

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDERS F2006-003 and P2006-003**

**October 5, 2006**

**CALGARY BOARD OF EDUCATION**

**Review Numbers 3199 and P0191**

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** The Complainant brought a complaint under the *Freedom of Information and Protection of Privacy Act* (the “FOIP Act”) against the Calgary Board of Education (the “Public Body”), and the Escuela Canyon Meadows School Council (the “School Council”), that the personal information of a child (the child’s address) was published in a school directory, without the consent of her parent.

Prior to the hearing date, the Public Body raised the objection that the Complainant is not the child’s guardian, and thus does not have the necessary standing to make a complaint on her behalf, or advance a complaint to inquiry under the FOIP Act. This case also raised the question of whether the School Council is a public body under the FOIP Act, or an organization under the *Personal Information Protection Act* (“PIPA”).

The Commissioner found he did not have jurisdiction under the FOIP Act to conduct an inquiry into the complaints as the Complainant is not the guardian of the person whose information is at issue.

He also found that the School Council in this case is subject to PIPA as an “organization” thereunder.

**Statutes Cited:** **AB:** *Family Law Act*, S.A. 2003, c. F-4.5, s. 7; *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(d), 1(p)(i), 1(p)(ii), 53, 65(3), 72, 84, 84(1)(e), 84(1)(f); *Freedom of Information and Protection of Privacy Act Regulation* (A.R. 200/95), Schedule 1; *Government Organization Act*, R.S.A. 2000, c. G-10, s. 7; *Personal Information Protection Act*, S.A. 2003, c. P-6.5, , ss. 46(2), 50, 52; *School Act*, R.S.A. 2000, c. S-3, ss. 22, 144(1); *School Councils Regulation*, Alta. Reg. 171/1998, s.10.

**Authorities Cited:** AB Investigation Reports: 2001-IR-005; AB Orders: 96-007, 96-016, 2001-010.

## **I. BACKGROUND**

[para 1] On January 21, 2005, the Complainant brought a complaint to this Office under the *Freedom of Information and Protection of Privacy Act* (the “FOIP Act”) against the Calgary Board of Education (the “Public Body”), and the Escuela Canyon Meadows School Council (the “School Council”), that the personal information of a child (the child’s address) was published in a school directory, without the consent of her parent, contrary to the FOIP Act. The child’s mother (who is not the Complainant) had agreed, by signing a form, that the child’s phone number be published, but not the address. The Complainant also complained about some other more general practices of the Public Body and School Council relative to the school directory.

[para 2] A mediator was assigned to try to resolve the complaint. This was not successful, and the Complainant requested a review. A Notice of Inquiry was issued on August 16, 2005. The issues in the inquiry relative to the Public Body were whether it had improperly collected, used, disclosed, and failed to protect, all relative to the child’s information. With regard to the School Council, the issue was whether it was a “public body” subject to the FOIP Act, or whether, alternatively, it was an “organization” subject to the *Personal Information Protection Act* (“PIPA”). The Notice of Inquiry named the School Council as an Affected Party in the Inquiry. The Notice also stated that if the School Council was a “public body”, a separate inquiry would be convened at a later date to determine if the School Council had complied with the FOIP Act, and if it was an “organization”, a separate inquiry would be convened at a later date to determine if the School Council had complied with PIPA.

[para 3] Prior to the hearing date, the Public Body raised the objection that the Complainant is not the child’s guardian, and thus does not have the necessary standing to make a complaint on her behalf, or advance a complaint to inquiry. It said this objection applied to the complaint both under the FOIP Act and under PIPA.

[para 4] The School Council, as well as the three intervenors (Alberta Government Services, Alberta Education, and the Alberta Home and School Councils’ Association), made submissions about whether the School Council is a “public body” subject to the FOIP Act, or an “organization” subject to PIPA. The School Council did not itself raise any jurisdictional objection.

[para 5] I agreed to decide this jurisdictional issue first, before requiring submissions from the Public Body on the merits.

