

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2017-14**

February 8, 2017

**ELK ISLAND PUBLIC SCHOOLS REGIONAL DIVISION No. 14**

Case File Number 000060

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

**Summary:** The Complainant alleged a representative of Elk Island Public Schools (the Public Body) disclosed his personal information contrary to the *Freedom of Information and Protection of Privacy Act* (the Act).

The adjudicator found the Complainant had not met his burden of proof in convincing her the information disclosed was his personal information under the Act. She found the Public Body had not disclosed the Complainant's personal information.

**Statutes Cited:** **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 40, 72

**Authorities Cited:** **AB:** Orders F2006-002, F2007-019

**I. BACKGROUND**

[para 1] The Complainant states a former Superintendent of the Public Body phoned his daughter's grandfather. In this conversation, the former Superintendent told the grandfather he was considering suing the Complainant for defamation. The Complainant made a complaint the Superintendent revealed his personal information contrary to the Act.

## II. ISSUES

1. Did the Public Body disclose recorded personal information about the Complainant that was in its custody or control?
2. If the answer to question 1 is yes, was the Public Body authorized to disclose the Complainant's personal information by a provision of section 40 of the FOIP Act?
3. If the answers to questions 1 and 2 are yes, did the Public Body disclose only the personal information necessary for meeting its purposes as required by section 40(4) of the FOIP Act?

## III. DISCUSSION OF ISSUES

### 1. Did the Public Body disclose recorded personal information about the Complainant that was in its custody or control?

[para 2] The Complainant, in his request for review submitted to this office, attached a note signed by his daughter's grandfather. This note states the following:

Record of a call from [the former Superintendent]

I received a call from [the former Superintendent] November 10, 2014 who introduced himself as superintendent of [Complainant's daughter's] school; "Your granddaughter's school; You have been faxing the school he said" I interjected saying to him, "You are mistaken as I don't have a fax: Then I suggested: You probably meant to call [phone number], a number that is mistakenly meant versus mine" "No, [former Superintendent] said, this is the correct number; he was very agitated"

[Former Superintendent] then went on to say: "I have to take action against your son for defamation of character; he has been saying things about his teacher"!

I replied: "why are you telling me this as I don't know what you are talking about"?"

"Well [former Superintendent] said, "I have no choice in the matter, there's going to be consequences"!!

That was the end of the conversation.

[para 3] The Public Body, in its submissions, argues the following:

1. The Complainant has not met his initial burden of showing the Public Body has contravened the Act.
2. The complaint is too vague.

[para 4] I am referred by the Public Body to Order F2007-019, para. 9, where the former Commissioner discusses the initial burden of proof:

The person initiating the complaint has the onus of establishing that he or she has standing to bring the complaint, and to point to evidence suggesting that his or her personal information has been ...disclosed under the Act.

[para 5] In this matter, the Complainant has stated the Superintendent discussed his personal information without his consent. The statement made by the grandfather refers to one statement made by the Superintendent that references the Complainant: "he has been saying things about his teacher".

[para 6] In order to meet his burden of proof, the Complainant must convince me his personal information has been disclosed contrary to the Act.

[para 7] The Public Body argues the information alleged to be disclosed is not "personal information" as defined in the Act.

[para 8] Personal information is defined in section 1(n) of the Act:

*1(n) "personal information" means recorded information about an identifiable individual ...[my emphasis]*

[para 9] In Order F2006-002, former Commissioner Work stated:

The Act clearly states that personal information must be recorded, that is, it must be contained in a record. In my view, the Legislature appears to have decided that personal information must be recorded in order to fulfill the purposes set out under section 2 of the Act, which include rights of access and correction, and obligations of public bodies concerning the manner of collecting personal information.

Consequently, I agree with the Public Body's argument. Merely hearing an individual's personal information as a result of a conversation does not amount to a collection of that personal information under the Act, because there is no ability under the Act to access that personal information, or to correct it, or to control the manner in which it is collected.

[para 10] In this case, the Complainant has not met his burden. There is no evidence before me that the information he alleges was disclosed is his "personal information" as defined by the Act.

[para 11] If the information alleged to have been disclosed is "he has been saying things about his teacher", there is no evidence from the Complainant this information has been recorded by the Public Body. The Public Body tells me the information was not recorded or stored in any manner by the the Public Body.

[para 12] If the information alleged to have been disclosed is “I have to take action against your son for defamation of character”, this is not the Complainant’s personal information. It is a statement by the Superintendent of his intended future actions.

[para 13] I find the Public Body did not disclose recorded personal information of the Complainant that was in its custody or control.

[para 14] Having found the answer to the first issue is “no”, it is not necessary for me to consider the remaining issues.

#### **IV. ORDER**

[para 15] I make this Order under section 72 of the Act.

[para 16] I find the Public Body did not disclose the Complainant’s personal information.

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Neena Ahluwalia Q.C.  
Adjudicator