

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER 2001-034

March 8, 2002

FOOTHILLS SCHOOL DIVISION #38

Review Number 2086

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

Summary: The Applicant complained that the Foothills School Division #38 was not authorized to collect her personal information in relation to a student that she was supervising. The Adjudicator found that the information was collected as authorized by the *Freedom of Information and Protection of Privacy Act*.

Statutes Considered: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c-F-25, ss. 1(n) [previously section 1(1)(n)], 33 [previously section 32], 34 [previously section 33], 35 [previously section 34], 72 [previously section 68].

I. BACKGROUND

[para 1] In January of 2001, the Applicant made a complaint to the Office of the Information and Privacy Commissioner about the actions of the Foothills School Division #38 (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act). The complaint was investigated and the parties were made aware of the Portfolio Officer's findings. The Applicant was not satisfied with the resolution of all of the issues in her complaint. On April 26, 2001, the Applicant wrote to the Commissioner's Office and requested that an inquiry be held to resolve the remaining issue, which involved the collection of the Applicant's personal information.

[para 2] The matter was set down for a written inquiry. Both parties submitted written briefs and written rebuttal briefs. In conducting this inquiry, I am aware that there was a previous complaint by the Applicant about the Public Body to this office. I am not aware of the full extent of the Applicant's initial complaint. I have not reviewed any of the correspondence prior to the Applicant's request for an inquiry and have not reviewed the Portfolio Officer's findings. Therefore, I will only deal with the specific issues and records referred to in the Applicant's letter of April 26, 2001.

[para 3] The Revised Statutes of Alberta (R.S.A. 2000) came into force on January 1, 2002. Consequently, all section numbers referred to in this Order reflect the new numbering. Where section numbers are listed, the previous numbers have also been included as follows: section 10(1) [previously section 9(1)]. Unless otherwise noted, the text of each section remains the same.

II. RECORDS AT ISSUE

[para 4] The records at issue in this inquiry are as follows:

Entries in the "Anecdotal Notes Summary" dated October 27 and December 7, 2000.

[para 5] The Anecdotal Notes Summary is a summary of disciplinary issues related to a specific student (the Student). The Applicant has previously received copies of the records from the Public Body. Access to these records is not an issue for this inquiry.

III. ISSUE

[para 6] There is one issue for this inquiry:

Did the Public Body collect personal information in violation of Part 2 of the FOIP Act?

[para 7] The Applicant's April 26, 2001 letter to the Commissioner's office stated, in part:

I do not believe the information contained in the entries of October 2000 and December 2000 are necessary for the public body to carry out its purpose in a reasonable manner.

IV. DISCUSSION OF THE ISSUES

A. Factual Background Information

[para 8] The Public Body offered factual background information in its initial submission and through the Affidavit of the Principal (the Principal) of a school (the School) operated by the Public Body, which was attended by the Student. In her rebuttal, the Applicant disagreed with some of the information supplied by the Public Body as factual information. Wherever there was agreement, I have accepted the information as fact. The following paragraphs are a summary of the factual information presented.

[para 9] In July of 2000, the Applicant came to the School to inquire whether the Student would be allowed to attend, because the Student was not a resident of the school division. The Applicant is not the Student's mother. Therefore, she was told that any discussions would have to be with a parent of the Student. This resulted in subsequent meetings at the School with the Student's mother and the Student.

[para 10] At the time the Student was registered in the School, the Student's mother provided authorization on the registration form that the Applicant be an alternate contact person. In subsequent communication, the Student's mother authorized the School to use the Applicant as the primary contact in matters related to the Student.

[para 11] During the fall of 2000, there were several communications between the school and the Applicant about disciplinary issues related to the Student. This included meetings attended by the Applicant at the School. The Applicant also acted as a classroom volunteer, usually working with the Student on a one-to-one basis.

[para 12] On December 13, 2000, the Applicant provided the Principal with a written authorization from the Student's mother. The authorization allowed the Applicant to access "any information" concerning the "education or welfare" of the Student. A copy of the written authorization was submitted as an exhibit to the Principal's Affidavit.

[para 13] On December 14, 2000, a meeting was held at the School to discuss the Student's recent suspension. In attendance were the Student's mother, the Applicant, the Principal, and the Associate Superintendent of the Public Body. The Anecdotal Notes Summary was prepared for this meeting.

