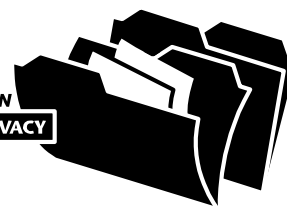


Freedom of Information and Protection of Privacy

Frequently Asked Questions for School Jurisdictions

FREEDOM OF INFORMATION
AND PROTECTION OF PRIVACY



The Freedom of Information and Protection of Privacy (FOIP) Act aims to strike a balance between the public's right to know and the individual's right to privacy, as those rights relate to information held by public bodies in Alberta.

This law, proclaimed October 1, 1995, affects all provincial government departments, agencies, boards and commissions. The Act came into effect for school boards and charter schools on September 1, 1998, health care bodies on October 1, 1998, post-secondary educational institutions on September 1, 1999, and local governments on October 1, 1999.

In a school setting, the privacy of students and parents is protected by rules that schools must follow in the collection, use, protection and disclosure of personal information.

Alberta schools collect and use personal information for authorized programs and activities that are a normal part of school life. These uses are a vital part of a healthy and functioning school environment, and participation of all students is very important. The FOIP Act does not dramatically change normal school activities; it does not prevent parents from participating in their children's education. It does allow parents and students broader rights of access to information and it does obligate schools to protect privacy.

The Act should be applied in a common sense manner and should not negatively affect school life. Below are some questions that have arisen. The responses are provided to clarify matters for school staff and administrators, parents and students. This document will be revised periodically as new questions are raised.

PHOTOGRAPHS

1. Who can photograph students at public events at schools?

- Classrooms are not public places. Schools control who has access to school property and to students. When students are at school, school staff act in the place of parents to protect students.
- Schools can decide to invite spectators, including parents or media, to certain school events. This is a school policy issue rather than a FOIP issue. Once parents or other members of the public are invited (other than as volunteers within the school), the event becomes a public event, and anyone in attendance may take photographs without first obtaining consent.

2. Who can photograph students involved in performing arts or competitive teams?

- Students involved in performing arts or competitive teams perform or compete in public venues and it is reasonable to expect that photographs may be taken by spectators and by schools.
- Anyone may take photographs of students participating in a public event. These photographs may be disclosed for promotion of the school or the school board's activities.

3. Can schools and school boards photograph students in classrooms?

- School staff may take photographs of students for use within the school.
- Schools do not need to get parental consent for these photographs. This is part of the general notice that certain personal information is collected for the purpose of providing educational programs.

4. Can the media photograph students in classrooms?

- Schools need to obtain parental consent before allowing those outside the school, including parents, visitors, or media, to take photographs of students at non-public events. Consent is required only if individual students are identifiable in the pictures.
- For example, if the newspaper wants to interview and photograph the Grade 6 student who had the highest marks, the school must get parental consent first. If the newspaper wants to photograph the school's new computer lab, it could photograph the students from the back, in a way that did not identify individuals, without requiring consent.
- The media are expected to behave responsibly and co-operate with schools that have invited them to participate in school events.
- Schools should be proactive by communicating with the local media and agreeing upon guidelines in advance of inviting media into the schools.

5. Would visits by a celebrity or dignitary to a classroom be considered a public event?

- Probably not. Visits by celebrities or dignitaries to a classroom when the public is not invited, are not public events. If the media are invited, parental consent should be sought for photos or interviews.

6. Can the media interview or photograph students at school events such as student modeled fashion shows or Safe and Caring School programs, when the public has not been invited?

- No. Schools should seek parental consent before allowing the media to interview or photograph students at non-public events.

7. How should schools go about producing newsletters?

- Newsletters are used to announce student success, events and activities within the school and its community and are generally made available to parents, bus drivers, board members, trustees and other schools in the community. As such they are public documents.
- Schools need to determine whether all personal information being placed in the newsletter is a use consistent with the purpose for which the information was collected or compiled, and has a reasonable and direct connection to that purpose within the meaning

of **sections 39(1)(a) and 41**. If the use of personal information is consistent with the purpose for which it was collected or compiled, then schools would only need to give notice to parents on how the information will be used. Notification of what is normally published in the newsletter could be part of the notification process done during registration. If the use of personal information is not a consistent use, then consent is required.

