

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2009-035

June 15, 2010

**THE BOARD OF TRUSTEES OF EDMONTON SCHOOL DISTRICT
NO.7**

Case File Number F4186

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

Summary: The Complainant alleged that The Board of Trustees of Edmonton School District No.7 (the “Public Body”) disclosed the Complainant’s children’s personal information to Edmonton and Area Child and Family Services Authority (Region 6)(the “Affected Party”). The Complainant requested that this Office review whether the Public Body had the authority under Part 2 of the *Freedom of Information and Protection of Privacy Act* (the “FOIP Act”) to disclose this information to the Affected Party.

The Adjudicator found that there was insufficient evidence as to whether the Public Body disclosed the Complainant’s children’s recorded personal information. However, the Adjudicator held that, in any event, if the Public Body did disclose the Complainant’s children’s recorded personal information to the Affected Party, the Public Body would nevertheless have had the authority under section 40(1)(l) of the FOIP Act to disclose that information.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c.F-25 ss. 1(n), 1(n)(i), 1(n)(vi), 1(n)(vii), 1(n)(viii), 35(a), 40(1)(l), 72; *Family Support for Children with Disabilities Act*, S.A. 2003, c. F-5.3, ss 4(1), 4(1)(b), 4(2)

Regulations Cited: AB: *Family Support for Children with Disabilities Regulation*, Alta. Reg. 140/2004, s. 4(1)(m)

Authorities Cited: AB: Orders: F2006-019, F2008-022

I. BACKGROUND

[para 1] On June 15, 2007, the Complainant made a request under the FOIP Act to the Public Body for information related to the education of his two children as well as all communications that mentioned the Complainant or his wife.

[para 2] On July 23, 2007, the Public Body responded to the Complainant's access request, providing the Complainant with 1329 documents.

[para 3] On August 13, 2007, the Complainant requested a review by this Office. In the Complainant's request for review, the Complainant referred to a copy of document 485 which he received in response to his access request. Document 485 consisted of the meeting minutes from an October 18, 2006 meeting between three management staff at the school where one of his children attended and an employee for the Family Support for Children with Disabilities program ("FSCD program") which is a program of the Edmonton and Area Child and Family Services Authority (Region 6) (which is named as an Affected Party in this inquiry). The Complainant alleges that this document shows that the management staff at the school breached his privacy by discussing his children's progress with the Affected Party. The Complainant states that he did not give the Public Body permission to discuss his children's progress with the Affected Party. The Complainant states that at the time of the alleged disclosure he had scheduled an appeal of the FSCD Director's decision to terminate funding for specialized services for his children and was in negotiation with the Director's Delegate of the FSCD program regarding a settlement.

[para 4] Mediation was authorized but did not resolve the issue.

[para 5] On February 1, 2008, the Complainant requested that the Information and Privacy Commissioner conduct an inquiry into the matter. The matter was scheduled for an inquiry.

[para 6] During the inquiry, the Public Body and the Complainant each submitted an initial submission and a rebuttal submission. The Affected Party did not make a submission in this inquiry.

II. ISSUE

[para 7] There was one issue identified in the inquiry notice: Did the Public Body disclose the Complainant's sons' personal information in contravention of Part 2 of the FOIP Act?

[para 8] In order to address this issue, I have identified the following two sub-issues:

- A. Did the Public Body disclose the Complainant's sons' personal information?
- B. Did the Public Body have the authority to disclose the Complainant's sons' personal information under Part 2 of the FOIP Act?

III. DISCUSSION: Did the Public Body disclose the Complainant's sons' personal information in contravention of Part 2 of the FOIP Act?

A. Did the Public Body disclose the Complainant's sons' personal information?

[para 9] The Complainant states that during a meeting on October 18, 2006, the Public Body disclosed, to the Affected Party, information regarding his children. The Complainant states that the minutes of that meeting show that the management staff from the school where one of his children attended told the Affected Party that the Complainant's children were "doing extremely well in their programs" and that the management staff "will be happy to share any information" regarding the Complainant's children's progress with the Affected Party "as necessary". The Complainant states that the Public Body did not have the authority under the FOIP Act to disclose this information.

[para 10] Personal information is defined in section 1(n) of the FOIP Act. The relevant portions read:

I 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,

...

(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...

[para 11] In order for information to be considered "personal information" under the FOIP Act, it must be recorded information. A public body's oral disclosure of information is considered a disclosure under Part 2 of the FOIP Act as long as it is a

disclosure of recorded personal information (Orders F2006-019 (para.83) and F2008-022 (para.11)).

[para 12] After a review of the submissions of the parties, I find that it is unclear whether the Public Body's disclosure of information to the Affected Party regarding the progress of the Complainant's children fulfills the definition of personal information. The minutes of the meeting on October 18, 2006 show that the Public Body verbally disclosed, to the Affected Party, the children's names (section 1(n)(i)), information about the children's educational history (section 1(n)(vii)), an opinion about the children (section 1(n)(viii)) and arguably, information about the children's health and health care history, including information about a physical or mental disability (section 1(n)(vi)). However, there is insufficient evidence before me as to whether this information was recorded information. It is unclear whether the Public Body had possession of this information in recorded form prior to its oral disclosure to the Affected Party. In addition, there is no evidence before me as to whether the disclosure occurred through the distribution of the meeting minutes.

[para 13] However, I find that, for the reasons outlined below, in the event that the Public Body had possession of this information in recorded form prior to its oral disclosure or, in the likely event that the Public Body distributed the meeting minutes to the Affected Party, the Public Body would nevertheless have had the authority to disclose this information to the Affected Party under Part 2 of the FOIP Act.