## II. ISSUES

[para 6] The preliminary jurisdictional objection as raised by the Public Body was that the Complainant does not have standing to make a complaint, or advance a complaint to inquiry. It made this objection relative to both the FOIP Act and PIPA. However, PIPA does not apply to the Public Body, and though (as will be seen below), it applies to the School Council, the School Council has not made any jurisdictional objection to the Complainant's standing. Thus I will frame the first issue as follows:

### **Issue A: Does the Complainant have standing to request a review under section 65(3) of the FOIP Act?**

[para 7] As indicated in the Notice of Inquiry, depending on my conclusion about the status of the School Council - whether it is a "public body" under the FOIP Act or an "organization" under PIPA – the issue of whether the School Council complied with the applicable statute can be dealt with at a later stage. As I have already received submissions on this issue, in this Order I will also decide the following question:

### **Issue B: Is the School Council a "public body" subject to the FOIP Act, or an "organization" subject to PIPA?**

## III. DISCUSSION OF ISSUES

### **Issue A: Does the Complainant have standing to request a review under section 65(3) of the FOIP Act?**

#### *The legislation*

[para 8] Section 53 of the FOIP Act provides:

*53(1) In addition to the Commissioner's powers and duties under Part 5 with respect to reviews, the Commissioner is generally responsible for monitoring how this Act is administered to ensure that its purposes are achieved, and may*

*(a) conduct investigations to ensure compliance with any provision of this Act  
....*

*(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 contravention of Part 2.*

[para 9] Section 65(3) provides:

*65(3) A person who believes that the person's own personal information has been collected, used or disclosed in contravention of Part 2 may ask the Commissioner to review that matter.*

[para 10] Section 84(1(e) provides:

*84(1) Any right or power conferred on an individual by this Act may be exercised*

*(e) if the individual is a minor, by a guardian of the minor in circumstances where, in the opinion of the head of the public body concerned, the exercise of the right or power by the guardian would not constitute an unreasonable invasion of the personal privacy of the minor, ...*

*(f) by any person with written authorization from the individual to act on the individual's behalf.*

[para 11] The essence of the Public Body's objection is that the information at issue is the child's information rather than the Complainant's. It says that only a guardian of a child can initiate and advance a complaint about improper collection, use or disclosure of such information.<sup>1</sup>

[para 12] Part of this argument – that which questions the Complainant's ability to initiate a complaint - seems to overlook section 53 of the FOIP Act. Under this section, the Commissioner may authorize an investigation in response to a complaint about improper collection, use and disclosure, even though the personal information at issue is other than a person's own information. However, section 53 does not give a person a right to ask for a review, and matters initiated in this manner do not go to inquiry. A right to ask for a review, which gives rise to an inquiry, is found only in section 65(3), and in that case the complaint must be about the person's own personal information. If this process is instigated on behalf of a child, then, by virtue of section 84, it can only be by the child's guardian, (assuming the condition in the section is met that the Public Body would not regard this procedure to be an unreasonable invasion of the child's privacy), and, by virtue of section 84(1)(f), it may possibly also be instigated by someone authorized to act on the guardian's behalf).<sup>2</sup>

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<sup>1</sup> In the initial part of its submission, the Public Body says the Complainant lacks standing to "advance his initial complaint to the Local Public Body" ("Background Statement"). In its first point under "Issue 1" in its "Argument", the Public Body questions the Applicant's standing to make a complaint, and to advance his complaint to inquiry.

<sup>2</sup> With respect to the Public Body's arguments on this point relative to PIPA, I note the provisions as to who may request a review in the FOIP Act are quite different than those in PIPA. Under section 46(2) of PIPA, any person may initiate a complaint with respect to the issues in section 36(2) - which includes a complaint that personal information has been disclosed by an organization in contravention of, or in circumstances not in compliance with, PIPA. This is not restricted to a complaint about a person's own information, and there is no requirement to demonstrate any relationship with the person whose information is at issue. In contrast to the FOIP Act, if such a complaint is not resolved, the Commissioner may conduct an inquiry under section 50. I do not prejudge the issue should a jurisdictional objection be raised under PIPA. However, on its face, there appears to be nothing in PIPA that precludes my holding an inquiry into a complaint about improper collection, use or disclosure of personal information by an organization, even

[para 13] In this case, the Complainant's complaint had reached the stage where he was requesting a review, which can give rise to an inquiry, under section 65(3) of FOIP. I accept that the Public Body may challenge the Complainant's right to require a review/inquiry at this stage by arguing that he is not the child's guardian.

*Is the Complainant the child's guardian?*

[para 14] The word "guardian" is not defined in the FOIP Act.