- The notice can describe that the school newsletter regularly includes for example, a welcome to new students (age and grade), names and photos of students of the month, or students achieving honours, news on sports teams and athletic achievements, and photos of students involved in school projects.
- Normally newsletters include a mixture of general information and personal information. An example of the former may be a story about the grade 5 class visiting the museum. The story describing the class visit may not disclose personal information about individual students. Schools should seek parental consent when students are being profiled individually in an in-depth way or on a sensitive subject.
- **Section 17(2)(j)** sets out the circumstances where personal information can normally be disclosed. These include enrollment in a school, attendance or participation in a public event, and receipt of an honour or award granted by the school board. Any expressed objections by parents on the use and disclosure of the personal information must be considered (**section 17(3)**). For more information see *FOIP Bulletin No. 4 on Disclosure of Personal Information – Sections 17(2)(j)/17(3)* and the publication *Using and Disclosing Personal Information in School Jurisdictions* which are both available on the FOIP web site at www.gov.ab.ca/foip.

8. Can schools photograph students for student identification cards?

- Schools can photograph students for student identification cards without asking for consent from parents. These identification cards are in the custody of students, so no personal information is disclosed.

9. How should schools go about producing yearbooks?

- Yearbooks are normally available to anyone who wants to purchase a copy and they may be placed in public libraries. As such, they are public documents.
- Schools must decide whether their yearbooks are part of an educational program. If yes, then photographs and other personal information may be included without requiring consent. If no, consents must be obtained before using some personal information.
- Photographs taken at public events, as in questions [1](#) and [2](#) above, or in classrooms as in question [3](#), can be included without consent.
- Consent should be obtained to include individual or group photographs which do not fit into the above categories.
- Personal information to be included in the yearbook, for example, the student's educational or career plans, should be collected directly from the individual the information is about.

10. Can schools disclose the names of graduating students or students who received an honour or award?

- The school can disclose a list of names of students who have received an honour or award granted by the school under **section 17(2)(j)(iv)** of the Act. This can include graduation certificates or diplomas.

11. Can schools and school boards display pictures of graduating students and historical photographs within the schools and administrative offices?

- If the pictures were created for educational purposes, the continued display of them is allowed.

RECORDS

12. What is a “record”?

- **Section 1(q)** of the FOIP Act defines a record as “information in any form and includes notes, images, audio-visual recordings, x-rays, books, documents, maps, drawings, photographs, letters, vouchers and papers and any other information that is written, photographed, recorded or stored in any manner, but does not include software or any mechanism that produces records”.
- It includes handwritten notes and electronic correspondence or messages, which are in the custody or control of a school.
- Not all records need to be kept by schools. You can routinely discard transitory records, those that have only short-term, immediate or no value to your organization and that you won’t need again in the future. For more information about transitory records see the guide entitled *Official and Transitory Records: A Guide for Government of Alberta Employees* available at www.im.gov.ab.ca/public/OfficialandTransitoryRecords.pdf.
- If the information in a record will have some future administrative, financial, legal, research or historical value to the school board, then you should file the record. For example, e-mail messages that record approvals, recommendations, opinions, decisions or business transactions have future value, and are not transitory and should be filed. You can print and file them in your manual filing system or store them in an electronic filing system.

13. What records of schools/school boards are subject to the FOIP Act?

- All records that are in the custody or under the control of the school are subject to the FOIP Act (**section 4(1)**) unless a specific exclusion applies.
- A school has custody of a record when the record is in the possession of the school. This includes situations where the records of a third party are kept on the premises of the school.
- A record is under the control of a school when it has the authority to manage the record, including restricting, regulating and administering its use, disclosure and disposition.
- IPC Orders 2001-024 and F2002-006 discuss when a public body has control of a record but not custody.

14. How long should a school keep its paper/electronic records?

- There is no simple answer to this question. Each organization should establish records retention and disposition schedules or a retention bylaw for its records, including electronic and transitory records.
- A records retention and disposition schedule is a document that identifies and describes records, and indicates the length of time they shall be retained as active before transfer to semi-active storage; the length of time they should be retained as semi-active prior to final disposition; and the final disposition of the records.
- The FOIP Act allows the destruction of records in accordance with your records retention by-law. If a school does not have such a bylaw, the Act allows destruction as authorized by the board (**section 3(e)(ii)**).
- Under **section 53(1)(a)**, the Commissioner has the power to conduct an investigation into how a school is managing its records. Specifically, the Commissioner can check to make sure that a school is following any bylaw it has regarding the destruction of records.
- Schools are required by **section 35** to keep personal information about an individual for at least one year if that personal information has been used by the school to make a decision about the individual.
- The Alberta School Board Association has developed a records management program for school boards.

