

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER 2001-028**

February 7, 2002

**EDMONTON CATHOLIC SEPARATE  
SCHOOL DISTRICT No. 7**

Review Number 2123

**Office URL:** <http://www.oipc.ab.ca>

**Summary:** The Applicant wrote two letters to Edmonton Catholic Separate School District No. 7 (the Public Body) requesting information about his son. The Applicant was not satisfied the records he received were those that he had requested. The Applicant also complained that the Public Body did not respond to his request openly, accurately, and completely. The Adjudicator found that the records disclosed by the Public Body were those the Applicant requested. The Adjudicator also found that the Public Body properly discharged its duty to assist the Applicant.

**Statutes Considered:** **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c-F-25, ss. 7(3) [number not affected by R.S.A. 2000], 10(1) [previously section 9(1)], 17 [previously section 16], 32(1) [previously section 31(1)]; *Freedom of Information and Protection of Privacy Regulation*, Alta. Reg. 200/95, s. 3(b).

**Authorities Considered:** **AB:** Order 96-011; Order 97-020; **ON:** Order P-880.

## I. BACKGROUND

[para 1] In February 1998, the Applicant's son (then in Grade 1) was alleged to have engaged in some inappropriate behavior while attending a school (School A) operated by the Edmonton Catholic Separate School District No. 7 (the Public Body). The incident resulted in a meeting with the child's mother and a "Case Conference" report being submitted by the Assistant Principal. At the time of the Applicant's request for access to information, the Applicant's son was attending a second school (School B) operated by the Public Body.

[para 2] On November 9, 2000, the Principal of School B received a letter from the Applicant, which stated, in part:

*Please take notice that I, [the Applicant], formally request a photocopy of two documents from the brown folder within the main file folder of [Applicant's son] which refer to incidents of sexual assault.*

[para 3] On January 29, 2001, the Applicant wrote to the former Principal of School Operation Services with the Public Body and asked for two records described as follows:

- a. *Reprimand report for [Applicant's son] as per description in the report of [School A] representative, [Assistant Principal of School A] re: sexual assault.*
- b. *Reprimand report for [Applicant's son] as per description in the report of [School B] representative, [Assistant Principal of School B] re: pant-pulling incident.*

[para 4] On February 5, 2001, the Applicant wrote a letter to the Information and Privacy Commissioner indicating that he had not received a response from the Public Body. The Applicant complained that the Public Body had not lived up to its duty to respond pursuant to section 11 [previously section 10] of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act). Request for Review #2093 was opened and subsequently closed when the Public Body responded to the Applicant.

[para 5] On March 1, 2001, the Applicant received copies of three records from the Public Body.

[para 6] On March 8, 2001, the Applicant wrote to the Information and Privacy Commissioner and requested a review of the Public Body's response. It was the Applicant's position that the records disclosed by the Public Body were not the same as those requested in his letters of November 9, 2000 and January 29, 2001. He also expressed concern that his two letters to the Public Body were treated as two separate requests. The Applicant's position was that both letters referred to the same request. The Applicant was also concerned that a request made to the Public Body on March 5, 2001,

to personally view his son's file had been refused. The Applicant indicated that he wanted to view the file to personally identify the correct records.

[para 7] Mediation was authorized but was not successful. The matter was set down for a written inquiry. Both the Applicant and Public Body provided initial written submissions. Only the Public Body provided a rebuttal submission.

[para 8] The Revised Statutes of Alberta (R.S.A. 2000) came into force on January 1, 2002. Consequently, all section numbers referred to in this Order reflect the new numbering. Where section numbers are listed, the previous number has also been included as follows: section 10(1) [previously section 9(1)]. Unless otherwise noted, the text of each section remains the same.

## **II. RECORDS AT ISSUE**

[para 9] The records at issue in this inquiry are as follows:

1. Final copy of the February 18, 1998 Case Conference Report
2. Draft copy of the February 18, 1998 Case Conference Report
3. December 18, 1998 letter from the Assistant Principal of School B to the Applicant

[para10] In the Public Body's response to the Applicant on March 1, 2001, he received severed copies of the two versions of the Case Conference Report and an unsevered copy of the December 18, 1998, letter. Severing of the records was not identified as an issue for this inquiry and will not be dealt with in this Order.