[para 14] The Applicant is referred to in nine separate entries in the Anecdotal Notes Summary. The Applicant has requested I review the entries for October 27 and December 7, 2000. Those entries read as follows:

Oct. 27 – all grade 8 boys met with [the Principal and a teacher] so they would clearly understand that swearing and harassing other students, male or female, would not be tolerated

- physical confrontation with Gr. 8 boy – grabbed boy saying "Do you want to go" – removed from class, warning, phone call home

- evening at school dance threw cap bomb on gym floor, warning given, set off another, students upset, [the Student] and another student went to [the Applicant's] where there was no supervision (in Edmonton)

Dec. 07 – [The Student] not at school. Other students reported he was at [the Applicant's]. [The Student's mother] phoned. She said he was at [the Applicant's] and would not be at school.

-lunchtime – [the Student] outside at [the Applicant's] smoking with other boys (across from front of school)

-another boy was directed to get into [the Student's] locker and get his schoolwork and take it to [the Applicant's]. YDW said no, [the Student] could come and get it or [the Applicant] could call the school to request it.

B. Does the Record Contain Personal Information About the Applicant?

[para 15] Personal information is defined in section 1(1) [previously 1(1)(n)] of the FOIP Act. The relevant provision is section 1(n)(i) [previously section 1(1)(n)(i)], which states:

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 number,

[para 16] Most of the references to the Applicant in the records at issue relate to the Applicant's name in the possessive form and are used to identify the Applicant's residence. The other information is a reference that no one was home and a reference that the Applicant was in Edmonton. I find that the records contain personal information about the Applicant.

C. Was the Public Body Authorized to Collect the Personal Information of the Applicant?

[para 17] Section 33 [previously section 32] of the FOIP Act governs the collection of personal information by public bodies. Section 33 [previously section 32] states:

33 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.

[para 18] The Public Body stated in its written submission:

Nothing in the School Act specifically authorizes the School Division to record in anecdotal notes the names of persons involved with students enrolled in the school, other than the names of the parents of the students.

The Student Record Regulation, enacted pursuant to the School Act, clearly authorizes the keeping of anecdotal notes.

[para 19] The Public Body supplied a copy of the *Student Records Regulation* with its submission. The *Student Records Regulation* sets out what information may be kept on the “official” student record. I agree with the Public Body that they are authorized to collect personal information as anecdotal notes, provided those notes do not form part of the “official” student record. There is no evidence in front of me that the records at issue form part of the “official” student record.

[para 20] I find that that Public Body is authorized to keep anecdotal notes on students and parents. It is very clear in the evidence presented that the Applicant took on a parenting role regarding the student. There is evidence that the Applicant was authorized by the Student’s mother to be involved in all aspects of the Student’s education, including discipline. It is also clear that the Applicant willingly and actively carried out a parenting role. This role was clearly understood and accepted by the School.

[para 21] Therefore, as provided by section 33(a) [previously section 32(a)], I find that the Public Body was authorized to collect personal information about the Applicant. While the Public Body is authorized to collect personal information about the Applicant, this authorization does not allow the Public Body to collect any and all information about the Applicant. The information collected must be reasonable under the circumstances.

[para 22] The Applicant takes great exception to the collection of the information about the events happening at her residence. I note that the Applicant does not take exception to seven of the nine entries about her in the anecdotal notes. The Applicant characterizes the collection of information about her residence as “conducting surveillance” on her home. I note that the Applicant’s residence is across the street from the School.

[para 23] The function being carried out by the School is the monitoring of the behavior of the Student. There is clear evidence before me that the Student was the subject of ongoing disciplinary issues in the School. The anecdotal notes were prepared for the specific purpose of discussing these issues at a meeting with the Student’s mother. It is evident that the Student’s mother wanted the Applicant to be involved in the discipline of the student. It is also very clear that the Applicant was willingly and actively involved in matters relating to the Student.

[para 24] As previously stated, most of the personal information about the Applicant relates to a reference about the Applicant’s residence. For the most part, the references are that the student was at the Applicant’s residence or was supposed to be there.

[para 25] In the notes of December 7, the Student was at the Applicant's residence and involved in behavior that was disruptive to the School, primarily because of the location of the Applicant's residence. Had the Student been at a location several blocks away, there would have been no disruption and no need for the notation. The fact that the activity was conducted at the Applicant's residence, which is across from the School, makes the recording of this information reasonable.

