

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2008-004

December 23, 2008

CALGARY BOARD OF EDUCATION

Case File Number F3924

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request to the Calgary Board of Education, the Public Body, for her daughter's cumulative student file and other records relating to her daughter. The Public Body provided the Applicant with the responsive records, including 214 pages of records that may relate to the Applicant's daughter that were not in her daughter's cumulative student file. Portions of 10 pages of the responsive records had been either withheld on the basis that they were not responsive to the Applicant's request or severed pursuant to section 17 of the *Freedom of Information and Protection of Privacy Act*.

The Applicant requested the Office of the Information and Privacy Commissioner to review the Public Body's response.

The Adjudicator found that the information withheld by the Public Body from the records was responsive to the Applicant's request.

However, she found that, with limited exceptions, the third party personal information in the records had been or must be severed under section 17 of the Act.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n), 10, 10(1), 17, 71, 72.

Authorities Cited: AB: Orders 97-020, 99-020, 99-028, 2000-032, F2002-011, F2002-024, F2007-029.

I. BACKGROUND

[para 1] Pursuant to the *Freedom of Information and Protection of Privacy Act* (“the Act”), on October 16, 2006, the Applicant requested, “...personal information regarding [her daughter]...” from the Calgary Board of Education (“the Public Body”). Specifically, the Applicant requested her daughter’s:

- entire school [cumulative] file
- all internal and/or external documents that may be related to [her daughter], including communication with [sic]

[para 2] She provided the Public Body with a copy of her daughter’s birth certificate as proof that she had authority to make the request.

[para 3] On October 27, 2006, the Public Body wrote to the Applicant advising her that she could request her daughter’s cumulative school file outside of an access request under the Act. The Public Body made arrangements to have the Applicant’s daughter’s cumulative file copied and delivered to the Applicant’s home. The Public Body also requested clarification from the Applicant regarding the type of documents she wanted, the school or area in which the documents likely exist and the time period applicable to the Applicant’s request. Finally, the Public Body advised that, if applicable, a fee estimate would be sent to the Applicant.

[para 4] Also on October 27, 2006, the FOIP Coordinator with the Public Body began her search for the responsive records by sending out an urgent memo requesting the Chief and Deputy Superintendent of Schools, the Director of Area I and Area II, the Manager of Policy Operations Development, and the principals of two high schools to search for records responsive to the Applicant’s access request.

[para 5] On November 6, 2006, the Public Body wrote to the Applicant and provided her with a fee estimate of \$137.50 which included fees for duplicate records and records authored by the Applicant. The Public Body requested the Applicant to advise within 20 days that the Applicant accepted this fee estimate. The Public Body also advised that processing the Applicant’s request would cease until it received a response from the Applicant.

[para 6] By letter dated November 13, 2006, the Applicant provided the Public Body with a cheque in the amount of \$137.50 for the “...FOIP request pertaining to obtaining a copy of all documents (duplicate or otherwise) relating to [the Applicant’s daughter].” The Public Body advised the Applicant by way of letter dated November 16, 2006 that it had received the Applicant’s cheque and would forward the records by November 23, 2006.

[para 7] On November 16, 2006, the FOIP Coordinator for the Public Body sent an urgent memo to the Superintendent of Educational Support Services, Principal, Assistant Principle and Attendance Counselor in an effort to locate all possible responsive records.

[para 8] On November 23, 2006, the Public Body responded to the Applicant's access request and provided the Applicant with responsive records. Portions of pages 101, 116, 117, 123 and 204 of the responsive records had been severed on the basis that the information was not relevant to the Applicant's request. Portions of pages 27, 30, 95, 140 and 141 were severed pursuant to section 17 of the *Freedom of the Information and Protection of Privacy Act* ("the Act").

[para 9] On December 6, 2006, the Public Body refunded the Applicant \$84.00 based on the Applicant's overpayment of the fee estimate.