15. Should e-mail be printed before it is deleted, or should it be saved instead of being deleted?

- The same records management principles for paper files/records should also apply to e-mail documents. Transitory e-mails may be deleted.
- How or where the e-mail documents are retained will depend on the school board's records and information management program standards, and whether it has the capability of filing documents required for future use electronically. If the school does not have that capability, records should be printed and filed in the paper filing system.

16. Who is an "employee" under the FOIP Act?

- The definition of "employee" in the FOIP Act 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 (**section 1(e)**). This means that volunteers, students on work experience arrangements and contractors have the same responsibility to protect privacy as other employees of the school.
- School council members are not considered to be employees under the FOIP Act (IPC Order 2001-010). Personal information may only be disclosed to school council members with consent, or for another purpose authorized under **section 40**.

17. Are records of contractors subject to the FOIP Act?

- The definition of "employee" in the FOIP Act includes a person retained under contract to perform services for the public body (**section 1(e)**).
- A record may be under the control of a school where a contract permits the school to inspect, review or copy records produced, received or acquired by a contractor.

- Often schools have contracts with an organization to provide some kind of service to individuals. Services such as meal preparation or janitorial services may be provided through contracts. The contractor is functioning in the place of the school; the records the contractor creates are subject to the same privacy and access rules as records of the school. As a result, contracts need to include privacy protection clauses, as well as clarity on control of and access to records.
- The *Contract Manager's Guide* addresses these issues in detail and may be referred to for more information. The guide is available at www.gov.ab.ca/foip/other_resources/publications_videos/contract_manager's_guide.cfm.

18. Who is responsible for FOIP within a school?

- The governing body of the local public body in this case, the school board (the board) must designate a head by bylaw under **section 95(a)**. The head is responsible and accountable for all decisions taken under the Act.
- The head can be an individual (e.g. Superintendent, member of the board, or someone else responsible to the board) or the board or one of its committees.
- Appointing the board or a committee of the board as the head could present practical difficulties in meeting the timelines for responding to FOIP requests or in defending a complaint to the Information and Privacy Commissioner.
- Once the head is designated, the head can delegate any of his or her responsibilities in writing, under **section 85** of the Act (except the ability to delegate).

19. Does the FOIP Act still apply to health information held by schools, since the *Health Information Act* came into effect in April 2001?

- Yes. The *Health Information Act* applies only to health information held by health care bodies such as regional health authorities, physicians' offices, pharmacies and laboratories. Health information held by school boards is still covered by the FOIP Act.
- Note the *Health Information Act* will be reviewed three years after it comes into effect, and the potential extension of its scope of coverage to public bodies will be reviewed.

20. Does a school board have any control over how records that have been released in response to a FOIP request are used by the applicant?

- No. A school does not have any control over the use of information once it is released to an applicant.

PERSONAL INFORMATION OF PARENTS/STUDENTS

21. Can a school continue to maintain a student contact information system that includes a photograph of the student on Rolodex or in a database or CD?

- In Investigation Report 2000-IR-007, the Information and Privacy Commissioner found that if a school decides that including a photograph of a student in a contact information system is directly related to and necessary for the delivery of its educational services and programs, then the collection may be authorized under **section 33(c)** of the FOIP Act.
- The collection of a photograph from a student would be considered to be a collection of personal information directly from an individual and under **section 34(2)** of the FOIP

Act, when a school is collecting personal information directly from an individual, the school must provide notification for the collection. A school may provide the notification at the time of registration or at the time when the photographs are taken.

- If the personal information is being disclosed to a contractor to prepare the disk, the contract should include provisions to protect the privacy and security of the personal information.

