ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2008-025

May 21, 2009

ATTENDANCE BOARD

Case File Number F3762

Office URL: www.oipc.ab.ca

Summary: An individual complained that his personal information had been collected in a manner contrary to the *Freedom of Information and Protection of Privacy Act* ("the Act") when the provincial Attendance Board admitted into evidence a psychologist's report ("the Report") that, though pertaining primarily to the Complainant's son, also contained some of the Complainant's personal information. He also complained that his personal information had been disclosed contrary to the Act when the Attendance Board disclosed the Report to the son's school.

The Adjudicator found that the Attendance Board's admission of the entire Report as evidence in the attendance hearing was in compliance with the Act. However, she found that the Board's disclosure of the Report to the School was not authorized, and hence was in contravention of the Act.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n), 1(h), 3(d), 17, 17(1), 17(2), 17(3), 17(4), 17(4)(a), 17(4)(g)(i), 17(5), 17(5)(f), 33, 33(a), 33(b), 33(c), 34, 34(1)(a)(ii), 34(1)(b), 34(1)(g), 40, 40(1)(b), 40(1)(c), 40(1)(g), 40(4), 41, 41(a), 41(b), 72, 84(1)(e); *School Act*, R.S.A. 2000, c. S-3, ss. 127(e), 127(h), 127(1)(m), 128(1), 128(1)(e), 128(2)(a); **CANADA**: *Privacy Act*, R.S.C. 1985, c. P-21; *Access to Information Act*, R.S.C. 1985, c. A-1

Orders Cited: AB: Orders F2006-014, F2008-020; **ONT:** Order MO-2199.

Court Cases Cited: *Gordon v. Canada (Minister of Health*) 2008 FC 258.

I. BACKGROUND

[para 1] On June 13, 2006, the Complainant complained that his personal information had been collected and disclosed by the Attendance Board ("the Board" or "the Public Body") in a manner contrary to the *Freedom of Information and Protection of Privacy Act*. He also expressed concern about the collection and disclosure of his son's personal information.

[para 2] The Attendance Board had convened in January, 2006 and again in March, 2006, to hear a referral from the Edmonton Catholic Separate School District No. 7 (the "School Board") relating to the son's non-attendance at school and related issues. During the course of the second part of the hearing, the Attendance Board accepted into evidence a Psychological Assessment Report of a psychologist ("the Report"), which contains the personal information of the Complainant, as well as of his son and of another family member. As well, the Board ordered that a copy of this Report be provided to the son's school (the School). The evidence of the Attendance Board suggests that the Report was for a time placed on the son's student record (CUM file).

[para 3] At a subsequent hearing on May 4, 2006, the Complainant expressed concerns about the record being in his son's school file. On June 15, 2006 the Attendance Board directed that the School return the Report to the Attendance Board, which was done on that day.

[para 4] On receipt of the complaint, this matter was assigned to a mediator. However, the mediation was not successful, and the matter proceeded to inquiry. The Complainant requested that the matter be put into abeyance to enable him to make an access request to the Public Body. The access request was concluded, and the inquiry accordingly proceeded.

II. RECORDS AT ISSUE

[para 5] As this matter involves a complaint, there are no records at issue.

III. ISSUES

[para 6] The issues in this Inquiry are:

Issue A: Did the Public Body collect the Complainant's personal information in contravention of Part 2 of the *Freedom of Information and Protection of Privacy Act?*

Issue B: Did the Public Body disclose the Complainant's personal information in contravention of Part 2 of the *Freedom of Information and Protection of Privacy Act?*

[para 7] I have noted that the complaint to this Office indicates that the Complainant is also concerned that personal information of his son was improperly collected and disclosed. However, the concluding paragraph of the request states: “As such, can the Privacy Commissioner investigate and protect my rights.” As well, although parts of the Complainant’s rebuttal submission also seem to object to the collection and disclosure of the entire Report (which deals primarily with the son), in his initial submission he deals primarily with the collection and disclosure of his own personal information as contained in the Report. As the Complainant has not provided any evidence or argument that he is entitled to exercise the rights of his son as guardian under section 84(1)(e) of the Act, I will treat this complaint as one relating only to his own personal information as contained in the Report, and decide the issues as worded in the Notice of Inquiry.

