

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2009-036

June 15, 2010

**EDMONTON AND AREA CHILD AND FAMILY SERVICES
AUTHORITY (REGION 6)**

Case File Number F4215

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

Summary: The Complainant alleged that the Edmonton and Area Child and Family Services Authority (Region 6) (the “Public Body”) collected his children’s personal information from The Board of Trustees of Edmonton School District No.7 (“Edmonton School District”). 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*, R.S.A. 2000, c.F-25 (the “FOIP Act”) to collect this information.

The Adjudicator found that there was insufficient evidence as to whether the Public Body collected the Complainant’s children’s recorded personal information. However, the Adjudicator held that if the Public Body did collect the Complainant’s children’s recorded personal information, the Public Body would have had the authority under sections 33(a) and 33(c) of the FOIP Act to collect this information and the authority under section 34(1)(a)(ii) of the FOIP Act to collect this information indirectly.

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), 33(a), 33(c), 34(1)(a)(ii), 35(a), 72; *Family Support for Children with Disabilities Act*, S.A. 2003, c. F-5.3 ss. 4(1), 4(1)(b), 4(2).

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

I. BACKGROUND

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

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

[para 3] On September 12, 2007, the Complainant requested a review by this Office. The Complainant alleged that one of the documents he received in response to his access request showed that the Public Body collected personal information about his children. The Complainant states that the Public Body did not have the authority under the Act to collect this information.

[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. The Edmonton School District was identified as an Affected Party.

[para 6] During the inquiry, the Public Body submitted an initial submission but did not submit a rebuttal. The Complainant and the Edmonton School District each submitted an initial submission and a rebuttal submission.

II. ISSUE

[para 7] There was one issue identified in the inquiry notice: Did the Public Body collect 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 three sub-issues:

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

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

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

[para 9] The Complainant states that the Public Body collected his children's personal information at a meeting on October 18, 2006. 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 Public Body that his children were "doing extremely well in their programs" and that the management staff "will be happy to share any information" with the Public Body as necessary.

[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 personal information.

[para 12] After a review of the submissions of the parties including the minutes of the meeting, I find that it is unclear whether the Public Body collected the Complainant's children's recorded personal information. The minutes of the meeting show that the Edmonton School District verbally disclosed to the Public Body 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 children's health and health care history, including information about a physical or mental disability (section 1(n)(vi)). However, there is insufficient information and evidence before me as to whether the Public Body collected this information as recorded personal information. It is unclear whether the Public Body recorded this information or obtained a copy of this information in recorded form via distribution of the minutes. I

find that I do not have sufficient information and evidence before me to make a determination in this regard.

[para 13] However, I find that, for the reasons outlined below, if the Public Body either recorded the information or obtained a copy of the information in recorded form, the Public Body would nevertheless have had the authority to collect this information under Part 2 of the FOIP Act.

[para 14] I note that in this Order I will only address the alleged collection on October 18, 2006. There is no evidence before me that the Edmonton School District provided the Public Body with further information regarding the Complainant's children at a later date.

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

[para 15] The Public Body states that if I find that it collected the Complainant's children's recorded personal information, it nevertheless had the authority to collect the information under section 33(c) of the FOIP Act.

[para 16] Section 33(c) reads:

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

...

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

[para 17] After a review of the submissions of the parties, I find that the Public Body had the authority under section 33(c) of the FOIP Act to collect the information. I find that the Public Body collected the information in order to administer the Family Support of Children with Disabilities program (the "FSCD program"). The FSCD program is a statutory program, authorized under the *Family Support for Children with Disabilities Act*, S.A. 2003, c. F-5.3 (the "FSCD Act"). I find that pursuant to the FSCD Act, the FSCD program is an operating program or activity of the Public Body. I also find that the information the Public Body collected related directly to and was necessary for FSCD program.

[para 18] Section 4(1)(m) of the *Family Support for Children with Disabilities Regulation* Alta. Reg. 140/2004 ("FSCD Regulation") addresses the nature of the FSCD program. Section 4(1)(m) states that under the FSCD program the Public Body may provide specialized services funding to address behaviour, communication and socialization skills, cognitive abilities, physical and motor development, self-help skills and adaptive functioning. In my view, information observed about a child's progress in school which relates to a child's behaviour or skill set such as that described in the FSCD Regulation, would relate directly to and is necessary in order to make a determination as to whether the child is in need of specialized services under the FSCD program.

