

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2004-010

May 6, 2004

Edmonton Public School Board District No. 7

Review Number 2477

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

Summary: The Complainant argued that the Edmonton Public School Board District No. 7 (the “Public Body”) released the personal information of the Complainant and her child (the “personal information”) contrary to Part 2 (protection of privacy) of the *Freedom of Information and Protection of Privacy Act* (the “Act”). The record containing the personal information was disclosed to the Public Body’s employees and an individual (the “Parent”) who made an access request under the Act. The record was a letter that advocated for continued support for children with special needs and also contained personal information in the context of specific school-based programs. The record included information and enclosures from the Parent and was copied by the Complainant to the Parent and to other individuals. The Adjudicator held that the Public Body had the authority under the Act to disclose the record containing the personal information to the Public Body’s employees and the Parent.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, Part 2, ss. 17(1),17(4),17(5), 17(5)(a)-(i),40, 40(1),40(1)(b),(c),(h),(j), 40(4) and 72.

Authorities Cited: AB: Orders 96-008, 97-004, 97-019 and F 2003-17.

I. BACKGROUND

[para 1] On September 20, 2000, the Complainant wrote a letter to the principal of a school (“School 1”) operated by the Edmonton Public School Board District No. 7 (the

“Public Body”). The letter, while primarily advocating for continued support for children with special needs, also contained personal information regarding the Complainant and her child (the “personal information”). In addition, there were references to similar efforts made by an individual (the “Parent”) at another school (“School 2”) operated by the Public Body. The letter included enclosures from the Parent and was copied by the Complainant to the Parent and seven other individuals.

[para 2] The Public Body made three separate disclosures of the letter:

1. The Principal of School 1 disclosed the letter to the Principal of School 2.
2. The Principal of School 2 disclosed the letter to the Public Body’s legal counsel.
3. The Public Body disclosed the letter to the Parent pursuant to an access request made by the Parent under the Act.

II. RECORD AT ISSUE

[para 3] The record that was disclosed is the Complainant’s September 20, 2000 letter. As the case involves the authority for disclosure of personal information, the record itself is not directly at issue.

III. ISSUES

[para 4] There are three issues in this inquiry:

- A. Did the Public Body disclose the Complainant’s personal information to a principal in contravention of Part 2 (protection of privacy) of the Act?
- B. Did the Public Body disclose the Complainant’s personal information to the School District’s legal counsel in contravention of Part 2 (protection of privacy) of the Act?
- C. Did the Public Body disclose the Complainant’s personal information to an applicant in response to a FOIP request in contravention of Part 2 (protection of privacy) of the Act?

IV. DISCUSSION OF THE ISSUES

ISSUE A: Did the Public Body disclose the Complainant’s personal information to a principal in contravention of Part 2 (protection of privacy) of the Act?

[para 5] The Act is silent as to which party has the burden of proof in a case where the issue raised is the improper disclosure of personal information under Part 2. Order 97-004 stated that a decision maker may determine who has the burden of proof by considering who raised the issue and who is in the best position to meet the evidential burden. In Order F2003-017, I determined that it was the applicant who had the initial burden to establish that personal information was disclosed, and then the burden would shift to the public body to show that disclosure was allowed under the Act.

[para 6] In this instance the Public Body has admitted that personal information was disclosed on the three occasions. Therefore, it will have the burden to prove that the disclosures were allowed under the Act.

[para 7] The Complainant submits that disclosure of the letter to the Principal of School 2 was not for the benefit of her, or any other, child.

[para 8] The Public Body's position is that disclosure was permitted by section 40(1)(h) of the Act, in that the disclosure to the Principal of School 2 was necessary for the performance of her duties. Section 40(1)(h) 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,

[para 9] The Public Body submitted in evidence a statement of the roles and responsibilities of a principal from its Budget Planning Manual 2003-04, that includes the conduct of programs, management of school resources and the promotion of positive attitudes for all staff. The record contained information pertaining to the programs and management of School 2. For the Principal of School 2 to fulfill those duties, it was necessary for there to be disclosure. I find that the disclosure is allowed under section 40(1)(h).

ISSUE B: Did the Public Body disclose the Complainant's personal information to the School District's legal counsel in contravention of Part 2 (protection of privacy) of the Act?

[para 10] The Public Body's position is that disclosure was permitted by sections 40(1)(h) and (j) of the Act. The Public Body submitted that legal counsel was a full-time employee responsible for the provision of all of its legal services. As the record involved a potential legal matter involving the Public Body and the individuals identified in it, disclosure was necessary for legal counsel to discharge his duties. I find this disclosure fits within section 40(1)(h).