22. Who can have access to student/parent names and contact information?

- This information can be disclosed on a need-to-know basis, i.e. if the information is necessary for the performance of the duties of a school employee or volunteer. For example, a teacher may need this information for each of the students in his/her class, to contact parents to discuss the student's progress. As well, the school guidance counsellor may need the information for similar purposes.
- It should be noted that volunteers are included in the definition of an employee under the FOIP Act.
- Some schools have parent volunteers who call parents to verify absences; in such cases, volunteers can have access to the information they need to carry out their task.
- Schools can use information for the purpose for which it was collected. The examples above illustrate this and are therefore acceptable.

23. Can schools give the names of students who are transported to and from school by bus, to the bus driver?

- Yes. The disclosure of student names to bus drivers would be a use that is consistent with the purpose for which it was collected or compiled (**section 39(1)(a)**), and are part of the school's obligation to provide students with transportation to an educational program under the *School Act*.

24. Can schools release information about students and parents to the regional health authority?

- According to the Student Record Regulation (A.R. 71/99), certain information must be provided when a school board receives a written request from a medical officer of health
- as defined in the *Public Health Act* or his designate.
- Schools must disclose the student's name, address, date of birth, sex and school, and the name, address and telephone number of the student's parent or guardian.
- The regional health authority may use the information for the purpose of contacting parents or guardians regarding voluntary health programs offered by the regional health authority, including immunization, hearing, vision, speech and dental health programs, and communicable disease control.

25. Does a school board need to enter into a personal information sharing agreement regarding police liaison or resource officers in schools?

- If the role of the police officer in the school is just to be a law enforcement presence in the school, to interact with and provide advice to students and staff, there is probably no need for the officer to collect personal information or for the school to disclose the personal information of students.

- If the officer is investigating a particular incident or the possibility of a criminal offence having been committed, the officer would have the authority to collect **(section 34(1)(g))** and the school may disclose the personal information of the student(s) involved to assist in a law enforcement investigation under **section 40(1)(q)**. The Law Enforcement Disclosure Form in Appendix 5 of the *FOIP Guidelines and Practices* manual could be used for this purpose. There is no need for a personal information sharing agreement to set out the terms and conditions of this disclosure. The manual is available at www.gov.ab.ca/foip/guidelines_practices/.
- If the officer is presenting a workshop of some sort to students, staff or parents, the officer should be collecting personal information about the participants directly from them, rather than the school disclosing this information.
- If the officer is delivering school board programs or services, such as counselling students, then a personal information sharing agreement is necessary. Any time records are being created or disclosed, and agreement is likely necessary.
- Whenever resource officers are assigned to schools, it is recommended that school boards and police services agree upon terms of reference or guidelines regarding the role, authority and activities of the police officer.

26. Can school boards collect the names, addresses and phone numbers of students who may be eligible for enrollment for the next school year from regional health authorities for the purpose of staffing and budgeting?

- No. Normally personal information has to be collected directly from the individual it is about. This type of collection by the school would be considered an indirect collection.
- Note the school board could ask regional health authorities for statistical information such as the number and ages of children in a geographic area.

27. Can a school collect the personal health number of a student?

- Section 21 of the *Health Information Act* and section 5 of the Health Information Regulation set out who has the right to *require* an individual to provide their personal health number. Schools are not listed.
- If a school determines the collection of the personal health number relates directly to and is necessary for an operating program or activity of the school (**section 33(c)** of the FOIP Act), then they could ask for it, but if an individual refuses to provide the number, the school cannot insist that it be provided.

28. Can the personal information of students be disclosed for the purposes of a longitudinal research project? Is the consent of the parents required? Could a personal information sharing agreement be used?

- **Section 42** of the FOIP Act and **section 8** of the FOIP Regulation set out the circumstances concerning the disclosure of personal information for a research purpose.
- The school must first approve a research proposal submitted by the researcher. The purpose for the disclosure of students' personal information must only be for research or statistical analysis – not for other purposes such as administration of a program or making decisions affecting an individual. Samples of a 'Research Proposal' and

‘Agreement for Access to Personal Information for Research or Statistical Purposes’ are included in the Appendices to the *FOIP Guidelines and Practices* manual.

