

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

**Report on the Investigation into a Complaint regarding Collection, Disclosure, Use and
Security of Personal Information collected by a Public Body**

July 7, 1999

Edmonton Public Schools

Case Number 1647

The Complaint

On June 9, 1999, the Office of the Information and Privacy Commissioner received a complaint that Edmonton Public Schools (the "Public Body") breached the privacy of grade six students by failing to obtain consent from a parent/guardian prior to asking students to complete a questionnaire. The questionnaire was part of a study to identify factors that affect student and school performance. The complainant also raised issues relating to the collection, disclosure, use and security of the personal information collected in the questionnaire.

The Commissioner authorized an investigation pursuant to section 51(2)(e) of the *Freedom of Information and Protection of Privacy Act* (the "Act") which states:

51(2) Without limiting subsection (1), the Commissioner may investigate and attempt to resolve complaints that

(e) personal information has been collected, used or disclosed by a public body in violation of Part 2.

Background Information

According to the Complainant, parents/guardians were unaware that students completed a questionnaire until a letter was sent home with students from the Centre for Research in Applied Measurement and Evaluation ("CRAME"), which is part of the Faculty of Education at the University of Alberta. The letter informed parents/guardians that a major study was being conducted into factors affecting the performance of students. Parents/guardians were asked to complete an enclosed questionnaire, which they were informed would be linked, through use of a code, to the questionnaire completed by their child. Parents/guardians were instructed to return their completed questionnaire to CRAME.

The Complainant also questioned the appropriateness of a few questions on the student questionnaire.

The Public Body stated that it administered a questionnaire to grade six students as part of a study into factors affecting student achievement scores. According to the Public Body, the need for a study was identified as a result of previous research conducted by the ATA and CRAME which found that socio-economic factors only partly account for differences in student achievement scores. The purpose of the questionnaire was to identify what factors, other than socio-economic factors, affect student performance. In addition to the grade six students, parents/guardians, teachers and school principals were asked to complete questionnaires.

In addition to the Public Body, there are four other organizations involved in the study. These are:

- Alberta Learning (formerly Alberta Education)
- Human Resources Development Canada
- Alberta Teachers' Association ("ATA")
- Centre for Research in Applied Measurement and Evaluation ("CRAME"),
University of Alberta

Representatives of each organization formed an Advisory Committee to oversee the study.

According to the Public Body, CRAME was responsible for analyzing the information in the questionnaires and preparing a report. Human Resources Development Canada provided funding for CRAME's services. The Public Body provided a copy of the signed contract between CRAME and Human Resources Development Canada. The contract specifies that CRAME will collect personal information such as demographic information, attitudes and opinions from individuals. The contract also specifies that no personal information collected by CRAME will be provided to Human Resources Development Canada.

The Public Body also submitted a copy of the signed contract between CRAME and Alberta Learning. This contract contains provisions with respect to confidentiality and security of the personal information collected in the survey.

The Public Body was not a signatory to any contracts.

The questionnaires were developed and forwarded to the Public Body by CRAME. The student questionnaires were administered by the classroom teacher. Completed student, teacher and principal questionnaires were then forwarded by the Public Body to CRAME.

The questionnaire completed by students contained a label with the following information: the student's name, grade, age, school code, number of years in school and provincial education ID number. The label on the questionnaire sent to parents/guardians contained their child's name, school code and provincial education ID number.

CRAME is responsible for analysis of the findings and preparation of the report and therefore has access to the personal information collected in the questionnaire. No other sponsor has access to the personal information in the questionnaires.

The findings on the survey will be available to the public.

The Public Body acknowledged that it did not consider the provisions of the Act prior to administering the questionnaire. Lack of familiarity and knowledge with the Act were cited as reasons.

Issue: Did the Public Body violate the provisions set out in Part 2 of the Act, by administering a questionnaire to students without prior consent from a parent/guardian?

a) Is information collected on the student questionnaire “personal information” as defined in the Act?

“Personal information” is defined in Section 1(1)(n) of the Act, which states, in part:

(1)(1) In this Act,

(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,*
- (ii) the individual’s age, sex, marital status or family status,*
- (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 opinion about the individual, and*
- (ix) the individual’s personal views or opinions, except if they are about someone else;*

When completed, the student questionnaire contains the following type of information: age, family status and personal views or opinions about themselves and school related matters.

The labels on the student questionnaire contain the following information: the child’s name, age, grade, number of years in school, school code and provincial education ID number.