## **III. ISSUES**

[para 11] There are two issues in this inquiry:

- A. What records are responsive to the Applicant's access request?
- B. Did the Public Body make every reasonable effort to assist the Applicant and to respond to the Applicant openly, accurately and completely, as provided by section 10(1) [previously section 9(1)] of the FOIP Act?

## **IV. DISCUSSION OF THE ISSUES**

### **ISSUE A: What records are responsive to the Applicant's access request?**

[para 12] In his written submission, the Applicant stated that none of the three records disclosed to him by the Public Body *resembled the records which were viewed in the*

*brown folder within the main folder at [School B] on or about November 2000. He went on to make the following accusations:*

*The two FOIP documents, which have been formally requested under the FOIP ACT, are being concealed, probably due to the prejudicial nature for which they reference a six year old child.*

*In the alternative, it has been identified that the three documents ... have been altered in their entirety, and/or beyond recognition, and/or have possibly been transcribed, notwithstanding the "Section 16" [now section 17] omissions.*

[para 13] The Applicant offered no specific evidence to support these allegations. Likewise, he offered no evidence to support his position that these were not the same records that he recalled seeing at a meeting at School B sometime in November 2000.

[para 14] In the Applicant's written submission, he also raised section 7(3)(b) [number not affected by R.S.A. 2000] and section 32 [previously section 31], which were not specifically set out as issues in this inquiry. Section 7(3) states:

*7(3) In a request, the applicant may ask  
(a) for a copy of the record, or  
(b) to examine the record.*

[para 15] The Applicant pointed out that he had made several requests to view the records and that each request had been refused. In the context of identifying the records that are responsive to the Applicant's request, the Applicant suggested that by his viewing of the records, he would be able to determine if the records were the same as those that he recalled seeing at School B. I reject the Applicant's suggestion for two reasons.

[para 16] Firstly, section 7(3) of the FOIP Act does not give the Applicant an absolute right to decide how disclosure will be made. Section 7(3) must be considered along with section 3 of the *Freedom of Information and Protection of Privacy Regulation*, Alta. Reg. 200/95 (the FOIP Act Regulation), which states:

*3 Where a person is given access to a record, the head of the public body may require that the person be given a copy of the record, rather than the opportunity to examine it, if the head is of the opinion that*

*(a) providing for examination of the record would unreasonably interfere with operations of the public body, or*

*(b) providing examination of the record might result in the disclosure of information that is restricted or prohibited from disclosure under section 5 of the Act or Part 1, Division 2 of the Act.*

[para 17] The Public Body severed both versions of the Case Conference Report before they were disclosed to the Applicant. I have examined the unsevered version of the records. The severed information appears to be third party personal information as set out in section 17 [previously section 16] of the FOIP Act. Section 17 is a mandatory exception found in Part 1, Division 2 of the FOIP Act. Therefore, section 3(b) of the FOIP Act Regulation applies. I therefore conclude that the Public Body was correct to deny the Applicant the opportunity to examine the records.

[para 18] Secondly, the Applicant has already seen severed copies of the records in question. If I were to order the Public Body to allow the Applicant to examine the records, the Public Body would have to sever the records. The Applicant would then be viewing what he has already seen. This would serve no useful purpose. Therefore, I will not order the Public Body to allow the Applicant the opportunity to examine the records.

[para 19] The Applicant also raised section 32 [previously section 31] of the FOIP Act as a reason for why he should be allowed access to the unsevered information, specifically to examine the records. Section 32 states, in part:

*32(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people, to any person or to an applicant*

*(a) information about a risk of significant harm to the environment or to the health or safety of the public, of the affected group of people, of the person or of the applicant, or*

*(b) information the disclosure of which is, for any other reason, clearly in the public interest.*

*(2) Subsection (1) applies despite any other provision of this Act.*

[para 20] Section 32 [previously section 31] is often referred to as the public interest override section of the FOIP Act. As section 32(1)(a) [previously section 31(1)(a)] states, there must be a risk of significant harm. The Applicant did not offer any specific evidence regarding what harm he was alleging. He implied that the Public Body has labeled his son's actions a sexual assault and that labeling would somehow harm his son. The implication is that his son will somehow be treated adversely because of the information contained in his file at the school.