- If the nature of the research is a longitudinal study of students that will require the disclosure by the school of further personal information about the students (such as grades attached to names and birth dates, or disclosure of the student’s current address) and perhaps some follow up surveys of the students’ future, the school may require the researchers to obtain parental consent for the disclosure.
- Research agreements under **section 42(d)** of the Act shouldn’t be substituted for, or confused with, personal information sharing agreements. Before entering into a personal information sharing agreement, there must first be authority for the sharing either through consent for disclosure for a certain purpose (under **section 40(1)(d)**); or the disclosure is for the purpose for which the information was collected or a consistent purpose (**section 40(1)(c) and 41**); or the purpose is authorized elsewhere under **section 40(1)**. If research or statistical analysis is only one of several purposes for information sharing between bodies, the personal information sharing agreement must include provisions showing that the requirements of **section 42(a) and (b)** have been met and the agreement must include the privacy protection and security requirements of **section 42(c) and (d)**.

29. Can a school administer a questionnaire to students for a study being conducted by another body without prior consent from a parent/guardian?

- In Investigation Report 99-IR-002, the Commissioner’s Office looked at the collection, notice, use and disclosure of participating students’ information.
- In this case, the Portfolio Officer recommended that the teachers administering the questionnaire provide notice to the students about the purpose for which the information was collected. She also recommended that the school provide written notice to the parents including information about the study, how the child’s information will be used, which organizations are involved, the measures in place to protect privacy, and the conditions on participation in the survey.
- A school would also need to satisfy the provision of **section 42**, disclosures for research purposes. For more information about **section 42**, see [question 28](#) and the Investigation Report.

30. What types of student information can schools disclose to Child Welfare workers when the worker is just beginning an investigation? Can they disclose the address of a child for the purpose of locating the child?

- Under section 4(1) of the *Child Welfare Act*, any person who has reasonable and probable grounds to believe that a child is in need of protective services must report that matter to the Director of Child Welfare (who delegates his authority to employees of Children’s Services and Child and Family Service Authorities). Once the Director receives a report (either from a peace officer or any other person) that a child may be in need of protection, the Director must have the matter investigated.
- Under section 6(1) of the *Child Welfare Act*, the worker conducting the investigation could collect (**section 34(1)(g)**) and the teacher or other school staff could disclose personal information (**section 40(1)(q)**) necessary to assist in the child welfare investigation, including providing the address of the child.

- If a supervision order has been made or if the guardian of the child has entered into a support or temporary guardianship agreement with the Director of Child Welfare under the *Child Welfare Act*, **sections 40(1)(q), (e) or (f)** of the FOIP Act would likely permit the school to disclose the whereabouts of a child to a child welfare worker so that the worker can monitor the effectiveness of the support services and determine whether there are still concerns related to the protection of the child. A child welfare worker is responsible for reporting to the Director on the support agreement or supervision or guardianship arrangements (section 8(1)(b) of the *Child Welfare Act*).

31. Can students ask counsellors or teachers to keep certain personal information confidential and not to disclose it to parents?

- Parents have access to the student record, unless the student is over 18 or an independent student.
- A school may disclose other personal information of students to parents against the wishes of the student if the head believes the disclosure will avert or minimize imminent danger to any person (**section 40(1)(ee)**) or if the disclosure would not be an unreasonable invasion of the student's personal privacy under **section 17**. A situation of imminent danger might be a student confiding suicidal thoughts to a counsellor. In order to make a determination that a disclosure would not be an unreasonable invasion of personal privacy, a school would have to weigh the factors in **section 17**. For example, it would not be an unreasonable invasion of personal privacy to disclose the student's personal information to the parent if there are compelling circumstances affecting either the health or safety of the student or of any other person (e.g. the student threatens to harm someone). Schools should also weigh the factors in **section 17(5)** for and against disclosure. For example, when the information was supplied in confidence this weighs against disclosure.
- Schools will also have to follow their own policies and procedures regarding how to weigh the minor student's wishes as a consideration in deciding whether to disclose personal information.

32. What information about graduating students can be provided to Members of the Legislative Assembly?

- Schools can release the names of the graduating students to a Member of the Legislative Assembly under **section 17(2)(j)(i) or (iii)** and **section 40(1)(b)** of the Act.
- Schools shouldn't release the names of students who have asked that their personal information not be released. Normally such a request would have been made at the beginning of the school year or as part of graduation initiatives in schools.
- Schools may obtain consent to release the addresses of students. Alternatively, elected officials can offer congratulations by including a letter in a grad kit, through the local media, by attending school ceremonies, and so on.