The information collected in the questionnaire is “personal information” as defined by the Act.

b) Did the Public Body have authority to collect personal information from grade six students?

Once information is in its possession, a public body is deemed under the Act to have “collected information” regardless of how it came into possession of the information. In this case, the act of administering the questionnaire to students constituted “collection” for the purposes of the Act.

Once it has been determined that collection of personal information has occurred, the next question is whether the Public Body had authority to collect the personal information.

Section 32 of the Act states:

32 No personal information may be collected by or for a public body unless

(a) the collection of that information is expressly authorized by an enactment of Alberta or Canada,

(b) that information is collected for the purposes of law enforcement, or

(c) that information relates directly to and is necessary for an operating program or activity of the public body.

The collection of personal information by the Public Body is not expressly authorized by an enactment of Alberta or Canada. Therefore, section 32(a) of the Act is not applicable. Furthermore, the information was not collected for the purposes of law enforcement.

However, the Public Body believes the collection of the personal information in the student questionnaire is directly related to and necessary for the operation of its programs. The position of the Public Body is that information regarding factors which affect student achievement is relevant and necessary to assist in the development of educational programs. It was pointed out that the public expects school boards to be knowledgeable about the factors which affect student achievement so that appropriate programs can be developed and implemented.

Based on my review of the questionnaire, I am satisfied the questions asked and therefore the information collected is aimed at identifying factors that affect student achievement. Collection of personal information for the purpose of identifying factors affecting student achievement is directly related to and necessary for the programs and activities of the Public Body.

Copies of the student and parent/guardian questionnaires are attached as Appendix “A” and “B” respectively.

I find the Public Body has satisfied Section 32(c) of the Act and had authority to collect the personal information by way of a questionnaire. As the Public Body had authority to collect the information consent from a parent/guardian was not required.

(c) Did the Public Body contravene the Act by collecting personal information from grade six students without the prior consent of a parent/guardian?

Section 33 of the Act deals with the manner in which personal information is collected.

Section 33(1) states that a public body must collect personal information directly from the individual the information is about except in specific circumstances listed in the Act. None of those circumstances are applicable to this complaint.

Section 33(2) provides further elaboration on the conditions under which a public body may collect personal information. Section 33(2) states:

33(2) A public body that collects personal information that is required by subsection (1) to be collected directly from the individual the information is about must inform the individual of

(a) the purpose for which the information is collected,

(b) the specific legal authority for the collection, and

(c) the title, business address and business telephone number of an officer or employee of the public body who can answer the individual's questions about the collection.

The Public Body acknowledged it did not fulfil the conditions specified in Section 33(2). Lack of knowledge and familiarity with the Act were cited as the reasons the conditions in Section 33(2) were not met.

Teachers administering the questionnaire were not given instructions to inform students about the purpose for which the information was collected. Nor were parents/guardians given advance notice regarding the study or that students would be asked to complete a questionnaire. As noted previously, parents/guardians were first informed about the study when they received a letter from CRAME asking them to complete a questionnaire.

There is no explicit provision in the Act that requires the written consent of the student, parent or guardian be obtained prior to collecting students' personal information in a questionnaire.

Rather, Section 33(2) imposes a duty on public bodies to ensure individuals are properly informed, in advance, about the purposes for which their personal information will be used. The reason for this is to ensure the individual has reasonable opportunity to raise questions and make decisions about whether to provide the information.

It can not be expected that elementary school children will fully comprehend the purposes for which their personal information will be used. Nor can it be expected that elementary school children would be able to raise questions or make an informed decision about providing the personal information. Therefore, in situations involving the collection of personal information from elementary school children, it is recommended the Public Body inform parents/guardians, in writing, of the following:

- The purpose(s) for which the information will be used
- The legal authority for the collection and
- The title, business address and phone number of a person who can answer any questions.

In situations involving elementary school children, it is also recommended that written notification to the parent/guardian include information:

- about the study
- how the child's information will be used
- which organizations are involved in the study
- the measures in place to ensure protection of personal information and
- that participation in the survey is voluntary.

The Public Body can mitigate its failure to comply with Section 33(2) by sending a letter to the parent/guardian containing the above information.

It was the Complainant's belief that students were compelled to complete the questionnaire. The Complainant believes that students who did not attend to this task were told they would be reported to the principal.

Teachers were provided with instructions from CRAME for administration of the questionnaire. The instructions deal with matters such as: pointing out to students that there are no right or wrong answers, explaining that answers will be kept confidential and reminding students to take the parent/guardian questionnaire home. There is no instruction to teachers to ensure that students complete the questionnaire or that students who failed to attend to task were to be reported to the principal.