[para 11] Having found that section 40(1)(h) applies, I need not consider the application of section 40(1)(j).

[para 12] One final issue that should be considered in relation to the disclosures concerning both the Principal of School 2 and legal counsel, is the applicability of section 40(4) of the Act. This section states that disclosure should only be made to the extent necessary to enable the public body to carry out the purposes of section 40(1) in a reasonable manner. Disclosure of the entire letter was made to the Principal of School 2 and legal counsel. Having reviewed the letter in the context of employment duties and keeping in mind that school-based program details were intertwined with personal information, I find it was proper for the Public Body to disclose the complete letter to the Principal of School 2 and legal counsel.

ISSUE C: Did the Public Body disclose the Complainant’s personal information to an applicant in response to a FOIP request in contravention of Part 2 of the Act?

[para 13] In the Notice of Inquiry, this issue dealt only with the disclosure of the Complainant’s personal information. However, the Complainant’s submission dealt with both disclosure of her personal information and her child’s. It is in this context that I address this issue.

[para 14] The Public Body has argued that the word “disclosure” means by definition the communication of new information. It argues that this is lacking as the Complainant, prior to the Parent’s FOIP request, had copied her with the record in question.

[para 15] I do not accept this argument. Section 40 of the Act sets out the provisions under which a public body may disclose personal information. None of the provisions allows a public body to release personal information to a third party solely on the basis of prior knowledge.

[para 16] In the alternative, the Public Body submits that the disclosure is permitted by section 40(1)(b) of the Act that states:

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

(b) if the disclosure would not be an unreasonable invasion of a third party's personal privacy under section 17

[para 17] The Public Body makes the submission that the provision of the personal information to the Parent who has already received that information from the Complainant cannot constitute an unreasonable invasion of the Complainant’s or her child’s privacy since no new information has been imparted and thus no privacy interest can have been violated.

[para 18] Order 96-008 set out the principle that, even if an applicant knows the personal information of a third party, that knowledge in itself does not give a right to such information under the Act. Applying that decision here, the issue is still whether disclosure of personal information would not be an unreasonable invasion of the third party's personal privacy, as provided by section 40(1)(b).

[para 19] The Complainant has argued that the Public Body did not respect her or her child's privacy rights. The Complainant also submits, in contrast, that the Public Body does not sufficiently act upon the information it receives or respect the rights of parents to advocate for their children.

[para 20] In reviewing the record, it is apparent that its intent was to advocate for special needs children. The subject matter of the record covered such areas as the hiring of therapists, program funding and parent advocacy. The record identifies third parties, describes their experiences and includes correspondence from them. Some of the information in the Complainant's letter relates to a support group. The Complainant copied members of that group, including the Parent, who later received a copy of the record through her FOIP request to the Public Body.

[para 21] The letter was drafted, in part, on behalf of those concerned with the rights of special needs children. The personal information was tendered incidentally to further the advocacy contained within the record. I also note that the personal information of the Complainant's child did not include detailed information about the child's special condition. The personal information related to school-based programs, which appear to be part of the Complainant's advocacy.

[para 22] It is important to note that advocacy is the act of supporting or recommending a course of action. The audience for such advocacy may be the public at large or, in this case, a restricted audience of educators and concerned individuals. In this context, it is reasonable that a Public Body would act upon such a record by sharing it with those involved with such issues, be they employees or persons such as the Parent who are somehow involved in such an effort. To conclude that such a disclosure would be an unreasonable invasion of personal privacy would limit the effectiveness of any advocacy and, in essence, would be contrary to the purpose for which the letter was apparently created.

[para 23] Section 17(5) provides that, in determining under section 17(1) or (4) whether disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances. The consideration of relevant circumstances is not confined to those listed in section 17(5)(a) to (i). The collaborative effort behind the letter and the purpose for which the letter was created are relevant circumstances that can be properly considered. For the reasons cited above, I find that the Public Body has established that disclosure of personal information to the Parent in this case was not an unreasonable invasion of the personal privacy of the Complainant or her child.

[para 24] In making such a finding I am aware that Order 97-019 stated that a letter containing personal information “cc’ed” to a third party would not constitute a relevant circumstance when determining whether there has been an unreasonable invasion of privacy under section 17(5). The rationale behind that conclusion is that prior knowledge should not, in itself, determine rights of access under the Act. In this case, there are other relevant circumstances such as the collaborative effort behind the letter and the letter’s purpose of bringing issues into a wider forum. This case therefore is clearly distinguishable from Order 97-019.

V. ORDER

[para 25] On all three issues, I find that the Public Body disclosed the Complainant’s personal information in accordance with Part 2 of the Act. Therefore, no Order is to be made.

Dave Bell
Adjudicator