[para 26] The Applicant also suggested that the reference to her whereabouts in the October 27 notes and whether or not there was supervision at her home is none of the Public Body's business. The Applicant also argued that she was not informed about the reason for collection and that the information was never used to make a placement or disciplinary decision about the Student. Therefore, the Applicant argued that the Public Body was not authorized to collect the information.

[para 27] I reject the Applicant's argument that she was never informed about the reason for collection. It is evident that she was at the meeting regarding the Student's behavior. The records were used at that meeting and the Applicant was given a copy. While it is likely that the specific reference to her residence may not have been explained, it is obvious from the context, that the information was collected for the purpose of monitoring the behavior of the Student.

[para 28] I also find no relevance in the Applicant's argument that the information was never used to make a program placement or disciplinary decision about the Student. The issue before me is collection, not use, of personal information.

[para 29] The Applicant pointed out that her two children were also at the dance and they were not asked where they were going or if they were supervised. The Applicant offered this as evidence that the Public Body does not typically collect this type of information.

[para 30] While I agree that it is evidence that the Public Body does not normally collect this type of information, I interpret this evidence differently than the Applicant. The Public Body was collecting information about the Student because he had disciplinary issues and his behavior was being monitored. In my view, this strengthens the Public Body's position that it was necessary to collect the information specifically about the Student and the people he associated with. This is particularly true regarding the Applicant, considering the parenting role she had assumed in relation to the Student. Under the circumstances, I find that it was reasonable for the Public Body to collect the Applicant's personal information.

D. Was the Public Body Authorized to Collect Information About the Applicant in a Manner Other Than Directly from the Applicant?

[para 31] Section 34 [previously section 33] of the FOIP Act states that personal information must be collected directly from the individual the information is about unless one of many conditions is present. The relevant provision is 34(1)(a)(ii) [previously section 33(1)(a)(ii)], which states:

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

[para 32] I have already found that the *Student Records Regulation* allows for the collection of personal information in the form of anecdotal notes. Therefore I find that the Public Body is authorized by section 34(1)(a)(ii) [previously section 33(1)(a)(ii)] to collect this type of personal information in a manner other than directly from the Applicant.

E. Other Issues Raised by the Applicant

[para 33] The Applicant also raised section 34 [now section 35] of the FOIP Act in her written submission. This section was not specifically set out as an issue for this inquiry. Section 35 [previously section 34] states:

35 If an individual's personal information will be used by a public body to make a decision that directly affects the individual, the public body must

(a) make every reasonable effort to ensure that the information is accurate and complete, and

(b) retain the personal information for at least one year after using it so that the individual has a reasonable opportunity to obtain access to it, or for any shorter period of time as agreed to in writing by

(i) the individual,

(ii) the public body, and

(iii) if the body that approves the records and retention and disposition schedule for the public body is different from the public body, that body.

[para 34] In order for section 35 [previously section 34] to apply, a public body must make a decision that directly affects the individual. I did not find any evidence that the Public Body used the Applicant's personal information to make a decision about the Applicant. Therefore, I find that section 35 [previously section 34] has no application in this inquiry.

[para 35] The Applicant included a letter from a neighbor who indicated that she was supervising all of the young people at the Applicant's residence on the evening of the dance and that no one contacted the residence.

[para 36] The Public Body offered an Affidavit in rebuttal from a staff member who made the phone call. The staff member indicated that she watched the Student leave the

School and observed him go to the Applicant's residence. The staff member went on to state that she called the Applicant's residence to inform the Applicant about the Student's behavior. She states that she got no answer.

[para 37] It appears that both parties would like me to sort out who is telling the truth. Not only is this not an issue for this inquiry, I believe the larger issue is one of trust. I am not in a position to resolve any trust issues that have arisen between the Applicant and the School. In this case, it is possible, and likely, that both parties are being truthful. Therefore I do not intend to pursue any further the issue of who is telling the truth.

[para 38] The Applicant suggested that the removal of the specific information about supervision and the Applicant's whereabouts would not adversely affect the integrity of the record. The Applicant has not specifically asked the Public Body for a correction under section 36 [previously section 35] of the FOIP Act. Therefore, I do not have the jurisdiction to deal with that issue.

V. ORDER

[para 39] For the reasons previously stated, I make the following order under section 72 [previously section 68] of the FOIP Act.

[para 40] I find that the Public Body collected the Applicant's personal information in accordance with Part 2 of the FOIP Act.

Dave Bell
Adjudicator