[para 21] In their rebuttal submission, the Public Body quoted from Commissioner Clark's Order # 96-011, which states, in part:

*Section 31 [now section 32] imposes a statutory duty on the head of a public body to release information of certain risks under "emergency-like" circumstances (i.e. 'without delay').*

[para 22] The Public Body argues that there is nothing within the information that constitutes "emergency-like" circumstances and that the Applicant has not offered any evidence about a possible risk. Having reviewed the records, I agree with the Public

Body that there is no merit to the use of section 32(1)(a) or (b)[previously section 31(1)(a) or (b)] for the records in question.

[para 23] As I understand it, the Applicant's position is that the records disclosed by the Public Body are not the records requested. The only evidence offered to support this position is his contention that the records disclosed are not the records that he recalls seeing during his meeting with School B staff sometime in November 2000.

[para 24] The Public Body offered quotes from Order 97-020, which contains a discussion of the meaning of "responsiveness". In Order 97-020 Commissioner Clark adopted the comments that were made in Ontario Order P-880 and concluded the following:

*"Responsiveness" must mean anything that is reasonably related to an applicant's request for access. In determining "responsiveness", a public body is determining what information or records are relevant to the request. It follows that any information or records that do not reasonably relate to an applicant's request for access will be "non-responsive" to the applicant's request.*

[para 25] The Public Body argued that the information requested by the Applicant in his letters of November 9, 2000 and January 29, 2001 was very specific. The first request was for *a photocopy of two documents from the brown folder within the main file folder of [Applicant's son] which refer to incidents of sexual assault.* The second was for two specific reprimand reports.

[para 26] The Public Body's initial written submission included Affidavits from the FOIP Coordinator, the Assistant Principal, School A and the Assistant Principal of School B. The FOIP Coordinator's Affidavit states, at paragraph 12:

*During the week of November 27, we received the student record with the brown folder containing two documents, which I interpreted to be responsive to the request made by the Applicant dated November 9, 2000, which sought production of the documents within the brown folder.*

[para 27] The FOIP Coordinator's Affidavit also outlined the search conducted to determine whether other records existed that may be responsive to the Applicant's request. The search for records included the automated student records system, both schools attended by the Applicant's son, the suspension and expulsion files maintained at Central Office and personal contact with the people who held the position of Assistant Principal at both schools.

[para 28] The Affidavit of the Assistant Principal of School A states at paragraph 3:

*During the 1997/1998 school year, I recall an incident involving the Applicant's son, which resulted in the preparation of case conference notes, which I understand to be produced as Records A and B in these proceedings. However, to*

*the best of my knowledge, no form of disciplinary report, reprimand report or any other such reports were generated as a result of the incident nor were any suspension proceedings taken with respect to the alleged incident.*

[para 29] The Affidavit of the Assistant Principal of School A went on to state at paragraph 5:

*I confirm that the student record file was transferred to [School B] during the latter portion of the 1997/1998 school year and that I had no additional documentation regarding the Applicant's son.*

[para 30] The Affidavit of the Assistant Principal of School B states at paragraphs 3, 4 and 7:

*3. During the 1998/1999 school year, I recall an incident involving the Applicant's son, which is referenced within record C to these proceedings.*

*4. I specifically recall that I determined it not to be appropriate to issue a reprimand report or any disciplinary report on this matter. I instead chose to issue the December 18, 1998 letter to the Applicant, believing it to be more appropriate in the circumstances that had arisen.*

...