[para 10] On December 20, 2006, the Applicant requested that the Office of the Information and Privacy Commissioner ("this Office") review the Public Body's response to her access request.

[para 11] This matter proceeded to investigation by a Portfolio Officer from this Office but the Portfolio Officer was not successful in resolving the issues between the parties. On July 30, 2007, the Applicant requested an inquiry by the Commissioner into this matter.

[para 12] On October 30, 2007, the Director of Adjudication advised the parties that this matter had been received by the Adjudication Unit and the anticipated date of completion of the review was September 30, 2009.

[para 13] On August 22, 2008, this Office requested a copy of the unsevered responsive records from the Public Body and these were provided by the Public Body to this Office on August 29, 2008.

[para 14] On September 8, 2008, the parties were sent the Notice of Inquiry for this matter and on October 28, 2008, I received submissions from both the Applicant and the Public Body. As a portion of the Public Body's submissions, regarding section 17, were made *in camera*, I asked the Public Body to amend those submissions so that they could be provided to the Applicant for rebuttal. On November 26, 2008, the Public Body provided a Supplementary Brief which was provided to the Applicant. The Applicant provided a rebuttal submission but the Public Body did not.

II. RECORDS AT ISSUE

[para 15] Severed or withheld portions of pages 27, 30, 95, 101, 116, 117, 123, 140, 141 and 204 of the responsive records are at issue.

III. ISSUES

[para 16] According to the Notice of Inquiry dated September 8, 2008, the issues in this inquiry are as follows:

Issue A:

Did the Public Body conduct an adequate search for responsive records as required by section 10 of the FOIP Act?

Issue B:

Did the Public Body correctly withhold information that was non-responsive to the access request?

Issue C:

Does section 17 of the Act (third party information) apply to the records/information?

IV. DISCUSSION OF ISSUES

Issue A: Did the Public Body conduct an adequate search for responsive records as required by section 10 of the FOIP Act?

[para 17] The Applicant argues that she cannot make submissions regarding the Public Body's search as she was unaware of what records were searched. She also made no argument regarding section 10 in her rebuttal submissions.

[para 18] The Public Body argues that it did perform an adequate search for all responsive records relating to the Applicant's access request. It provided me with both submissions, and an affidavit sworn by the Public Body's FOIP Coordinator, detailing the steps taken to locate records responsive to the Applicant's access request.

[para 19] Section 10(1) of the 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 20] Section 10(1) of the Act imposes a general duty on a public body when responding to an applicant's request for records. As a part of this general duty a specific duty to perform an adequate search for records in response to an access request has evolved.

[para 21] Under section 10(1) of the Act, the Public Body bears the onus of proof and must, "...establish that it has made every reasonable effort to assist the Applicant." (Order F2007-029 at paragraph 46)

[para 22] In Order F2007-029 the Commissioner outlined evidence which the Public Body should provide in order to meet its onus of proof under section 10(1) of the Act. The Public Body should provide information regarding:

- The specific steps taken by the Public Body to identify and locate records responsive to the Applicant's access request
- The scope of the search conducted – for example: physical sites, program areas, specific databases, off-site storage areas, etc.
- The steps taken to identify and locate all possible repositories of records relevant to the access request: keyword searches, records retention and disposition schedules, etc.
- Who did the search
- Why the Public Body believes no more responsive records exist than what has been found or produced

(Order F2007-029 at paragraph 66)

[para 23] Both the Public Body's submissions and the Affidavit sworn by the Public Body's FOIP Coordinator set out the specific steps which the FOIP Coordinator personally took to locate the records. These steps included contacting Superintendents employed by the school division and other senior administrators as well as administrators and personnel at individual schools who might have had records responsive to the Applicant's request.

[para 24] The evidence provided to me by the Public Body touches on all five points set out above and clearly indicates that the Public Body performed an extensive search for all possible records responsive to the Applicant's request. Therefore, I find that the Public Body met its obligation to the Applicant under section 10(1) of the Act.