*Submissions of the parties*

[para 15] The Public Body provided me with a number of definitions of "parent" and "guardian" under various other pieces of provincial legislation, in particular, the former *School Act*, the current *School Act*, and the recently-enacted *Family Law Act* (with which the definitions in the current *School Act* have been harmonized). It urged me to adopt, for the purposes of the privacy legislation, the definition of guardian that is contained in the *Family Law Act*. It said this would be in the interests of consistency and decision-making and interpretation of relevant statutes. It presented me with the rules under the *Family Law Act* as to who is a child's parent, and who is a guardian. These rules are complex. To summarize, under this legislation, a person who is not a biological or adoptive parent of a child (or who falls under certain sections of the act that apply to very specific circumstances) is not a guardian unless they have a court order appointing them as such. The *Family Law Act* also provides that a guardian is entitled to deal with legal proceedings on behalf of a child.

[para 16] The Public Body provided evidence that there is nothing in the child's school record to indicate that the Complainant is the guardian of the child in this case. There is some evidence before me that the Complainant and the child live in the same residence. There is no evidence as to whether this is the child's only residence. The child's biological father is listed in the school records as one of the parents. There is no further information before me about this person.

[para 17] In response to the Public Body's jurisdictional objection, the Complainant made no claim to be the child's guardian, nor did he present any court orders about custody or guardianship. Rather, he stated that he was making the complaint on behalf of himself and his family, as the family's personal life was affected, and the information was his own personal information as well as that of the child.

*Discussion*

[para 18] In parts of its argument the Public Body seems to be suggesting that the definition of "guardian" in the *Family Law Act* is the one I am obliged to adopt to

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though the complaint was brought by a person who is not a guardian of the person whose information is at issue.

determine how to define “guardian” in the context of the FOIP Act and PIPA. For example, it says:

To find that the interpretation used under the *Family Law Act* is not the interpretation to be given to the term “guardian” under the *FOIP Act* would appear to thwart the intention of the *Family Law Act*, which is to clearly establish guardianship rights in respect of minors.

[para 19] In other parts of its submission the Public Body seems to offer the *Family Law Act* definition as a persuasive approach to the problem of definition.

[para 20] I do not accept that the *Family Law Act* definition is one I am bound to adopt. I note that section 7 of the *Family Law Act* provides that “unless another enactment provides otherwise, a person who is a parent of a child under this Act is a parent of that child for all purposes of the law of Alberta”. Had the legislature intended that the same be true for the term “guardian”, it could have said so.<sup>3</sup>

[para 21] However, I do accept that the definition in the new legislation provides me with significant information about the possibilities for an appropriate definition. As well, it would be in accord with principles of statutory interpretation to adopt an interpretation that is in harmony with other legislation.

[para 22] However, I do not think it is necessary for me to assign a definitive meaning to the term “guardian” in the context of privacy legislation in this case. Because the Complainant is the person in the best position to persuade me that he is the child’s guardian in this case, in my view the onus is on him to do this if he can. As he has neither tried to do so, nor provided any evidence at all on the basis of which I might do so, I find that he is not the guardian of the child in this case.

[para 23] The issues in the Notice of Inquiry relate to the Complainant’s complaints on behalf of the child. In my view, the Complainant did not have the requisite standing to advance the complaint on behalf of the child to inquiry under the FOIP Act by requesting a review under section 65(3). Thus I do not have jurisdiction to conduct an inquiry relative to these issues.

[para 24] In order to ensure that the Complainant is aware of the options that are available or possibly available in this matter, I bring to the Complainant’s attention section 84(1)(f) of the FOIP Act. This section provides as follows:

*84(1) Any right or power conferred on an individual by this Act may be exercised*

...

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<sup>3</sup> The same comments apply to the definitions of “guardian” in the *School Act*. This case happens to involve a school. While I take the point that overall harmony is desirable, I do not see that the definitions of terms in the *School Act* are any more significant to the question of how “guardian” is to be understood in the privacy legislation than definitions in any other legislation in which the term appears.

(e) *if the individual is a minor, by a guardian of the minor in circumstances where, in the opinion of the head of the public body concerned, the exercise of the right or power by the guardian would not constitute an unreasonable invasion of the personal privacy of the minor, or*

(f) *by any person with written authorization from the individual to act on the individual's behalf.*

[para 25] A complaint could potentially be brought under these provisions if the conditions were met. For the provision to apply, there is also the condition that the head of the Public Body would not regard a complaint by the child's guardian (or someone with written authorization to act on that person's behalf) as an unreasonable invasion of the child's privacy.