IV. DISCUSSION OF ISSUES

Issue A: Did the Public Body collect the Complainant’s personal information in contravention of Part 2 of the *Freedom of Information and Protection of Privacy Act?*

[para 8] The definition of “personal information” in section 1(n) of the Act includes the following:

> *1(n) “personal information” means recorded information about an identifiable individual, including*
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> *(iii) the individual’s age, sex, marital status or family status,*
>
> *...*
>
> *(vi) information about the individual’s health and health care history, including information about a physical or mental disability,*
>
> *...*
>
> *(viii) anyone else’s opinions about the individual,... .*

[para 9] I have reviewed the Report, and determined that it contains the Complainant’s personal information, primarily the psychologist’s opinions about the Complainant’s personal relationships with his son and another family member, as well as his marital status. While the Report does not name the Complainant, there are various references within it to the “parents” and the “father” of the son. In my view, the Complainant is identifiable as the parent or father discussed in the Report. As a participant in the hearing, he could clearly be identified by the Attendance Board. As well, as a person involved in his son’s schooling, he could be identified by employees of the School or School Board to which the Report was provided. Earlier orders of this Office have held that a person is identifiable if others have other information about the person which could be used to

identify a person whose information is contained in written records. For example, in Order F2008-020, the Adjudicator stated (at para 30):

> An individual does not have to be identifiable by every person reviewing a particular record in order for there to be personal information about that individual; the individual needs only to be identifiable by someone.[1]

As the Attendance Board received this Report in to evidence, I conclude that it collected the Complainant's personal information.

I note, however, that contrary to the Complainant's assertions in his letter of complaint and in his submissions, while the Report contains some assertions about the nature of the Complainant's family relationships, it does not contain any information that could reasonably be describe as his "personal medical information" or his "medical condition". It does not refer either to any physical condition of the Complainant, nor to any mental one.

[para 10] The Attendance Board argues that it was authorized to collect the personal information "pursuant to a combined reading of sections 127(e) and (h) of the *School Act* and sections 33(b) and (c) of the FOIP Act.

[para 11] The *School Act* provisions that were cited fall within the part of the *School Act* that governs hearings of the Attendance Board. Section 127(e) provides that the Board shall receive any relevant evidence presented to it, and section 127(h) provides that all documentary evidence received at a hearing forms part of the record of the proceeding.

[para 12] The FOIP Act provisions cited by the Attendance Board permit collection of personal information in specified circumstances. Section 33(b) permits collection for the purposes of law enforcement. Section 33(c) permits collection of information that relates directly to and is necessary for an operating program or activity of the public body. I also note section 33(a), which permits collection where collection of the personal information is expressly authorized by an enactment of Alberta or Canada.

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[1] As well, in Order F2006-014, the Adjudicator said:

> The information also pertains to an individual who is identifiable**,** whether using information that has not been severed from the records at issue (such as a date and location) or information otherwise known to the Applicant or others. In an Ontario Order, it was stated that when determining whether information is about an identifiable **i**ndividual, one must look at the information in the context of the record as a whole and that, furthermore, information without personal identifiers (as here, given that the name of the individual has also been severed) may not be truly non-identifiable if it can be combined with other information from other sources to render it identifiable (Ontario Order MO-2199 at para. 23).

See also *Gordon v. Canada (Minister of Health*) 2008 FC 258, at para 34, wherein the following test was adopted in relation to "personal information" (the definition of which, as set out in the federal *Privacy Act* as "information about an identifiable individual that is recorded in any form", is adopted for certain purposes by the federal *Access to Information Act*): "Information will be about an identifiable individual where there is a serious possibility that an individual could be identified through the use of that information, alone or in combination with other available information."