*7. I reviewed the files that may contain documentation regarding this matter and did not find any additional records, apart from those that are contained on the student record. I am advised by the school principal and do verily believe the student record was forwarded to the FOIP Coordinator's office for her review.*

[para 31] The Public Body offered evidence that the records referred to by the Applicant as *two documents from the brown folder within the main file folder of [Applicant's son]* are the two versions of the Case Conference Report which were contained in a brown folder within the Applicant's son's student record file. They also offered Affidavit evidence that the reports remained in the brown folder when the student record file was transferred from School A to School B late in the 1998/1999 school year and again when the file was transferred to the FOIP Coordinator's office in November 2000.

[para 32] In addition, the Affidavit evidence from both Assistant Principals is that there were no other reports of any kind with regards to the alleged incident in 1998. Both specifically stated that there were no "reprimand reports" submitted. This is further supported by the fact that there were no responsive reports found at Central Office.

[para 33] The Assistant Principal of School B specifically remembers an incident involving the Applicant's son. His evidence is that he concluded the matter with his letter of December 18, 1998, addressed to the Applicant. There were no other reports submitted.

[para 34] With regard to the Applicant's allegations that records have somehow been altered or concealed, I can see no evidence to support either of these allegations. I note that the Public Body disclosed both the draft and final copies of the Case Conference Report. This is evidence to support the position that the Public Body disclosed all records that were responsive to the Applicant's request. The records were severed before disclosure, but there is no evidence that they have been altered in any way.

[para 35] I conclude that the records disclosed by the Public Body were responsive to the Applicant's requests for access. Specifically, the two versions of the Case Conference Report are responsive to the request contained in the November 9, 2000, letter and the letter of December 18, 1998 is responsive to the request made in the Applicant's January 29, 2001, letter.

[para 36] More importantly, I conclude that those records are the only records in the custody or control of the Public Body that are responsive to the Applicant's requests. I am satisfied from the evidence presented by the Public Body that a thorough search was conducted for any other records that may have been responsive.

**ISSUE B: Did the Public Body make every reasonable effort to assist the Applicant and to respond to the Applicant openly, accurately and completely, as provided by section 10(1) [previously section 9(1)] of the FOIP Act?**

[para 37] Section 10(1) [previously section 9(1)] of the FOIP Act states:

*10(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.*

[para 38] Section 10(1) [previously section 9(1)] includes the adequacy of the search conducted by the Public Body for responsive records. I have previously concluded that the Public Body conducted a thorough search. In addition, I have already found that the Public Body was correct to refuse to allow the Applicant's requests to personally examine the records. Therefore, I will not deal further with either of these two issues.

[para 39] In his request for review, the Applicant expressed concern that his two letters to the Public Body were treated as separate requests when he believed them to be the same. It was also the Applicant's position that the Public Body did not respond to his November 9, 2000, access request. The Applicant has stated that his letter of January 29, 2001, was written because he had not received a response to the access request contained in the first letter.

Did the Public Body respond to the Applicant's November 9, 2000 access request?

[para 40] The FOIP Coordinator states in her Affidavit that she received a call from the Principal of School B on November 22, 2000. This call was about the Applicant's November 9, 2000 letter requesting access to the documents in the brown folder. Later



that day, the FOIP Coordinator received a copy of the Applicant's request letter and the response sent to the Applicant from the Principal of School B. In his letter, the Principal advised the Applicant that more time would be needed to consult with the Assistant Principal of School A about the contents of the Case Conference Report.

[para 41] The FOIP Coordinator's Affidavit outlines a telephone discussion that she had with the Applicant on December 1, 2000. She stated that, during that conversation, the Applicant expressed concern about the two documents in the brown folder within his son's file. He expressed a concern that the documents should be destroyed. The FOIP Coordinator stated in her Affidavit that she believed that the Applicant did not want a copy of the records but rather wished them destroyed. She believed that the Applicant had abandoned his access request, and she began researching the feasibility of having the documents destroyed.

[para 42] The FOIP Coordinator stated in her Affidavit that there was no policy within the Public Body to deal with the destruction of this type of record. She went on to state that her research included the practices of other jurisdictions and involved other staff, such as the Records and Information Management Facilitator and Principal of School Operation Services who are involved in developing policy.