[para 26] I have noted that throughout the investigation phase of this matter, the Public Body treated the Complainant as though he was entitled to complain to it about the matter under the FOIP Act, as well as to advance the complaint to the inquiry stage. The jurisdictional objection was raised at a late stage, creating a significant inefficiency in this process. However, this point cannot bear on the legal requirements of the legislation. In my view the Public Body's failure to raise its objections at an earlier time cannot constitute a waiver of the requirements of sections 65(3) and 84(1)(e).

[para 27] A final point relates to the fact that parts of the Complainant's response to the Public Body's jurisdictional argument suggests that he was bringing the complaint on his own behalf rather than on behalf of the child. In the Complainant's original statement of the complaint he did not deal with this point expressly. Rather, he complained about the way the disclosure at issue affected both him and other members of his household. However, the issues as stated in the Notice of Inquiry all clearly relate to disclosure of the child's information. The Complainant made no objection to the issues as stated in this Notice. Therefore, I cannot deal in this inquiry with a complaint about the how the Public Body dealt with the Complainant's own information.

[para 28] However, without deciding the issue, I do note that the information at issue in this case does not appear on its face to be the Complainant's personal information. "Personal information" is information *about* an identifiable individual. The disclosed information was *about* the child. If the child's address also happens to be the address of the Complainant (if, in other words, they have personal information that is the same), this doesn't make the information disclosed in this case the Complainant's personal information. Unless the Complainant could present me with a persuasive argument to the contrary, it does not seem that making a complaint based on the idea the information at issue was that of the Complainant would be a fruitful course.

**Issue B: Is the School Council a “public body” subject to the FOIP Act, or an “organization” subject to PIPA?**

[para 29] The School Council itself provided me with a submission on this question. It suggested that it could be either a public body under the FOIP Act, or an organization under PIPA. It seemed to prefer the former to the latter to some degree, but did not take a firm position.

[para 30] None of the three intervenors supported the School Council’s view that there was a basis in the FOIP Act for finding that the Council is a public body. All of them argued that it meets the definition of “organization” under PIPA.

[para 31] I have reviewed the provisions in the FOIP Act by reference to which the School Council thought it might be brought within the Act. The provisions that define public bodies under the FOIP Act that are potentially relevant here are as follows:

*1 In this Act, ...*

*(j) “local public body” means*

*(i) an educational body,... ;*

*(p) “public body” means*

*i) a department, branch or office of the Government of Alberta,*

*ii) an agency, board, commission, corporation, office or other body designated as a public body in the regulations, ...*

*(vii) a local public body,....*

I agree with the intervenors that none of these provisions covers the School Council.

[para 32] One argument presented by the School Council in favour of finding it falls under the FOIP Act is that the School Council members could be regarded as “employees” of the Public Body (the Board). It noted that the definition of “employee” in the FOIP Act is as follows:

*1(e) “employee”, in relation to a public body, includes a person who performs a service for the public body as an appointee, volunteer or student or under a contract or agency relationship with the public body;... .*

[para 33] The School Council noted that in accordance with the *School Act*, it is constituted by the principal and a teacher (both employees) as well as by volunteers. It said the members perform a service for the Public Body and the school by advising on issues and liaising with the community. It also pointed out that School Council members



are protected from liability under section 144.1 of the *School Act*, the same provision as affords protection to trustees and board employees. (I note however, that under this provision “school council members” is a distinct category from “employees”, which is an argument that these are discrete categories rather than that they are not.) Finally, the School Council says, pointing to a number of provisions of the *School Act* and the *School Councils Regulation*, that the Minister and Board exercise some degree of control over the Council (including a reporting requirement, the Board’s access to the Council minutes, and the Board’s power to request the Minister to dissolve a Council).

[para 34] As conceded by the School Council, earlier decisions of the Office (Order 2001-010 and Investigation Report 2001-IR-005) have ruled that a school council is not an employee of the Board, on the basis that council members function in their own right rather than as Board employees. I agree with this reasoning. In addition, in my view, the members of the School Council are volunteer members of the school council, not volunteer members of the Board or of the particular school with which they are associated. Thus I find that this argument does not support a conclusion that the School Council is a part of the Public Body.

[para 35] The School Council’s second suggestion is that school councils might be taken to be “offices” of the Government of Alberta under section 1(p)(i) of the FOIP Act. This provision includes as a public body “a department, branch, or office of the Government of Alberta”. In support of this argument it presents a decision of this Office (Order 96-016) in which a body (the Alberta Environmental Centre) was considered a division of the Alberta Research Council (a public body). It is not clear how the case supports the argument, since if school councils are taken to be divisions of the Board (to draw the parallel with the cited case) this would not make them public bodies in their own right. I note as well that Order 96-007 held that to qualify as a public body under section 1(p)(i), the body must be a branch or office of government, not a branch or office of a department (or, presumably, of any other public body).