[para 13] I accept the Attendance Board's contention that the collection of the Complainant's personal information by the Attendance Board during the hearing was authorized by section 33.

[para 14] First, I accept that admitting evidence that is relevant to a matter before it, including evidence that consists of someone's personal information, relates directly to and is necessary for the operating program or activity of the Attendance Board of making the kinds of decisions, and issuing the kinds of orders, that it is constituted to make and issue, within the terms of section 33(c). I also accept that the parts of the Report that consist of the Complainant's personal information were evidence that was relevant to the kinds of things the Board is empowered to decide and to order, and that it was to decide in the case before it involving the Complainant. The Board has broad powers to address a non-attendance issue, including directing the parents to send students to school, imposing monetary penalties on parents where a student fails to attend, and giving any directions, including to parents, that it considers appropriate in the circumstances. Information about a parent and a parent's relationship with a child and possibly with other family members may well be needed to assist the Board in understanding an attendance problem and in deciding what determinations and orders should be made to address an attendance issue. Having reviewed the Report and the Board's orders, I believe that such evidence was relevant to the decisions the Board was to make in the present case.

[para 15] As well, I accept that the Attendance Board's proceedings were "law enforcement" proceedings, within the terms of section 33(b). "Law enforcement" is defined in section 1(h) of the Act as including "proceedings that lead or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the proceedings or by another body to which the results of the proceedings are referred". I note that section 128(1)(e) of the *School Act* permits the Board to impose a monetary penalty on a student's parent for each day a child does not attend school (to a maximum of $1000). As well, as the Attendance Board points out in its submission, contravention of a Board order could lead to a contempt proceeding, and an associated penalty. While penalizing parents may not be a primary function of the Attendance Board, it is one means by which it may achieve its mandate in appropriate cases, and thus its powers in this regard bring it within the terms of the provision.

[para 16] As I have found that sections 33(b) and (c) apply so as to authorize the Attendance Board's collection of the Complainant's personal information during the course of its hearing, I do not strictly need to consider whether this collection as also authorized by section 33(a), which allows collection where collection of the information is expressly authorized by an enactment of Alberta or Canada. This section contains some ambiguity as to the degree to which the authorizing enactment must describe the particular kind of personal information that may be collected under its authority. However, in my view, a provision that requires the admission of relevant evidence expressly authorizes the collection of any relevant evidence, including evidence that consists of any kind of personal information. Further, section 3(d) of the Act says that the Act does not affect the power of any tribunal in Canada to compel the production of

documents. Therefore, in my view, section 33(a) also applies so as to authorize the collection of personal information by the Attendance Board in this case.

[para 17] Before leaving this section, I wish to address the Complainant's submission respecting his lack of consent to collection of his personal information by the Board. The Complainant cites some sections of the Act which have led him to believe that his consent was required. He states his view that "[t]he specific controlling identifier to the collection of any and all information seems to be that of consent, unless ordered by the courts, by law enforcement, or by the commissioner".

[para 18] This is a misinterpretation of the Act. Section 33 of the Act permits a public body to collect personal information in particular circumstances *regardless of whether the person whose information it is consents*. While the idea of consent arises in some of the other parts of the Act, none of them detract from a public body's ability to collect information where any of the three subsections of section 33 are met. As I have said, in this case, all three of them are met.

[para 19] I conclude that the Attendance Board did not violate the Act when it collected the Complainant's personal information in the course of its hearing.

[para 20] I also note that the Complainant's submission raises the requirement under section 34 of the Act that collection be directly from the individual unless indirect collection is authorized. [2] This was not raised as an issue for the inquiry, but since the Complainant's information in the Report was not collected directly from him, but was collected as it existed in the Report (which was created prior to the hearing), I will address it. For reasons similar to those already given, I conclude that the indirect collection was authorized by section 34(1)(a)(ii) (indirect collection authorized by another Act - in this case, section 127(e) of the *School Act,* which requires the collection of any information that constitutes relevant evidence), and section 34(1)(g) (information collected for the purpose of law enforcement).

