

June 25, 2002

To: The Board of Trustees of the Calgary Roman Catholic Separate School
District No. 1 (the Public Body)
And to: The Applicant

Dear Public Body and Applicant:

**Re: ORDER F2002-012
Review Number 2250**

[para 1] On May 16, 2002, at the conclusion of the oral inquiry I conducted concerning Review Number 2250, I rendered an oral decision, with written reasons to follow. I found that the English 10-H exam (the "Record") fell within section 4(1)(g) of the FOIP Act and, as such, was excluded from the application of the FOIP Act. This letter sets out the written reasons for my decision.

I. BACKGROUND AND ISSUES

[para 2] Under the *Freedom of Information and Protection of Privacy Act* (the Act"), the Applicant requested access to a copy of her son's English 10-H final exam questions and her son's responses with notations resulting in his final mark. A request for other records is no longer at issue.

[para 3] The Public Body provided access to the Applicant's son's responses, but refused access to the Record, which consists of exam questions, instructions and reading passages on which the exam questions are based. The Public Body said that the Record was excluded from the application of the Act by section 4(1)(g) [previously section 4(1)(d)], which reads:

4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:

...

(g) a question that is to be used on an examination or test.

[para 4] Alternatively, the Public Body said that the Record fell within the exception to disclosure contained in section 26 [previously section 25] of the Act (testing procedures, tests and audits).

II. SUMMARY OF THE PARTIES' ARGUMENTS

[para 5] The Applicant argued that it is not sufficient under section 4(1)(g) that an exam question "may" be used in the future. The Applicant maintained that section 4(1)(g) requires that an exam question will definitely be used or is scheduled to be used. The Applicant also stated that the school makes a practice of giving out copies of previously written exams.

[para 6] The Public Body argued that section 4(1)(g) contains only two criteria: (i) there must be a question to be used on an examination or test, and (ii) the question will be used in the future.

[para 7] The Public Body's written submission described the examination questions as follows:

The particular examination questions were taken from the classroom assessment materials designed for the English 10 program by Alberta Learning. These materials are commonly referred to as "CAMP materials" (Classroom Assessment Materials Project). This project was launched in 1994 in response to Alberta Education's goal of establishing and effectively communicating clear learning outcomes and high standards for specified areas of learning.

The classroom assessment materials are summative assessment packages designed to be used by classroom teachers to assess students' achievement of learning outcomes specified in the Program of Studies relative to clearly stated standards.

These materials were provided to school boards on the understanding and recommendation that they be used as secured materials. Securing of the resources was needed in order to preserve their integrity as effective tools for summative assessment.

[para 8] The Public Body emphasized the uniqueness of the CAMP materials, which have been tested and normed on Alberta students.

[para 9] The Public Body said that the Record is used in its complete form. The Public Body maintained that the reading passages and questions are integrally related. Therefore, the Public Body argued that I should interpret "question" in section 4(1)(g) to include anything related to the question to be used on the examination, to avoid absurd consequences. In the Public Body's view, if any of the components of the Record were found not to fall within section 4(1)(g), that would render the Record useless. In particular, if the reading passages were found not to fall within section 4(1)(g), that would defeat the purpose of protecting the Record for future use. The Public Body does not want to repeatedly be required to develop a normative test.

[para 10] The Public Body emphasized that the nature of this exam is that it is intended for more than one-time use. The Public Body's written evidence and the oral evidence of its employees is that the Record has been used since 1997 and will be used again in June 2002.

III. MY DECISION

[para 11] I find that the questions are clearly going to be used on examinations in the future and therefore fall within section 4(1)(g). The evidence of the Public Body's employees was critical to my finding.

[para 12] I also find that the instructions and the passages upon which the exam questions are based are integral to the questions and also fall within section 4(1)(g).

[para 13] Given my decision, I do not have to consider the application of section 26 of the Act to the Record.

[para 14] I appreciate the Applicant's concern about the ability of parents and students to have access to these questions to help their children with their education. I was impressed with the Applicant's arguments and more impressed with her devotion to her child's education to the extent of wanting to have these questions.

[para 15] However, where the Act clearly excludes material like this, that also puts an end to my authority over the Record.

Frank Work, Q.C.
Information and Privacy Commissioner