Issue B: Did the Public Body correctly withhold information that was non-responsive to the access request?

[para 25] The Public Body argues that it withheld information from the Applicant because it was not responsive to the Applicant's request. The Applicant's request was for her daughter's cumulative school file, which was provided to her, and:

- All internal and/or external documents that may be related to [the Applicant's daughter], including communication with [*sic*].

[para 26] In support of its argument, the Public Body cites Order 99-020 in which Commissioner Clark stated:

...the public body may withhold portions [of a record] as non-responsive, if those portions are clearly separate and distinct and entirely unrelated to the access request.

(Order 99-020 at paragraph 14)

[para 27] In order to determine if a record, or portion thereof, is responsive, it is necessary to closely examine the access request (Order 97-020 at paragraph 61). An access request should be interpreted broadly (Order F2002-011 at paragraph 18). The Applicant requested all documents that may be related to her daughter. She did not request only her daughter's personal information, but all records related to her daughter.

[para 28] I have reviewed the responsive records and the portions that were withheld by the Public Body on the basis that they were non-responsive. While the information withheld is not the Applicant's daughter's personal information, it is information contained in records that may be related to her daughter. The information is, therefore, reasonably related to the Applicant's access request and should not have been withheld by the Public Body on the basis that the information was non-responsive.

Issue C: Does section 17 of the Act (third party information) apply to the records/information?

[para 29] In addition to arguing that portions of the records were withheld because they were not responsive to the Applicant's request, the Public Body also states that much of the information could also be properly severed pursuant to section 17 of the Act. Specifically, it cites sections 17(1), 17(4)(a), 17(4)(d), 17(4)(f) and 17(4)(g).

[para 30] The unsevered records were provided to me *in camera* and, therefore, the Applicant has not had the opportunity to review the severed information. The Applicant takes the position that since she was not able to review the severed information and has no idea what information was severed, she is at a disadvantage in arguing that the information was severed incorrectly

[para 31] The relevant portions of section 17 state:

17(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

...

(j) subject to subsection (3), the disclosure is not contrary to the public interest and reveals only the following personal information about a third party:

(i) enrolment in a school of an educational body or in a program offered by a post-secondary educational body,

...

(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,

...

(d) the personal information relates to employment or educational history,

...

(f) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations,

(g) the personal information consists of the third party's name when

(i) it appears with other personal information about the third party, or

(ii) the disclosure of the name itself would reveal personal information about the third party,

...

(5) In determining under subsections (1) and (4) whether a 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, including whether

- (a) *the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny,*
- (b) *the disclosure is likely to promote public health and safety or the protection of the environment,*
- (c) *the personal information is relevant to a fair determination of the applicant's rights,*
- (d) *the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people,*
- (e) *the third party will be exposed unfairly to financial or other harm,*
- (f) *the personal information has been supplied in confidence,*
- (g) *the personal information is likely to be inaccurate or unreliable,*
- (h) *the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, and*
- (i) *the personal information was originally provided by the applicant.*

[para 32] Section 17 of the Act is a mandatory provision. Therefore, a Public Body must sever third party information where the release of the information would be an unreasonable invasion of a third party's personal privacy.

[para 33] There are two criteria to be met. First the information withheld must be personal information and second, the disclosure of the information must be an unreasonable invasion of a third party's privacy.

[para 34] Pursuant to section 71(1) and 71(2) of the Act, the Public Body must first prove that the information severed is personal information and then the Applicant must prove that it is not an unreasonable invasion of the third party's personal privacy (see Orders 99-028 at paragraph 12, 2000-032 at paragraph 25, F2002-024 at paragraph 17).

Personal information:

[para 35] Personal information is defined in section 1(n) of the Act which states:

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 36] I have reviewed the severed portions of the responsive records provided to me *in camera*. Most of the information severed pursuant to section 17 of the Act or withheld as non-responsive is information about students other than the Applicant's daughter, including students' names, information about their educational history and other peoples' opinions about the students. This is clearly personal information.