Issue B: Did the Public Body disclose the Complainant's personal information in contravention of Part 2 of the *Freedom of Information and Protection of Privacy Act?*

[para 21] The Attendance Board confirmed the Complainant's contention that it had disclosed the Report, and thereby his personal information contained therein, when it ordered the Report to be provided to the School. The School is a separate body from the Attendance Board, and therefore I find there was a disclosure of the Complainant's personal information as contained in the Report when it was provided to the School.

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[2] The relevant parts of section 34(1) provide:

> *34(1) A public body must collect personal information directly from the individual the information is about unless*
> *(a) another method of collection is authorized by*
> *(ii) another Act or a regulation under another Act, or*
> *(g) the information is collected for the purpose of law enforcement,… .*

Whether the disclosure was authorized under section 40(1)(c) and 41

[para 22] The Attendance Board argues that the disclosure was authorized under a number of the provisions of the Act. First, it argues that sections 40(1)(c) and 41 authorized the disclosure. Section 40(1)(c) provides that a public body may disclose personal information for the purpose for which the information was collected or compiled or for a use consistent with that purpose. Section 41 says a disclosure is consistent if the disclosure has a reasonable and direct connection to the purpose for which it was collected (section 41(a)), and if the disclosure is necessary for performing the statutory duties of, or operating a legally authorized program of, the public body that discloses the information (section 41(b)).

[para 23] In its oral reasons for decision of March 8, 2006, the Attendance Board described the reasons for its decision to order the disclosure of the Report to the School or School Board as follows:

> Okay, we have deliberated and we are going to provide a copy of the Report to [the Assistant Principal of the son's School].
> The school board saw fit to make a referral because of lack of attendance, and when we read the report, in there is at least 4 recommendations that the school should have an opportunity to review in detail, you know, recommendations from [the psychologist], and one of them we will come to in a minute.

[para 24] As well, in the Background to a later order of the Attendance Board, it is noted that at the subsequent hearing that took place on May 4th, 2006, the parents objected to the Report being placed on the son's student record. The Attendance Board's response is described as follows:

> The panel explained that the report was a valuable tool to assist the school jurisdiction with planning [the son's] program.

[para 25] In making its submissions the Attendance Board states that

> … the School needed to have a copy of the Report, specifically because the report contained recommendations from [the psychologist] that:
>
> - "The school should provide [the child] with more individualized attention and assistance
> - The school should involve [the child] in more activities as a sign of good faith
> - The school should work in collaboration with the parents in devising a more effective learning format for [the child]
> - Instead of having [the child] agree to a contract, he should be engaged in a "covenant" which is more in keeping with Catholic theology
> - The covenant should focus on [the child's] needs but outline the role to be played by parents, teachers and others

[para 26] I concluded in the preceding section that the entire Report was relevant as evidence that would better enable the Attendance Board to make its determinations and issue its orders, and could be collected by the Board on that basis. The question I must now answer is whether provision of the entire Report by the Board to the School, which included the parts that consisted of the Complainant's personal information (which is personal information about him and his relationships with his son and with another family member) had a reasonable and direct connection to the purpose for which the Board received the entire Report as evidence (which was to consider the causes of and circumstances surrounding the son's attendance issues for the purpose of determining what directives to issue) within the terms of section 41(a). I must also decide whether the provision of this part of the Report to the School was necessary for the Attendance Board to perform its statutory duties or operating its program of addressing attendance problems. Section 40(1)(c) is met only if both these conditions are met.

[para 27] In answering these questions, I have taken two factors into account.

[para 28] First, I note that the Attendance Board itself gave as its primary reason for disclosing the information that it wanted the School to have an opportunity to review the psychologist's recommendations. The psychologist's recommendations were all contained in the final paragraph of the Report. Disclosure of that part alone would have been adequate to achieve the stated objective.