The Public Body stated that teachers were not given instructions to ensure students completed the questionnaire. However, the Public Body concedes there may have been incidents in which a student who was not attending to task was told they would be reported. The Public Body agrees such situations would be unfortunate and a cause of concern.

Concerns of this nature can, in future, be prevented by parents/guardians being given proper advance notification and opportunity to decline to have their child participate in the study. As well, instructions to teachers and/or principals should address what to do if such situations arise.

(d) Did the Public Body use the personal information for a purpose consistent with Section 37 of the Act?

Section 37 of the Act regulates how a public body may use personal information. Section 37 reads:

37 A public body may use personal information only

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

(b) if the individual the information is about has identified the information and consented, in the prescribed manner, to the use, or

(c) for a purpose for which that information may be disclosed to that public body under section 38, 40 or 41.

The intended use of the collected information is to analyze the information for the specific purpose of identifying factors affecting student achievement. As this use is consistent with the purpose the information was collected, Section 37(a) of the Act is satisfied.

(e) Did the Public Body disclose information in accordance with Section 38 of the Act?

The Public Body disclosed personal information in two ways.

The Public Body disclosed students' names to CRAME. CRAME used the names to prepare labels which were placed on the student and parent/guardian questionnaires.

Secondly, the Public Body disclosed students' names and personal information when it forwarded completed questionnaires to CRAME.

Section 38 of the Act specifies the circumstances under which a public body may disclose personal information.

Section 38(r) permits disclosure of personal information for a research purpose if the disclosure is in accordance with Section 40 or 41.

As the Public Body disclosed personal information for research purposes, it must comply with Section 40.

(f) Did the Public Body comply with the provisions of Section 40?

Section 40 permits a public body to disclose personal information for a research purpose when specific conditions are satisfied.

Section 40 states:

40 A public body may disclose personal information for a research purpose, including statistical research, only if

- (a) the research purpose cannot reasonable be accomplished unless that information is provided in individually identifiable form or the research purpose has been approved by the Commissioner,*
- (b) any record linkage is not harmful to the individuals the information is about and the benefits to be derived from the record linkage are clearly in the public interest,*
- (c) the head of the public body has approved conditions relating to the following:
 - (i) security and confidentiality,*
 - (ii) the removal or destruction of individual identifiers at the earliest reasonable time, and*
 - (iii) the prohibition of any subsequent use or disclosure of the information in individually identifiable form without the express authorization of that public body,**

and

- (d) the person to whom the information is disclosed has signed an agreement to comply with the approved conditions, this Act and any of the public body's policies and procedures relating to the confidentiality of personal information.*

Section 40(a) specifies that a public body may disclose information only if the research purpose cannot reasonable be accomplished unless the information is provided in an individually identifiable form or the Commissioner has approved the research purpose.

In this situation the Public Body did not seek the approval of the Commissioner. The Public Body said it failed to do so as it was not familiar with its responsibilities under the Act.

In this study, students' completed questionnaires were disclosed to CRAME which is responsible for analysis of the findings. The information was disclosed in an individually identifiable form as the students' name and provincial education ID number were on the student questionnaire. The student's provincial education ID number was also on the parent/guardian questionnaire.

In response to this complaint, the Public Body submitted an explanation from CRAME regarding the need for the information to be disclosed in an individually identifiable form.

According to the explanation given, it was necessary for the Public Body to disclose the personal information in an individually identifiable form in order to link the information provided by students in the questionnaire with their provincial achievement scores. The study design also called for the information provided by the parent/guardian to be linked with their child through the provincial education ID number.

As well, the student's name and provincial education number were used to determine whether the parent/guardian submitted a completed questionnaire. This was because the student's questionnaire is not included in the study if a parent/guardian does not send in a completed questionnaire.

Throughout this investigation, the Public Body has been forthright and acknowledged that it did not consider its responsibilities under the Act prior to disclosing the personal information. The Public Body responded to this complaint by promptly examining the research project in terms of its obligations under the Act and to ensure measures are in place to protect privacy.

Nonetheless, an implied purpose of Sections 38(r) and 40 is to ensure that public bodies consider and comply with specified conditions prior to disclosing personal information. In this case, prior consideration did not occur. In order to comply with Sections 38(r) and 40, public bodies must ensure that the Act is satisfied before personal information is disclosed.

