

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2016-26

July 13, 2016

EDMONTON PUBLIC SCHOOL DISTRICT NO. 7

Case File Number F8066

Office URL: www.oipc.ab.ca

Summary: The Complainant is a female transgender student attending a school run by Edmonton Public School District No. 7 (the Public Body). She complained that the Public Body disclosed her personal information in contravention of the *Freedom of Information and Protection of Privacy Act* (the Act) when teachers displayed or called out her legal name, which is a typically male name. The Public Body agreed that it had breached the Act and had not made proper security arrangements to protect the Complainant's personal information.

The Adjudicator found that the Public Body disclosed the Complainant's personal information (her name, sex, and that her gender identity was different than her sex at birth) in breach of the Act. She also found that it had failed to make proper security arrangements, but noted that the draft policy created after these breaches addressed the concerns raised by the Complainant.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 17, 38, 40, 41, and 72.

I. BACKGROUND

[para 1] The Complainant is a transgender student who was attending a school run by Edmonton Public School District No. 7 (the Public Body). At the material time, her legal name had not been changed and reflected that she was born physically a male.

[para 2] Before she began attending the school, the Complainant and her parents met with school officials, and the school officials were told that they could advise the Complainant's teachers that she was transgender but did not want the school body to be made aware of this. The school officials agreed, and assured the Complainant and her parents that accommodations would be made to keep this information private.

[para 3] One such accommodation was that teachers in the Complainant's classes would read roll call from a paper list, which reflected the Complainant's chosen name instead of her then legal name. It is my understanding from the Complainant's submissions that teachers generally take attendance from a computer program called PowerTeacher. The Complainant's name in PowerTeacher was her legal name and not her chosen name.

[para 4] On a number of occasions, the Complainant's legal name was displayed on a screen at the front of her classroom and was visible to the entire class. On two of these occasions, a teacher also called out or had another student call out attendance from the screen, announcing the Complainant's legal name to the other students in the class. On one occasion a supply teacher loudly discussed with the Complainant the process to have her name changed.

[para 5] Many of these incidents involved supply teachers who were covering for the Complainant's regular teachers. The Complainant advises that there is a binder created for supply teachers and that it contains information that a teacher must take attendance from the paper copy of the class list when there is a transgender student in class.

[para 6] The Complainant and her parents discussed these incidents with school officials, who were apologetic.

[para 7] On March 10, 2014, the Complainant submitted a complaint to the Office of the Information and Privacy Commissioner (this Office) arguing that the Public Body had breached the *Freedom of Information and Protection of Privacy Act* (the Act). Mediation was authorized but not successful in resolving the issues between the parties. Believing that no "effective administrative or technological resolutions have been implemented that would stop these disclosures from recurring", on April 14, 2015, the Complainant requested an inquiry. I received submissions from both the Complainant and the Public Body.

II. ISSUES

[para 8] The Notice of Inquiry dated March 8, 2016 states the issues in this inquiry as follows:

1. Did the Public Body disclose the Complainant's personal information in contravention of Part 2 of the Act?
2. Did the Public Body fail to protect the Complainant's personal information in contravention of Part 2 of the Act?

III. DISCUSSION OF ISSUES

1. Did the Public Body disclose the Complainant's personal information in contravention of Part 2 of the Act?

[para 9] Section 40 of the Act governs when a public body may disclose personal information. Personal information is defined by section 1(n) of the Act as follows:

1(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,

(ii) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,

(iii) the individual's age, sex, marital status or family status,

(iv) an identifying number, symbol or other particular assigned to the individual,

(v) the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,

(vi) information about the individual's health and health care history, including information about a physical or mental disability,

(vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,

(viii) anyone else's opinions about the individual, and

(ix) the individual's personal views or opinions, except if they are about someone else;

[para 10] The Complainant argues that by disclosing her legal name the Public Body disclosed her name and sex, which are her personal information. I agree. As well, given that her legal name was gender specific, in these circumstances, disclosing her legal name also disclosed her gender identity was different from her sex at birth, which is information about an identifiable individual.

[para 11] Therefore, when the Complainant's legal name was displayed or called out in front of her class, her personal information was disclosed by the Public Body.

[para 12] The possibly relevant parts of sections 40 and 41 of the Act state:

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

(a) in accordance with Part 1,

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

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

...

(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

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.

[para 13] Sections 40(1)(b) and 40(1)(c) arguably apply. However, the Complainant argues that they do not.

[para 14] First, she says that section 40(1)(b) (not an unreasonable invasion) would not apply by reference to section 17(3). Section 17(3) provides that disclosure of the categories of information listed in section 17(2)(j) (disclosure of which is not an unreasonable invasion) is nevertheless an unreasonable invasion if the party whose information it is has requested that it not be disclosed. Although section 17(2)(j)(i) deals with school enrollment, it is not clear to me that the present situation is one in which all that will be revealed by disclosing the name is the fact the Complainant is enrolled in the school. Therefore, section 17(3) may not be applicable. However, I do agree, particularly because the Complainant requested the information not be disclosed, that disclosing it was an unreasonable invasion of her privacy. Therefore, section 40(1)(b) does not apply.