[para 29] The second factor is the nature of the Attendance Board's powers, and the orders that it made for securing attendance in this case.

[para 30] With regard to this factor, I begin by noting that because the Complainant's personal information constitutes background information about family dynamics that might shed some light on the son's attendance issues, it could, conceivably, enhance the ability of the School or School Board to help address the attendance issue. I note as well that although the psychologist's recommendations are largely directed at the way the School should deal with the student in future, the recommendations also involve the parents to some degree. The psychologist recommends that the School work collaboratively with the parents in devising the son's learning format, and the "covenant" with the School is to include the role to be played by the parents.

[para 31] Having said this, however, I do not see that the statutory role and powers of the Attendance Board include facilitating the School's ability to deal with attendance issues, much less to provide the School with information it needs to plan the son's program. Section 128(1) of the *School Act* provides:

> *128(1) On hearing a matter referred to it, the Attendance Board may, subject to any terms or conditions that the Attendance Board considers proper in the circumstances, make an order doing one or more of the following:*
>
> *(a) directing the student to attend school;*
>
> *(b) directing the parents of a student to send the student to school;*

(c) *subject to sections 29, 47 and 48, directing the student to take an education program, course or student program set out in the order;*

(d) *reporting the matter to a director under the Child, Youth and Family Enhancement Act;*

(e) *imposing on the student's parent a monetary penalty not exceeding $100 per day up to a maximum of $1000 to be paid to the Crown for each day that the student does not attend school;*

(f) *giving any other direction not referred to in clauses (a) to (e) that the Attendance Board considers appropriate in the circumstances*

[para 32] This list of the Board's order-making powers does not expressly include the power to direct the School as to how to resolve or help resolve an attendance problem. I note that section 128(2)(a) permits the Board to "make an interim order giving any directions to the student, a parent of the student, *the board* or the person responsible for the operation of the private school that the Attendance Board considers appropriate in the circumstances [emphasis added]". However, any final order is to be made under section 128(1), which refers to parents and students but not to a school or school board. While it might be argued that the last of the list of powers in section 128(1) - to give any direction it considers appropriate – includes the power to give directions to a school, in my view, this would have been stated had it been intended, particularly given the restricted list of persons against whom an order can be made in the first part of the list. The Attendance Board appears to be a body 'of last resort' for attendance problems, in the sense that a referral is to be done to it by a board only if the school's or school board's own efforts have failed, and the powers of the Attendance Board are powers for enforcing attendance.

[para 33] Quite apart from the scope of the Board's powers, no order was made to the School or School Board in this case as a matter of fact. While the psychologist's Report makes recommendations to the School about what it should do to help resolve the problem, the Attendance Board's directives are all to the parents and the student, and there is no suggestion that the psychologist's recommendations in his Report are enforceable as against the School, or that the Attendance Board intended that they should be. Though the Board did direct, on April 7, 2006, that the student is to enter into a covenant with the School, which necessarily involves the School, no direction was given to the school, and I presume that the School's participation in this endeavour was to be voluntary. This is supported by the Background Summary from the first hearing of the Board on January 26, 2006, which describes the testimony of the School Operations Services District Principal, wherein this individual stated that "Edmonton Catholic Schools will abide by whatever directions are given by the panel in the order".

[para 34] The point of the foregoing discussion is as follows: had the Attendance Board given directives to the School (even assuming it had the power to do so), then conceivably, disclosure of personal information which might have helped the School to comply with these directives (to the extent the Complainant's personal information could have had this effect) might be regarded as having had a reasonable and direct connection to the purpose for which the Board received the entire Report as evidence (which was to

consider the causes of and circumstances surrounding the son's attendance issues and to give any necessary directives). Similarly, it might also be seen as having been necessary for the Attendance Board to perform its statutory duties or operate its program of addressing attendance problems.