I find that the Public Body contravened Sections 38(r) and 40 by failing to ensure the provisions of the Act were satisfied before it disclosed personal information. As such, it is not necessary to determine whether it was necessary for the information to be disclosed in an individually identifiable form. However, it is recommended that in future research projects the Public Body should question the need for information to be disclosed in an individually identifiable form and consider whether it is possible to collect personal information in a non-identifiable form and still satisfy the research purpose.

Did the Public Body satisfy the provisions of Section 40(b)?

The Public Body acknowledged it did not consider Section 40(b) prior to the decision to disclose personal information due to its lack of familiarity and knowledge of its responsibilities under the Act. As stated above, failure to give prior consideration constitutes a contravention of Section 40.

Section 40(b) specifies that any record linkage is not to be harmful to the individuals the information is about and that the benefits to be derived from the record linkage are clearly in the public interest.

With respect to record linkage, in this study the names of students appear on labels on the student questionnaire and as well as the parent questionnaire. According to information provided to this Office, this was done to ensure that the student took the correct questionnaire home to the parent/guardian. In other words the linkage was done, to ensure the questionnaire the parent/legal guardian completed was the one with their child's name on the label. This was

necessary as the student's completed questionnaire is only used in the study if the parent/guardian sent in a completed questionnaire.

This Office was informed that names will be used for no other purpose and will not be entered into computer files.

In addition to the name, a student provincial education ID number appears on the labels of both the student and parent/guardian questionnaires. This number will be used to match the parent/guardian responses with the student responses.

The label on the student questionnaire includes the student's provincial student ID number, the room number of the student and the school location code. Teachers were asked to include the room number and school location code on their questionnaire. Principals were asked to include the school code on their questionnaire. These numbers are to be used to match the teachers and principals with their students. The reason for the matching is so that students' views/attitudes about factors affecting achievement can be correlated with the views of parents/guardian, teachers and principals. For example, the study will look at the relationship between a student's attitudes about matters believed to affect achievement and their actual achievement scores. The students' attitudes will be compared with the views of the parents/guardian, teachers and principals.

The teacher and principal questionnaires are attached as Appendix "C" and "D" respectively.

According to the information provided to this office, the information from each questionnaire will be entered into a separate computer file. Once the information from the questionnaire is entered into the computer file, the CRAME research team will shred the questionnaire.

The information from the student, parent/guardian, teacher and principal questionnaires will be merged with a provincial achievement test file. A separate file will be established in which each student's provincial education ID number will be matched with a random number. The random number will replace the provincial education identification number in the merged file. The principal researcher with CRAME will be the only person who has access to this file.

There is no information, which suggests linkage of students' personal information, parents' personal information and student achievement scores will be harmful to the individuals the information is about.

With respect to the requirement that the linkage be in the public interest, the intent of the Public Body is to identify factors which affect student achievement. According to the Public Body, the purpose is to increase understanding and knowledge of the factors affecting achievement. The Public Body believes this information is necessary to assist them in planning and developing programs for students. I am satisfied that the benefits derived from the study are clearly in the public interest.

However, the Public Body did contravene Section 40(b) by failing to address the issue of record linkage prior to disclosing the personal information.

Did the Public Body satisfy the provisions of Section 40(c)?

Section 40(c) places responsibility on the head of the public body to approve conditions relating to confidentiality and security of personal information used for research purposes as well as the removal or destruction of individual identifiers at the earliest time. Additionally, the head of the public body must approve conditions which would prohibit any use or disclosure of the individually identifiable information without the express authorization of the public body.

The Public Body acknowledged that it did not assume responsibility for ensuring that the conditions specified in Section 40(c) were fulfilled.

Since learning of the complaint and meeting with this Office, the Public Body has conducted a review of its responsibilities under the Act including the three requirements of section 40(c) and provided the following information.

With respect to section 40(c)(i), the Public Body submitted a copy of the contract between CRAME and Alberta Learning, which addresses security and confidentiality. These include agreement by CRAME to:

- Protect and hold in confidence all information disclosed to CRAME
- Ensure all information is stored in a secure location
- Not to disclose information to any unauthorized third party
- Prevent and protect information from unauthorized disclosure, use, or possession
- Take all reasonable steps to safeguard information to ensure no unauthorized person will have access
- Ensure computer files are password protected
- Ensure proper destruction of records

Additionally, the Public Body provided a copy of the contract between CRAME and Human Resources Development Canada which funded the study. This contract specifies that Human Resources Development Canada will not have access to any personal information in the possession of CRAME.