[para 37] However, information at the third paragraph of the first e-mail message on page 117 and the information on page 123 was severed but is not information about an identifiable individual and is therefore not personal information as defined in section 1(n) of the Act.

Unreasonable invasion of third party's personal privacy:

[para 38] Pursuant to section 17(2) of the Act, there are several instances where disclosure of a third party's personal information will not be an unreasonable invasion of their personal privacy. The only possibly applicable subsection is section 17(2)(j)(i) of the Act, as some of the information severed relates to other students' enrollment in certain schools. However, in order for section 17(2)(j)(i) of the Act to apply, only that

the student is enrolled in a school is to be revealed. This is not the case in relation to any of the third party personal information regarding other students in the responsive records. The records reveal other information about these student at the same time as revealing their enrollment in a particular school. Therefore, section 17(2) of the Act does not apply to any of the severed information in the responsive records.

[para 39] Section 17(4) of the Act provides a list of information that, if disclosed, will give rise to a presumption of an unreasonable invasion of personal privacy.

[para 40] The Public Body severed information on pages 27 and 30 pursuant to sections 17(4)(d), 17(4)(f) and 17(4)(g) of the Act. I agree with the Public Body that the information severed falls under the cited subsections of section 17(4) of the Act.

[para 41] The Public Body severed information on page 95 of the responsive records pursuant to sections 17(4)(a), 17(4)(d), 17(4)(f) and 17(4)(g) of the Act. I agree with the Public Body that the information severed from these pages fits under the sections cited.

[para 42] The Public Body severed information on pages 140 and 141 pursuant to section 17(4)(g) of the Act. I agree with the Public Body's application of section 17(4)(g) of the Act to this information.

[para 43] Information on pages 101, 116, 117 and 204 was withheld by the Public Body as it felt that the information was not responsive to the Applicant's access request. I have found that the information was responsive. However, I have also found, for the most part, that information on these pages was third party personal information. Further, the Applicant makes the same argument regarding the information withheld as non-responsive as she makes in relation to the information that was severed pursuant to section 17 of the Act. Given this and as section 17 is a mandatory exception, I will assess whether the information on these pages ought to be severed pursuant to section 17 of the Act.

[para 44] Pages 101, 116, 117 and 204 contain information about third parties' educational history as well as a personal assessment of the individuals. Therefore, I find that section 17(4)(d) and 17(4)(f) apply. I have found that page 117 contains information, in the third paragraph of the first e-mail message, that was withheld as non-responsive and is not personal information. This information ought to be disclosed to the Applicant.

[para 45] Although I have found that much of the severed information is personal information of third parties, and disclosure of the information is presumed to be an unreasonable invasion of the third parties' personal privacy pursuant to section 17(4) of the Act, it is still necessary to determine if any factors under section 17(5) of the Act weigh in favour of disclosure.

[para 46] On examination of the unsevered responsive records and taking the factors listed under section 17(5) of the Act into account, I find that there are no factors that weigh in favour of releasing the third party personal information to the Applicant.

V. ORDER

[para 47] I make this Order under section 72 of the Act.

[para 48] I find that the Public Body improperly withheld information from the responsive records on the basis that they were not responsive to the Applicant's request.

[para 49] I find that the information severed in the third paragraph of the first e-mail message on page 117, and the severed information on page 123, of the responsive records is not personal information of a third party and must be disclosed to the Applicant.

[para 50] I find that the Public Body properly applied section 17 of the Act to pages 27, 30, 95, 140, and 141.

[para 51] I order the Public Body to sever the third party personal information on pages 101, 116, 117 and 204 pursuant to section 17 of the Act, with the exception of the third paragraph of the first e-mail message on page 117, which I order the Public Body to disclose.

[para 52] I further order the Public Body to notify me in writing, within 50 days of being given a copy of this Order that the Public Body has complied with this Order.

Keri Ridley
Adjudicator