[para 43] The FOIP Coordinator went on to say in her Affidavit that she received a copy of the Applicant's letter of January 29, 2001 on February 2, 2001. This letter had been sent to the Principal of School Operation Services and appeared to be asking for different records than in the November 9, 2000 letter, which had been sent to the Principal of School B.

[para 44] In her Affidavit, the FOIP Coordinator went on to outline a telephone conversation that she had with the Applicant on February 6, 2001. The FOIP Coordinator stated that, in this conversation, she informed the Applicant about the steps she had taken to research destruction of the records contained in the brown folder and asked what he now wanted. The FOIP Coordinator also stated that the Applicant told her that he still wanted copies of the documents and that he had already written to the Commissioner about the lack of response.

[para 45] The FOIP Coordinator stated in her Affidavit that she then proceeded with both requests and did so as separate requests to ensure that all records that were responsive to the Applicant's requests were found. On March 1, 2001 the Applicant received copies of three records from the Public Body.

[para 46] I have already found that the three records are responsive to the Applicant's requests contained in both of his letters to the Public Body, and that these are the only records that are responsive. I therefore conclude that the Public Body did respond to the Applicant's November 9, 2000 access request.

[para 47] The Public Body's response to the Applicant clearly exceeded the 30-day time period set out in section 11 [previously section 10] of the FOIP Act. However, it is the

Public Body's evidence that the FOIP Coordinator spoke to the Applicant and formed the opinion that his primary concern was to have the records destroyed and not to receive a copy. The Public Body offered evidence that work on the Applicant's request continued. The Public Body focused on research about the destruction of the records. It was only when the FOIP Coordinator made telephone contact with the Applicant again on February 6, 2001, that she learned her conclusion concerning the change in the Applicant's wishes was wrong. The Applicant received records within 30 days of this telephone conversation.

[para 48] The Applicant did not mention any telephone conversations with the FOIP Coordinator in his written submission. I note, however, that he declined to offer a rebuttal to the evidence about the telephone conversations outlined in the Public Body's initial submission. Therefore I conclude that the accounts of the telephone conversations contained in the FOIP Coordinator's Affidavit are accurate. It was reasonable for the FOIP Coordinator to reach the conclusion that the Applicant had abandoned his access request. The research conducted to try to satisfy the Applicant's request to have the documents destroyed is further evidence that the Public Body fulfilled its duty to assist the Applicant.

Did the Public Body properly characterize his letters as two separate requests?

[para 49] The Applicant did not agree with the Public Body's decision to characterize his two letters as separate requests for information. His position is that the letter of January 29, 2001 was only written because he had not received any records as a result of his letter of November 9, 2000.

[para 50] On examination of the letters, it is clear that they were written to two different people and used different descriptions to describe the records requested. The First request was sent to the Principal of School B. The second went to the former Principal of School Operation Services. The Applicant chose to send the letter to this individual even though he knew that the original request was sent to the school principal and that the FOIP Coordinator was handling his initial request. The Applicant should have expected the requests to be handled as two separate requests.

[para 51] I also note that the letter of December 18, 1998 from the Assistant Principal of School B, was disclosed to the Applicant as a result of the Applicant's January 29, 2001 letter. The December 18, 1998 letter was not responsive to the Applicant's letter of November 9, 2000. Consequently, I am satisfied that the Public Body correctly characterized the Applicant's letters as two separate requests for access.

**V. ORDER**

[para 52] I make the following order under section 72 [previously section 68] of the FOIP Act.

[para 53] I find that the records disclosed by the Public Body to the Applicant were responsive to the Applicant's requests for access and further that they are the only responsive records in the custody or control of the Public Body.

[para 54] I find that the Public Body made every reasonable effort to assist the Applicant and responded to the Applicant openly, accurately, and completely, as provided by section 10(1) [previously section 9(1)] of the FOIP Act.

Dave Bell  
Adjudicator