33. Can a school disclose personal information to Alberta Justice Maintenance Enforcement Program?

- Yes. **Section 40(1)(y)** permits the disclosure of personal information about individuals for the purposes of enforcing a maintenance order under the *Maintenance Enforcement*

Act. If this is the basis for requesting the information, the official for Maintenance Enforcement would have to provide proof of identity and specific authority under which the information is being requested.

- Schools should only disclose the personal information necessary to the enforcement process relating to the order.

PERSONAL INFORMATION OF STAFF AND SCHOOL COUNCIL MEMBERS

34. Can schools release the names of teachers and other staff, for example, in a school newsletter?

- Staff names and other personal information are used for a number of purposes. For example, names of staff may be used for payroll purposes, to assign parking, and to advise parents about which teacher teaches their child.
- Schools should notify staff of how their personal information will be used. If staff names are then released for these or consistent uses, this is allowed under the FOIP Act.
- In general, disclosure of the name, business address and telephone number of a staff member would not be considered an unreasonable invasion of privacy (under **section 17(2)(e)**). Schools could disclose this information without consent and without a FOIP request (under **section 40(1)(b)**). However, a school could refuse to disclose the information if it was expected that health or safety would be put at risk (**section 18(1)**).
- Schools, with the input of staff, may develop a policy on when staff information will be released where a written FOIP request has not been made.

35. Can schools release the names of school council members, for example, in a school newsletter?

- Like school staff, school council members should be notified of why their personal information (e.g. name, phone number) is being collected, how it will be used, and to whom it will be disclosed. Information may then be released accordingly.
- Schools should discuss with council members how their personal information will be used, for example, whether home phone numbers will be released, and to whom.
- For an elected member of the council, there is an expectation that the individual's name and contact information will be available to anyone.

36. If a school board receives a FOIP request for the severance package given to an employee, does the information have to be released?

- In Order 2001-020, the City of Calgary received a request for all information related to a buy-out for managers since 1999.
- The Information and Privacy Commissioner upheld the City's decision to release standard clauses from the severance agreements, the individual's job title or position, and the amount of severance paid. This information could be released in accordance with **section 17(2)(e)**.
- The City withheld the individuals' names and signatures (**section 17(4)(g)(i)**), and employee numbers, and termination and retirement dates as employment history (**section 17(4)(d)**).

- It is not clear how the order would apply if the applicant had asked for the severance package information of a named individual. However, it appears that the same considerations of **sections 17(2) and 17(4)** may apply and the outcome may be the same.

STUDENTS' NAMES

37. Can schools put student names in hallways, for example above coat hooks, on lockers or on classroom doors?

- Schools often label coat hooks and lockers for younger students. Schools can continue to do so as this assists the students and teachers in the schools.

38. Can students' names be disclosed as part of an e-mail exchange program between schools?

- If this is part of an educational program of the school, then disclosing the students' names would be permissible.
- If it involves putting student names or photos on a web page, parental consent is required.

39. Can swimming pool staff be given the names of students attending school swim classes?

- The release of information relates to the enrolment in a school.
- Recipients of the lists should be told that the names may only be used for the purpose of running the swim class.

40. Can students put their names on assignments, tests or artwork?

- There is no barrier in the FOIP Act to prevent students from putting their names on their work.

41. Can schools provide students with lists of classmates for the purpose of sending St. Valentine's Day cards?

- Teachers can provide students with the names of the students to send St. Valentine's Day cards to classmates when this is a program of the school.

STUDENTS' MARKS AND ACHIEVEMENTS

42. Can teachers write comments on student assignments or tests as well as the student's grade?

- There is no barrier in the FOIP Act to prevent teachers from commenting on students' work.

43. Can students' grades and detentions be posted in the hallway or classroom?

- Posting students' grades or detentions may be a breach of privacy. The educational benefits need to be taken into consideration. In a Grade 1 class, a poster with student names and stickers for each book read by a student is entirely appropriate. By contrast, posting Math 30 exam results with the students' names in the hallway has no educational benefit, and so would be an unauthorized disclosure of personal information.