[para 14] I note that in this Order I will only address the alleged disclosure on October 18, 2006. There is no evidence before me that the Public Body made other disclosures of information regarding the Complainant's children to the Affected Party at a later date.

B. Did the Public Body have the authority to disclose the Complainant's sons' personal information under Part 2 of the FOIP Act?

[para 15] After a review of the submissions of the parties I find that if the Public Body disclosed the Complainant's children's recorded personal information to the Affected Party, the Public Body would have had the authority under section 40(1)(l) of the FOIP Act to disclose that information. Section 40(1)(l) reads:

40(1) A public body may disclose personal information only

...

(l) for the purpose of determining or verifying an individual's suitability or eligibility for a program or benefit,

[para 16] Under section 40(1)(l), a public body may disclose personal information for the purpose of determining or verifying an individual's suitability or eligibility for a program or benefit.

[para 17] After a review of the submissions before me, I find that the Public Body disclosed the Complainant's children's information to the Affected Party in order to provide the Affected Party with information to determine whether the children would be eligible for specialized services funding under the FSCD program and to what extent they

would be eligible for funding. Although the Affected Party is responsible for making this determination, the Public Body nevertheless disclosed the personal information to the Affected Party for that purpose. In the alternative, I find that the Public Body disclosed this information to the Affected Party in order to provide the Affected Party with some verification as to the children's suitability or eligibility.

[para 18] The Affected Party is responsible for determining whether a child will receive funding under the program and to what extent. In making this determination, the Affected Party is given the ability under the *Family Support for Children with Disabilities Act*, S.A. 2003, c. F-5.3 (the "FSCD Act") to collect a wide range of information.

[para 19] Section 4(1)(b) of the FSCD Act permits the Affected Party to obtain an assessment of the child before deciding whether to provide funding under the FSCD program. Arguably this assessment could include a formal assessment or an informal collection of information by the Affected Party. In addition, section 4(2) of the FSCD Act permits the Affected Party to consult with persons who have knowledge of a child's functional abilities. Sections 4(1) and 4(2) read:

4(1) If

(a) a medical diagnosis, in a format satisfactory to the director, of a child's condition or impairment indicates that the child has a disability, and

(b) an assessment of the child, completed in a manner satisfactory to the director, indicates that the disability significantly limits the child's ability to function in normal daily living,

the director and the child's guardian may enter into an agreement, in a form provided for in the regulations, with respect to the provision of child-focused services.

(2) In determining the terms of an agreement under subsection (1), the director and the guardian

(a) must have regard to the assessment referred to in subsection (1)(b), and

(b) may consult with experts in disabilities and persons who have knowledge of the child's functional abilities.

[para 20] I find that the Affected Party is given the ability under sections 4(1) and 4(2) of the FSCD Act to collect and use information regarding how a child's functions in a school to the extent that it relates to the child's behaviour or other skills that could be addressed under the FSCD program. In my view, information about how a child functions in school, whether in a special education program or outside of such a program, is useful and relevant information that the Affected Party would consider prior to providing funding under the FSCD program. For example, if a child exhibits difficulties at school in regard to his behaviour, communication, social, cognitive, physical and motor, self-help skills and adaptive skills, and other skills addressed under the FSCD

program, this information would be useful to the Affected Party in determining whether specialized services will be provided to that child and to what extent (see s. 4(1)(m) of the *Family Support for Children with Disabilities Regulation*, Alta. Reg. 140/2004 (the “FSCD Regulations”). In this regard, I note that although section 4(1)(m) of the FSCD Regulations states that specialized services may not be provided for the purpose of assisting a child’s education or academic development, the information regarding a child’s behaviour or skills at school, to the extent that those skills and behaviour are of the type addressed under the FSCD program, is nevertheless useful information to the Affected Party in its determination regarding funding.

[para 21] I accept the Complainant’s submission that his children were not, at the time of the October 18, 2006 meeting, in a specialized service program. However, it is clear from the submissions of the parties, that at the time of the October 18, 2006 meeting there were ongoing discussions between the Complainant and the Affected Party regarding funding for the Complainant’s children. At the time of that meeting, the Complainant acknowledges that he was appealing a decision by the Affected Party to withhold funding from his children and was in settlement negotiations with the Affected Party regarding funding for his children, the reinstatement of the agreement and the terms of the agreement. Given the foregoing, I find that Public Body’s disclosure of information regarding the Complainants’ children was for the purpose of determining or verifying whether the children should receive further funding from the Affected Party for specialized services, and to what extent. I find that the Public Body was authorized by section 40(1)(l) of the FOIP Act to disclose the personal information regarding the Complainant’s children.

[para 22] I note that in the Complainant’s submissions, the Complainant alleges that the information disclosed by the Public Body regarding his children was inaccurate. Section 35(a) of the FOIP Act addresses a public body’s duty to maintain accurate and complete information. Section 35(a) was not identified within the inquiry notice as an issue. It is therefore not an issue before me in this inquiry and I will not make a determination in this regard.

IV. ORDER

[para 23] I make the following order under section 72 of the FOIP Act.

[para 24] I find that there is insufficient evidence before me to determine whether the Public Body disclosed the Complainant’s children’s recorded personal information to the Affected Party. However, I find that if the Public Body did disclose the Complainant’s children’s recorded personal information to the Affected Party, the Public Body would have had the authority to disclose that information under section 40(1)(l) of the FOIP Act.

Lisa McAmmond
Adjudicator