[para 36] If the argument is that each school council is not a part of the Public Body but is a separate “office” of the Government of Alberta, this seems an inappropriate status to confer on a part-time, volunteer organization. Further, this suggestion does not comport with the School Council’s final observation that the Minister (of a department) asserts considerable control over the councils. In my view, therefore, the School Council is not an “office” of the Government of Alberta.

[para 37] I note as well that school councils do not fit within the definition of “educational body” under section 1(d) of the FOIP Act. Neither are they included in the list of public bodies in Schedule 1 of the FOIP Act Regulation pursuant to section 1(p)(ii): they are not expressly named in the Schedule, nor, as bodies created under section 22 of the *School Act*, are they included in the phrase “boards, committees or councils established under section 7 of the *Government Organization Act*”.

[para 38] I find, therefore, that the School Council does not fall within any of the definitions, and is not a public body under the FOIP Act.

[para 39] I turn next to the suggestion that the School Council is an “organization” under PIPA. The definition of “organization” in PIPA includes:

- (i) *a corporation*
- (ii) *an unincorporated association*
- (iii) *a trade union as defined in the Labour Relations Code*
- (iv) *a partnership as defined in the Partnership Act, and*
- (v) *an individual acting in a commercial capacity ... .*

[para 40] An “unincorporated association” is not defined in the Act. School councils are not incorporated, and they are associations in the sense that they are composed of people who are joined for a common purpose. Thus the plain words of the legislation seem to capture them.<sup>4</sup> There seems to be nothing else in the Act that excludes them. (PIPA has special provisions pertaining to non-profit organizations, which fall under the Act only in relation to personal information they collect, use or disclose in connection with commercial activities in which they engage. However, only organizations that are incorporated under particular, named, statutes fall within this category. School councils are by the terms of their constituting legislation not permitted to so incorporate<sup>5</sup>; hence they are not excluded as non-profit organizations.)

[para 41] The purpose of PIPA is to balance the right of individuals to have their personal information protected with the right of organizations to deal with personal information for reasonable purposes. School councils may have access to personal information by virtue of their statutorily-mandated activities. The stated purpose of PIPA is appropriate to information dealt with by such bodies. The term “unincorporated association” should be given a purposive interpretation that includes school councils, so as to ensure that information in their hands is dealt with, in accordance with the purposes of the Act, by properly balancing the stated interests.

[para 42] I find, therefore, that School Councils are “organizations” within the terms of PIPA, and are subject to the provisions of this Act.

#### **IV. ORDER**

[para 43] I make this Order under section 72 of the FOIP Act and under section 52 of PIPA.

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<sup>4</sup> The School Council quotes the definition of “unincorporated association” from Black’s Law Dictionary, 5<sup>th</sup> Edition, which includes the following meanings “Voluntary group of persons, without a charter, formed by mutual consent for purpose of promoting common enterprise of prosecuting common objective. An organization composed of a body of persons united with a charter for the prosecution of a common enterprise.” It is not clear whether the statements of purpose and operating rules adopted by school councils constitute a “charter”, but whether they do or not, these definitions seem to comport approximately with the nature and purpose of school councils.

<sup>5</sup> *School Councils Regulation*, section 10.

[para 44] I find I do not have jurisdiction under the FOIP Act to conduct an inquiry into the Complainant's complaints about improper collection, use or disclosure of personal information by the Public Body. The Complainant is not the guardian of the person whose information is at issue. Only a person with such standing (or who has written authorization from a person who does have such standing), and only if the condition in section 84(1)(e) (regarding the Public Body's opinion as to the effect of the complaint on the minor's privacy) is met, can a complaint such as the present one be advanced to inquiry on behalf of a child.

[para 45] I find that the School Council in this case is subject to PIPA as an "organization" thereunder. As indicated in the Notice of Inquiry, as a result of my conclusion about the status of the School Council under PIPA, I can now convene a separate inquiry to decide whether the School Council complied with PIPA. If it is the Complainant's wish that a complaint relative to the School Council be dealt with in this way, he may contact this Office.

Frank Work, Q.C.  
Information and Privacy Commissioner