44. Can students' PAA results be posted in the hallway or classroom?

New

- In investigation report F2002-IR-001, a school board's practice of posting Provincial achievement assessment (PAA) test results as part of its "Salute to Excellence" program was reviewed. The school board submitted that the practice of posting test results was authorized by **section 40(1)(b)**, which permits disclosure of personal information if the disclosure would not be an unreasonable invasion of privacy under **section 17**, and cited **section 17(2)(j)** as applying to the information. The investigator found that the school board had breached the student's privacy. In order for a disclosure not to be unreasonable invasion of a third party's personal privacy under **section 17(2)(j)**, the disclosure must be in the public interest, the information being disclosed must fit within the types of information enumerated in this section, and the individual the information is about must not have objected to the disclosure. The complainant submitted that he was never asked about his wishes.
- The school board continues to post the test results, but only after obtaining consent.

45. Can parents find out how their children's marks compare to those of other students in the class?

- Class averages may be provided. If required, parents may receive a list of other students' marks that excludes the names of other students and organized in such a way as to ensure anonymity and privacy of other students.

46. Can parents receive information on the performance of a school?

- Yes. This is not a privacy issue, as the performance of individual students would not be released.

47. Can students mark each other's tests?

- Personal information of students is disclosed when students mark each other's tests.
- This disclosure is permitted when it is done for an educational purpose. Group learning activities may be used in the classroom, and students can learn from critiquing the work of other students.
- Schools should consider the merits of this practice in the classroom and use it at the discretion of teachers.
- If this method of marking is convenient, but not educational, it should not be used.

48. Can students read their essays aloud in class?

- If the school decides that this activity is part of an educational program, there is no barrier to this in the FOIP Act.

49. Can a parent, in a FOIP request, receive a copy of their child's examination paper?

New

- The answers to examination questions are a part of the student's educational history and are personal information (**section 1(n)(vii)**). However, if the examination paper is going to be used again in the near future and the school board can document this fact, then the questions may be severed from the record before releasing the answers to the student (**section 4(1)(g)**).

- Order F2002-012 contains the first consideration of **section 4(1)(g)**. In this Order, an applicant requested a copy of her son's English 10-h final exam questions and her son's responses with notations resulting in his final mark. The school board released her son's responses, but withheld the exam questions, instructions and reading passages on which the exam questions were based. The school board submitted that the exam questions, instructions and reading passages were excluded from application of the FOIP Act by **section 4(1)(g)**, the exclusion for a question that is to be use on an examination or test.
- The Commissioner accepted the evidence of the Board that the exam questions and related information had been used since 1997 and would be used again in June 2002. The Commissioner also accepted the Board's interpretation of the word "question" to include, in particular, the reading passages. As the questions would be used on examinations in the future they fell within **section 4(1)(g)**. As the instructions and passages were integral to the exam questions they also fell within this exclusion.

FORMER STUDENTS

50. Can class lists of former students be released to plan special events like class reunions?

- **Section 17(2)(j)(i)** of the Act allows the disclosure of a list of names of former students to facilitate a reunion.
- In addition, **section 40(1)(bb)** of the Act provides discretion to release information already available to the public. If lists of students and graduates have been previously released and are available in public sources such as in a library, yearbooks or newspaper articles, the same information can be disclosed.

51. Can a relative obtain personal information about a deceased student?

- **Section 40(1)(cc)** of the Act provides discretion to release information if the head of the school board (normally the Superintendent) believes it is not an unreasonable invasion of the deceased student's personal privacy.
- The applicant may be asked to provide a rationale for the release of the information, and proof that the applicant is related to the deceased.

VOLUNTEERS

52. How does the FOIP Act affect the use of volunteers by schools?

- Schools can continue to welcome volunteers into schools, but should inform them of the need to protect student privacy, as they are considered employees for purposes of the Act.
- The definition of "employee" in the FOIP Act 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 (**section 1(e)**). This means that volunteers, students on work experience assignments, and contractors have the same responsibility to protect privacy as other employees of the school board.
- The Alberta School Boards Association recommends that volunteers who work closely with students sign a confidentiality agreement in which volunteers agree to protect

personal information that they may learn of in the course of fulfilling their duties. This is a way for school boards to demonstrate that they are taking steps to protect privacy.

53. Can parent volunteers take part in the marking of student tests and quizzes, or calling parents regarding school business?

- Yes, but volunteers are required to protect the privacy of the personal information they have access to in the course of performing their volunteer duties. This does not prevent parents from volunteering at the school.