[para 35] However, since the Attendance Board's orders were directed only to the son and to the parents, I do not see that providing information to the School such as might assist the School in dealing with the student was consistent with the Attendance Board's purposes for collecting the Complainant's personal information in this case. It is not clear that disclosure of the Complainant's personal information was of any assistance to the School in dealing with the student, but even if it had been, the connection between disclosure of this information to the School and the Attendance Board's purpose for collecting the information – which was to inform its decision as to what directives to issue to the son and the parents respecting his attendance - is not sufficiently close to constitute a "reasonable and direct connection" within the terms of section 40(1)(c) and 41(a). Similarly, the disclosure was not necessary within the terms of section 41(b) for the Attendance Board to perform its statutory duties or operate its program of deciding how to enforce, and enforcing, attendance requirements.

[para 36] Thus I conclude that the disclosure was not authorized by section 40(1)(c) of the Act.

[para 37] I also take into account section 40(4) of the Act, which provides that any disclosure of personal information that is authorized under section 40 is to be done "only to the extent necessary to enable the public body to carry out [its authorized purposes] in a reasonable manner". This provision raises the idea of necessity, and on this account, is similar to the requirement in section 41(b) that the disclosure be necessary for the Attendance Board to perform its statutory duties. As I have already discussed at para 35, even if the information could have been of some assistance to the School in continuing to address the son's attendance, disclosure of the Complainant's personal information to the School was not *necessary* for the Attendance Board to carry out its purposes in a reasonable manner. In my view, if the school needed information about the parents in order to carry out any role it had in the resolution of the attendance issue, it could have obtained such information directly from the parents while working with them, rather than from the Report.

[para 38] This raises the related point that the School collected the information about the parents indirectly by way of the Report rather than directly from them. The issue of the School's collection of the personal information of the parents was not raised as an issue for this inquiry, and the School (and the School Board as the related public body) were not parties, and have not had an opportunity to comment on it. Therefore, I make no finding as to whether this collection was in contravention of the Act. However, I note that the only provision in section 34 which I can see might authorize indirect collection of the information by the School or School Board (section 34(1)(b)) depends on the Attendance Board having authority to disclose the information to the School. I have already found there was no such authority.

Whether the disclosure was authorized under section 40(1)(b)

[para 39] The Attendance Board's second argument is that the disclosure was authorized under section 40(1)(b), which provides that a public body may disclose personal information if the disclosure would not be an unreasonable invasion of the personal privacy of the person the information concerns. To support this argument, the Attendance Board undertook an analysis under section 17.

[para 40] Section 17**(**1) requires the head of a public body to refuse to disclose a third party's personal information if the disclosure would be an unreasonable invasion of the third party's personal privacy. However, this provision cannot be read in isolation. Section 17**(**2) establishes situations in which disclosure is not an unreasonable invasion of privacy, while section 17**(**3)and (4) describe the situations in which disclosure of personal information is presumed to be an unreasonable invasion of privacy. Section 17**(**5) is a non-exhaustive list of criteria for the head of a public body to weigh when determining whether disclosure of personal information is an unreasonable invasion of a third party's personal privacy.

[para 41] The Attendance Board stated that the presumption that disclosure is unreasonable that arises under section 17(4)(a) – when the information relates to a medical or psychological history or condition – did not arise in this case because any such information that was in the Report was that of the son and not of the father. I agree with this point.

[para 42] The Attendance Board also stated that the Report was disclosed to assist the child, the parents and the School to comply with the *School Act* and the Attendance Board orders, and that this was not an unreasonable invasion of the Complainant's privacy because:

(1) The information in the Report is focused on the Complainant's son, and not the Complainant
(2) The Complainant had been cautioned by [the psychologist] as part of his consent procedures
(3) The Complainant was aware that the Report was being prepared in anticipation of the Attendance Board hearing
(4) The Consent on the cover of the Report states: "Upon completion of the assessment, the results were reviewed with [the child] and his parents""
(5) The Complainant had opportunity to make representations to the Attendance Board and did so on other issues (section 127(1)(m) of the *School Act*)
(6) The Complainant did not request that his personal information not be disclosed
(7) It was [the psychologist] and not the Complainant that raised the issue of the personal information in the Report
(8) The Complainant did not clearly articulate any objection to the personal information in the Report being disclosed to the school during the discussion,

after the panel deliberated, or after the panel pronounced its Order. When the Complainant did comment regarding the Report, it was not clear what his position was:

> "I think that you should talk with [the child] and we should make a copy that is submittable to her, that we can settle that."