[para 19] The Complainant states that at the time of the alleged collection of personal information at the October 18, 2006 meeting, his children were not currently enrolled in specialized services under the FSCD program. The Complainant therefore

states that the Public Body could not have collected the personal information for that program.

[para 20] I accept that 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 Public Body regarding funding for the Complainant's children. At the time of that meeting, the Complainant acknowledges that he was appealing a decision by the Public Body to withhold funding from his children and was in settlement negotiations with the Public Body regarding funding for his children, a new agreement and presumably the terms of the agreement. Given the foregoing, I find that collection by the Public Body of information regarding the Complainants' children's progress related directly to and was necessary in order to determine whether the children would receive further funding from the Public Body for specialized services. I find that the Public Body was authorized by section 33(c) of the FOIP Act to collect the personal information regarding the Complainant's children.

[para 21] I also note that, in addition to the Public Body's authority under section 33(c) to collect the information, the Public Body would also have had the authority to collect the information under section 33(a) of the FOIP Act read in conjunction with sections 4(1)(b) and 4(2) of the FSCD Act. Section 33(a) reads:

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,

[para 22] Sections 4(1) and 4(2) of the FSCD Act 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 23] I find that the Public Body was expressly authorized to collect the Complainant's children's information under sections 4(1) and 4(2) of the FSCD Act.

[para 24] Section 4(1)(b) of the FSCD Act permits the Public Body to obtain an assessment of the child before deciding whether to provide funding under the FSCD program. Although it is unclear from the section as to what an assessment would entail, arguably, it could include a formal assessment or an informal collection of information by the Public Body. In addition, section 4(2) of the FSCD Act permits the Public Body to obtain a wide range of information regarding the child's functional abilities. Section 4(2) of the FSCD Act permits the Public Body to consult with persons who have knowledge of a child's functional abilities.

[para 25] Arguably, sections 4(1) and 4(2) of the FSCD Act permit the Public Body to collect information regarding a child's functioning 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. I acknowledge that the Edmonton Public School's education program is separate and distinct from the specialized services provided under the FSCD program. However, 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 Public Body would consider before deciding whether to provide 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 is information that would arguably be useful to the Public Body in determining whether specialized services will be provided to that child (see s. 4(1)(m) of the *Family Support for Children with Disabilities Regulation*, Alta. Reg. 140/2004).

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

[para 26] After a review of the submissions of the parties, I find that the Public Body had the authority to indirectly collect the Complainant's children's personal information under 34(1)(a)(ii) of the FOIP Act. Section 34(1)(a)(ii) of the FOIP Act reads:

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,...

[para 27] Under section 34(1)(a)(ii), a Public Body may indirectly collect personal information if the collection is authorized by another Act or regulation. In this inquiry, I find that the Public Body's indirect collection was authorized by sections 4(1)(b) and 4(2) of the FSCD Act. I find that sections 4(1)(b) and 4(2) of the FSCD Act permit the Public

Body to consult and indirectly collect information either through an assessment or from persons, such as school management staff, that have knowledge of the child's functional abilities.

[para 28] In my view, sections 4(1)(b) and 4(2) of the FSCD Act give the Public Body the authority to indirectly collect personal information in order to make a decision as to whether to provide funding, enter into an agreement and establish the terms of the agreement. As previously mentioned, in the present case, the Complainant was attempting, through an appeal and through settlement negotiations, to restore funding for his two children via a new agreement with the Public Body and to establish the terms of that agreement. Given the foregoing, I find that the Public Body had the authority under sections 4(1)(b) and 4(2) of the FSCD Act to indirectly collect the Complainant's children's personal information.

[para 29] I note that in the Complainant's submissions, the Complainant alleges that the information collected 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 30] I make the following order under section 72 of the FOIP Act.

[para 31] I find that there is insufficient evidence before me to determine whether the Public Body collected the Complainant's children's recorded personal information. However, I find that, if the Public Body did collect the Complainant's children's recorded personal information, the Public Body would have had the authority under sections 33(a) and 33(c) of the FOIP Act to collect that information and the authority under section 34(1)(a)(ii) of the FOIP Act to collect that information indirectly.

Lisa McAmmond
Adjudicator