OTHER QUESTIONS

54. Can the names of students who submitted an application for a memorial scholarship be disclosed to the individual or family sponsoring the memorial scholarship?

New

- Generally, this information would only be disclosed to employees and the members of the scholarship selection committee, as the information would be necessary for the performance of their duties. Under **section 17(2)(j)(iv)**, it would not be an unreasonable invasion of privacy to disclose the name of the recipient of the scholarship unless the person has requested that the information not be disclosed (**section 17(3)**).
- A school board may disclose the information to the sponsor if the student consents in writing to the disclosure.
- If a school board establishes, as a condition of application, the disclosure of the name of individuals who have submitted an application for a particular scholarship, to the sponsor, it must inform the student of this at the time of applying and decide what input the sponsor will have in the selection process, if any. If the sponsor does not have any input into the selection process, the school board may have difficulty in justifying the disclosure to the sponsor.

55. Why is consent required to display students' work outside of the school?

- The federal *Copyright Act* requires that permission from the copyright owner, in this case the student, be obtained from the student's parent to use or reproduce the schoolwork (e.g. artwork, essays, poems) in this way. For example, schools may want to display student artwork at community events or on a school's web pages, or submit schoolwork to Alberta Learning. Displaying the work would be considered a "public performance" of the work under the *Copyright Act*.
- Copyright consent forms can be obtained as part of the student registration process. This is not generally a FOIP Act issue or privacy issue, unless the artwork contains personal information.

56. How is the personal information of international or out-of-province students attending school in Alberta protected?

- The FOIP Act applies to the personal information of international and out-of-province students in exactly the same way as it applies to other students.

57. What is a "personal information bank" (a PIB)?

- **Section 87.1(5)** of the FOIP Act contains the definition of a PIB. Basically it is any collection of personal information where information about an individual can be found using the individual's name or a unique identifier, such as social insurance number, client number or employee number.
- Schools are required to compile and maintain a list of their PIBs to have available at their offices, and provide to the public upon request.
- Alberta Government Services' publication, *Identifying Personal Information Banks: A Guide for Local Public Bodies*, may be referred to for more information. It is available at www.gov.ab.ca/foip/other_resources/publications_videos/pib_guide_for_lpb.cfm [Note: This guide is being revised and will be published on the FOIP web site in fall of 2003.]

For more information contact:

➤ **Your School Board's FOIP Coordinator**

➤ **The FOIP Help Desk**

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➤ **Alberta Learning**

Legislative Services Branch
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➤ **Office of the Information and Privacy Commissioner**

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Toll Free: 1-888-878-4044
Fax: (780) 422-5682
E-mail: generalinfo@oipc.ab.ca
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- *FOIP Act and Regulation*
- *FOIP Guidelines and Practices*
- *Annotated FOIP Act*

Resources on the FOIP web site: www.gov.ab.ca/foip

Guides

- FOIP: A Guide
- Contract Manager's Guide
- Guide to Using Surveillance Cameras in Public Areas
- Guide for Developing Personal Information Sharing Agreements
- Guide to Developing Privacy Statements for Government of Alberta Web Sites
- Conducting Surveys: A Guide to Privacy Protection
- Identifying Personal Information Banks: A Guide for Local Public Bodies
- Human Resources Guide for Local Public Bodies
- Guide to Providing Counselling Services in School Jurisdictions
- Using and Disclosing Personal Information in School Jurisdictions
- FOIP Tips for Planning a Municipal Census

FOIP Discussion Papers

- Assessment Roll
- School Promotional Video Production
- Video Yearbooks

FOIP Bulletins

1. Fee Estimates
2. Fee Waivers
3. Manuals and Reading Rooms
4. Disclosure of Personal Information - Sections 17(2)(j)/17(3)
5. Fund-Raising
6. Records of Elected and Appointed Officials of Local Public Bodies
7. Law Enforcement
8. Common Programs and Services
9. Burden of Proof
10. Third Party Intervention and Notice
11. Paramountcy
12. E-mail: Access and Privacy Considerations
14. FOIP Amendment Act, 2003

Brochures

- The Right to Information and the Right to Privacy
- Contractor's Guide to the FOIP Act

Other

- FOIP News
- FOIP Coordinators/Contacts
- Frequently Asked Questions
- Legislation
- Information and Privacy Commissioner's Orders and Investigation Reports