The Public Body also provided a description of the measures implemented by CRAME to ensure that personal information is properly secured. These include: Ensuring computer files are password protected, limiting access to computer files to persons on the research team, limiting access to the merged file to the principal researcher, and ensuring computer files are in a locked location accessible only to members of the research team.

The Public Body also obtained and provided to this Office copies of signed confidentiality agreements by all members of the CRAME research team who are involved in the study.

With respect to section 40(c)(ii), this Office was informed that completed questionnaires are shredded once the information has been entered into the computer. As stated above, names are not entered into the computer file.

The original study design called for the students' provincial education ID number to be entered into the computer file. However, as a result of this complaint, the Public Body has ensured that a random number replaces the education ID number. The resulting merged file contains information which is not in an individually identifiable form. The understanding of the Public Body is that the computer files containing students' provincial education ID number will be properly destroyed.

Section 40(c)(iii), requires that the head of the public body approve conditions relating to any subsequent use or disclosure of the information in an individually identifiable form.

As noted above, according to the information received by this Office, the merged file will not contain information in an individually identifiable form.

Nonetheless, as a result of this complaint the Public Body addressed the issue of subsequent use and disclosure of the information. The Public Body reported to this Office that following completion of the data analyses and production of the final reports, the principal researcher with CRAME will retain the only copy of the computer files. This information is to be used only with the permission of the Advisory Committee if secondary data analysis is necessary.

The Public Body also gave assurance that the information will not be used or disclosed to any person for any purpose.

The Public Body also advised that it accepts responsibility for control of the information while it remains in the custody of the principal researcher. A time period for destruction of the information has not has not yet been developed.

It is recommended that the Public Body implement a destruction schedule for the information.

Section 40(d)

Section 40(d) specifies that the public body must have a signed agreement with the "person" to whom information is being disclosed. The agreement must contain acknowledgement that the person agrees to comply with the provisions of the Act as well as any of the Public Body's policies and/or procedures relating to confidentiality of personal information.

In this case, there is a signed agreement between Alberta Learning and CRAME. The contract contains comprehensive provisions pertaining to the Act and sets out the responsibilities of CRAME with respect to confidentiality and security of the personal information.

The Public Body acknowledged that it does not have a signed agreement in place with CRAME or any of the other organizations involved in the study. However, as a result of this complaint

the Public Body is now aware it must comply with the Act and therefore must ensure that in future it will obtain a signed agreement prior to disclosing personal information for research purposes.

The Public Body has given assurance to this Office that in future it will comply with the provisions of the Act in all future research projects.

Summary

It is found that the Public Body contravened Sections 33(2), 38 and 40 of the Act.

Recommendations

In consideration of the above, it is recommended that Edmonton Public Schools:

1. In future, comply with Sections 33(2), 38 and 40 of the Act.
2. Ensure research agreements incorporating Section 40 of the Act are signed prior to information being collected, used or disclosed.
3. Establish a destruction schedule for the personal information collected.
4. Mitigate the failure to satisfy the requirements of Section 33(2) by sending a letter to parents/guardians containing the following information: the purpose for which the information was collected, the legal authority for the collection and the title, business address and telephone number of an officer or employer of the public body who can answer questions about the collection. Additionally, the letter should include information describing the purpose of the study, how the student's information will be used, the sponsors involved in the study and the measures in place to ensure protection of personal information.

It is also recommended that this complaint be considered concluded and the file closed upon confirmation from the Public Body that a letter has been sent to parents/guardians and that a destruction schedule for the personal information has been established.

Concluding Comments

I would like to thank the representatives of the Public Body for their cooperation with this investigation. The Public Body is also to be commended for the forthright manner which it dealt with the complaint and the prompt steps it took to mitigate the situation.

There is nothing inherently wrong with surveys and research studies being conducted. In this case, the research project was conducted by in a professional manner for a socially desirable and beneficial purpose.

In this case, contraventions of Sections 33(2), 38 and 40 occurred as a result of the Public Body's lack of familiarity and knowledge with the Act. It is important to note that the investigation did not find that there was a breach of privacy. The investigation found that the Public Body should have provided parents/guardians with advance notice that students would be asked to complete a questionnaire as part of a study.

Also, because there were a number of organizations involved in the study, the question of which organization is responsible for protection of privacy and security of the information can become obscured. In this case, measures were in place with respect to protection of privacy and security of the information. However, it is important that public bodies involved in research projects understand that they are responsible for complying with the Act if they are collecting and/or disclosing personal information.

Submitted by,

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Portfolio Officer