(9) The Complainant has not provided the specifics of how the information in the Report resulted in any loss or invasion of his personal privacy.

[para 43] I do not accept the Attendance Board's conclusion that the disclosure was not an unreasonable invasion of the Complainant's personal privacy, for the following reasons.

[para 44] I considered first whether there are any presumptions that disclosure is an unreasonable invasion of the Complainant's personal privacy. Section 17(4)g)(i) provides that there is such a presumption where the personal information consists of a third party's name when it appears with other personal information about a third party. In this case, the Report does not contain the Complainant's name, but it does contain other personal information about him, including sensitive personal information about his family relationships. The Complainant's name and association with the son are recorded in other documents relating to the hearing, including the Board's orders, and thus he is identifiable to a considerable number of people as the person who is being discussed in the Report. Thus, in my view, section 17(4)(g)(i) applies. Even if the provision does not strictly apply in terms of its language, the principle that it reflects – that disclosure of personal information associated with the name of the person whose information it is is presumptively an invasion of privacy - applies as a relevant circumstance which is to be taken into account under section 17(5).

[para 45] I turn to the Attendance Board's list of points under section 17.

[para 46] With regard to the Attendance Board's point that the information is focused on the Complainant's son, that is true, but it does not address the fact that the Report also contains the Complainant's sensitive personal information.

[para 47] With regard to the idea that the Complainant was "cautioned about the risk of loss of confidentiality", which the Attendance Board appears to base on the statement to this effect in the Report, this evidence does not tell me what the psychologist actually stated about confidentiality, or what the Complainant took from what was said. Possibly the Attendance Board's point is that the Complainant did not give the information to the psychologist in confidence within the terms of section 17(5)(f). However, I cannot conclude from the fact that some such "caution" was given that the Complainant was aware of the possibility that his personal information would be conveyed to the school or would become part of his son's school record.

[para 48] With regard to the idea that the Complainant was aware that the Report was being prepared for the Attendance Board hearing, I believe this is likely the case. I have found, above, that the entire Report was properly admitted in the hearing as relevant

evidence. However, again, this does not answer the question of whether the Complainant was aware the Report would be provided to the School.

[para 49] I am not sure of the significance of the Attendance Board's point that the results of the Report were reviewed with the parents. Possibly it is that the Complainant would have been aware of the contents at least by the time of the review, and thus would have known that it contained his own personal information, and that this implies some sort of acquiescence. I note first that the Complainant's submissions about what is in the Report indicate that he does not have a clear idea about what it contains about him. Second, by the time of this review, he was not in a position to decide what would go into the Report and thus what he did and did not wish to have revealed about himself.

[para 50] I am also unsure of what the Attendance Board meant by its statement that the Complainant had opportunities to make representations to the Attendance Board on other issues. If I am to take from this that the Complainant could have objected to the proposed disclosure of the Report to the School, this is the same as the next point (#6) - that he did not request that his personal information not be disclosed. As for this argument, I note first that the Attendance Report must abide by the limitations on disclosure in the Act whether or not it is asked to do so. Further, the transcript reveals that when the issue of providing the Report to the School arose, the psychologist raised the concern that disclosing the full Report, which contained the personal material of both parents, may not be fair to the parents, and the Complainant responded by saying:

> I agree. I think that you should talk with [the son] and we should make a copy that is submittable to [the School's Vice-Principal], that we can settle that.

