personal email addresses is not authorized under any of the provisions under section 39(1), the use is a contravention of the FOIP Act.
- The use of teacher names and business email addresses by the Communications Branch was limited to the extent necessary to send the Minister’s email in accordance with section 39(4) of the FOIP Act.

Recommendations

[118] I recommend that Alberta Education:

Recommendation #1: remove personal email addresses from the list provided by the Professional Standards Branch to the Communications Branch.

Recommendation # 2: state, in all future mass email communications from the Minister to teachers, the authority for the collection, use and disclosure of the teachers' personal information.

Recommendation #3: provide clear instructions to school authorities that only business email addresses that were assigned by the school authorities to their teachers or that teachers identify for business use be included in the submissions sent to Alberta Education pursuant to section 3(3)(a) of the CTR.

Recommendation #4: update all notifications on the application forms for teacher certification (and any other forms used to directly collect personal information for the Registry) to include the purposes for which the personal information is collected. The current notifications only identify one purpose, which is "processing your application to determine eligibility for Alberta teacher certification". There is no notification relating to establishing and maintaining the Registry or other purposes, such as conducting analyses or forecasting.

Closing Comments

[119] As a final matter, Alberta Education said it had already removed the names and email addresses of all the complainants from the list provided by the Professional Standards Branch to the Communications Branch. In addition, as stated earlier in this report (see paragraph 99), Alberta Education said recipients of the Minister's email could unsubscribe. I recommend that in future mass emails, Alberta Education continue to extend this option to all teachers on the list.

Veronica Chodak
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Office of the Information and Privacy Commissioner