[para 15] The Complainant also concedes that the information may have been disclosed for the purpose for which it was collected (section 40(1)(c)). However, she argues that despite this, it was not prudent or necessary in the circumstances. I agree that it was not, and therefore, the disclosure was in contravention of section 40(4) (disclosure may be only to the extent necessary to carry out the public body's purposes in a reasonable

manner). Further, while the *School Record Regulation* does require the student's legal name to be kept by the board, it does not require that it be used for attendance in the classroom. Therefore, assuming the Complainant's legal name had been collected to maintain her record in accordance with the regulation, its use for taking attendance was not a consistent purpose (the disclosure neither had a reasonable and direct connection to the purpose, nor was it necessary for performing the Public Body's statutory duties, or operating its program, within the terms of section 41).

[para 16] Finally, the Complainant discusses whether the disclosure fell within section 40(1)(e) (for the purpose of complying with an enactment of Alberta). Again, as the Complainant argues, the legislation does not speak to the use of full legal names for taking attendance. Therefore, I agree the disclosure was not for the purpose of complying with an enactment of Alberta.

[para 17] I agree with the Complainant that disclosure of her legal name as well as the disclosure of the information that her gender identity differs from her sex was not permitted by the Act.

[para 18] In its initial submissions, the Public Body did not take issue with any of the Complainant's arguments. In fact it stated:

At page 4 of Attachment I, the Public Body admitted that on six occasions, the [Public Body] staff unintentionally disclosed information that would reveal the gender identity of the student. This is admittedly a breach of section 40 of [the Act].

[para 19] I agree with both the Complainant and the Public Body that in disclosing the Complainant's legal name, the Public Body breached section 40 of the Act.

2. Did the Public Body fail to protect the Complainant's personal information in contravention of Part 2 of the Act?

[para 20] Section 38 of the Act states:

38 The head of a public body must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or destruction.

[para 21] In its initial submissions, the Public Body states:

The Public Body submits that [the Complainant's school] made significant efforts to maintain reasonable security arrangements against such risks as unauthorized disclosure of personal information regarding transgender students as described on page 3 of Attachment I... This is a very large school with a high degree of complexity... Nevertheless, the school recognizes that in the face of six unauthorized disclosures, it cannot properly advance a submission to the effect that the security arrangements were reasonable enough in these circumstances. The school has apologized for its actions repeatedly, and the regret is sincere. As noted in Attachment II, the Complainant reported that the teachers and staff were very apologetic and felt badly.

[para 22] I understand that the Public Body made a significant effort to attempt to secure the Complainant's personal information against disclosure and I appreciate that it has acknowledged that given the facts in this inquiry, it cannot properly advance an argument that its security arrangements were reasonable in these circumstances.

[para 23] I also note that I was provided with the school's draft "Guide to Supporting Transgender Students and Families" which was developed subsequent to these breaches. That draft states, "Counsellor will inform students their chosen name and gender can be changed confidentially in power school records (timetables, attendance, demographics, etc.) with signed parental consent of a District letter and a SOGI consultant/parent/counsellor discussion...This change in name and gender will also be reflected in PASI once an upload has been completed to reflect the name and gender change on the students Detailed Academic Report (DAR) from Alberta Education."

[para 24] It goes on to state that for students without a District letter requesting a chosen name and gender change, the school will ensure that the student's chosen name and chosen gender is correctly entered into the hard copy list. When a supply teacher is at the school he or she will be informed by way of an information package and verbally that he or she is to take attendance using a student's last name only from the supplied class list and ought not to display any student's personal information on the screen. In addition, the principal is to instruct staff at the start of each term to address students by last names only.

[para 25] In her initial submission, the Complainant acknowledges that no system will ever be perfect but feels that the Public Body ought to have done more to protect her personal information given that it was aware that her personal information had been disclosed, thus exposing that its system was not adequate. The Complainant states that she understands the Public Body's ability to amend information in PowerTeacher is limited given the nature of that computer program. The Complainant goes on to suggest that since multiple breaches occurred despite the Public Body's best efforts to warn and remind its staff to use the paper attendance sheet, a better solution was to better manage how PowerTeacher was accessed and used at the classroom level.

[para 26] I understand the Complainant's frustration and concern. I agree that there were not proper safeguards in place at the time of the breaches. I believe that the draft policy I was provided, detailed above, may address some of the Complainant's concerns. While it does not address access to PowerTeacher it does limit its use in the classroom for all students, not just transgender students. That being said, I cannot order the Public Body to institute a particular policy. Though I can order it to ensure its policies meet the legislation, and suggest what kinds of policies might achieve this. That being said, I believe that the draft policy it submitted shows the Public Body is well on its way to developing and implementing an appropriate policy. The Public Body has repeatedly acknowledged its failings and appears to be attempting to rectify its weaknesses in this area. I hope, as I am sure the Complainant does, that this is done as soon as possible to prevent future breaches.

IV. ORDER

[para 27] I make this Order under section 72 of the Act.

[para 28] I find that the Public Body disclosed the Complainant's personal information in contravention of the Act.

[para 29] I order the Public Body to stop disclosing the Complainant's personal information in contravention of Part 2 of the Act.

[para 30] I find that the Public Body failed to protect the Complainant's personal information by making reasonable security arrangements against such risks as unauthorized disclosure.

[para 31] I order the Public Body to protect and make reasonable security arrangements against the risk of unauthorized disclosure of the Complainant's personal information.

[para 32] I further order the Public Body to notify me within fifty days of receiving this Order that it has complied with this Order.

Keri H. Ridley
Adjudicator