[para 51] I disagree with the Attendance Board's submissions that this was not a clearly-articulated objection to disclosure of his personal information to the School. In my view, these statements by the Complainant reflect a concern about his privacy, and an indication of his desire to have a "submittable" copy created. It seems highly likely that by a "submittable" copy, he meant a copy from which his personal information, or sensitive personal information, had been removed (and possibly also that of another family member, as well as that, or some of that, of his son).

[para 52] These observations also address the Attendance Board's next two points (numbers 7 and 8) that it was the psychologist who raised the issue of personal information in the Report, and that the Complainant did not clearly articulate his objection until a subsequent meeting of the Board. The fact that the Complainant indicated his willingness that some version of the Report should be provided to the School should not be taken to override his expression of agreement with the psychologist that his personal privacy and that of his family members was a concern to him.

[para 53] With regard to the Attendance Board's final point in the list - that the Complainant did not provide specifics of how the information would result in invasion of his privacy - he stated his feelings about this in his submissions. While it appears that the Complainant is under some misapprehension as to the nature of the information in the

Report that is about him (in that he wrongly believes it to be his medical information), in my view, the information is nonetheless sensitive personal information about family relationships, and is self-evidently of a kind that invades personal privacy.

[para 54] The Attendance Board also provided a reason for not severing the Complainant's personal information from the Report. It said:

> … it is not reasonable for the Complainant to expect the Public Body to sever his personal information out of a Report presented at an Attendance Board hearing at which he was present, and at which he knew the Report would be entered, when he did not articulate an objection.

I accept that it would not have been reasonable for the Attendance Board to order severing of the Report before it accepted it as evidence, and I have confirmed the Board's admission of it in its entirety as having conformed with the Act. However, even if (which is not clear) the Board had the power to provide the Report to the School or School Board or would be in appropriate circumstances, it would have been possible for it to provide a version that did not contain the personal information of the parents. This was, indeed, what the Complainant had agreed should be done.

Whether the disclosure was authorized under section 40(1)(g)

[para 55] The Attendance Board's final argument under Issue B is that its disclosure was authorized by section 40(1)(g) of the Act, which permits disclosure for the purpose of complying with an order issued by a body having jurisdiction in Alberta to compel the production of information.

[para 56] The language of section 40(1)(g) might in form apply to the Attendance Board's disclosure in this case, insofar as it is a body having the ability to compel the production of information, it issued an order that the information was to be disclosed, and the disclosure was in compliance with this order.

[para 57] However, I do not believe this is a permissible reading of the provision because it is clearly contrary to its intent. In my view, the provision permits such disclosure as is done to comply with an order of the body to disclose information *to* it, rather than *by* it. In other words, the "order" contemplated by the provision is one that directs someone to provide evidence to the body. This is the only reading that accords the appropriate meaning to the part of the provision that makes it a condition that the body making the order to have the power to compel evidence.

Whether the disclosure to the School was authorized to enable the School to participate effectively in the hearing

[para 58] I note finally that the School participated in the hearing by providing evidence, and that conceivably, it might have been argued that the Attendance Board had authority to disclose the Report to the School to enable it to participate in the hearing effectively.

However, the Attendance Board did not make this argument. Further, I do not see that providing the Report to the School outside the context of the hearing, or after it had concluded, could have been justified on this basis. Nor do I see that the School would have needed the entire Report, including the personal information of the Complainant that was contained in it, to enable it to participate, especially as the psychologist provided much of the contents of the Report in his oral testimony.

V. ORDER

[para 59] I make this Order under section 72 of the Act.

[para 60] I find that in collecting the Complainant's personal information by accepting the psychologist's Report into evidence, the Public Body acted in compliance with Part 2 of the Act.

[para 61] I find that in disclosing the Complainant's personal information by providing the psychologist's Report to the School, the Public Body contravened Part 2 of the Act.

[para 62] I note that the School has already returned the Report to the Attendance Board, but I order the Attendance Board to refrain from disclosing the Complainant's personal information as contained in the Report to the School in future.

Christina Gauk, Ph.D.
Director of Adjudication