



“Keeping Schools Safe for Students” *Questions and Answers about Privacy and School Safety*

**British Columbia Confederation of Parent Advisory Councils
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The Office of the Information and Privacy Commissioner is responsible for reviewing how a school board responds to a request for access to information and for investigating complaints that a school or school board collected, used, or disclosed personal information inappropriately. In this role, we have reviewed many issues concerning a student or parent’s right to access school records, investigated complaints that a student’s or teacher’s privacy was violated, and advised school boards on numerous information and privacy issues. Those issues which have proved the most challenging are those concerning school or student safety. They present a challenge because they require a sensitive balancing of individual privacy with public safety. The following questions concerning school or student safety are ones that most frequently arise. The responses are provided to clarify matters for parents and students generally but are not necessarily determinative of a matter.

1. Who can photograph students?

Classrooms are not public places. Schools control who has access to school property and to students and are responsible for protecting students while they are at school. Students should not be photographed in classrooms or in schoolyards during school hours without student or parental consent.

Schools do, however, invite spectators - including parents or media - to certain school events. This is a school policy issue rather than an information and privacy issue. Once parents or other members of the public are invited (other than volunteers within the school), the event becomes a public event, and anyone in attendance is allowed to take photographs without first obtaining consent.

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, the media and by schools. The same may be said of class field trips.



Schools need to obtain student or parental consent before allowing those outside the school, including parents, visitors, or media, to take photographs of students on school property at non-public events.

2. Can the school or Parents Advisory Council create and distribute a telephone list to students and parents?

Personal information, such as parents' names, addresses, and telephone numbers, is provided to the school for school administration reasons and for the school to contact parents if necessary. Preparing and distributing a telephone list to all parents, while perhaps useful, is a purpose that is not consistent with the purpose for which the information was collected in the first place.

Telephone lists should, therefore, only be created and distributed with parental consent. Individuals may have very good reasons for keeping their telephone number and address private.

Some school districts seek parental consent at the beginning of the year to provide the Parents Advisory Council (PAC) with their name and telephone number so that the PAC may contact parents about PAC events. This consent allows disclosure of the information to the PAC for a specific use. This consent does not, however, permit the PAC to further disclose the personal information in the form of a telephone list. Specific consent for this purpose must be sought.

3. Are complainants' identities kept confidential?

The *Freedom of Information and Protection of Privacy Act* (the FOIPP Act) allows students and parents to provide information to schools in confidence in certain circumstances. However, students and parents should be aware that a school may not be able to properly investigate a complaint without identifying the source of the information, particularly if the complaint concerns a specific event. In some contexts, such as investigations into a teacher's conduct, the Collective Agreement may require disclosure of the complainant's identity.

Schools should have policies in place about how they treat complainants' identities in different circumstances. If a student or parent is concerned about her identity being revealed, particularly if safety is an issue, she should discuss the matter with the principal. She should ask if the matter can be investigated without revealing her identity and if not, what other options are available.



4. Can my ex-spouse access our child's information?

Under the *Freedom of Information and Protection of Privacy Act* (the FOIPP Act), personal information about a student belongs to the student, not a parent. However, the FOIPP Act recognizes that certain individuals, such as young people, are incapable of exercising their access rights and allows other individuals to act for them. Regulation 3 of the FOIPP Act allows the access rights of a young person to be exercised on his behalf by his parent or guardian if the young person is incapable of exercising his own rights.

In orders dealing with a non-custodial parent's right of access to a child's information, the Information and Privacy Commissioner has interpreted "parent or guardian" as meaning "custodial parent". Therefore, only a parent with legal or physical custody of child can exercise that child's access rights under the FOIPP Act. A non-custodial parent has no access rights to a child's information under the FOIPP Act, without consent of the custodial parent. However, a non-custodial parent may have a right to information about his child granted by the court in a divorce or separation agreement. These are separate rights than those found in the FOIPP Act and cannot be exercised through an access request under the FOIPP Act.

A parent with sole custody of a child should make sure the school is aware of the custody arrangement and clarify with the school what information, if any, can be disclosed to a non-custodial parent.

5. Can a parent access information about their child's teacher?

Some information about teachers should be available to the public but other information must be protected for privacy reasons.

As a public service employee, information about a teacher's position, functions, remuneration and expenses is releasable to the public for accountability reasons. However, this does not mean that teachers have no privacy rights. With the exception of the above, personal information about a teacher is subject to the same protections in the *Freedom of Information and Protection of Privacy Act* (the FOIPP Act) as the personal information of any other individual.

Under the FOIPP Act, schools must refuse to release personal information about a teacher if release would be an "unreasonable invasion" of the teacher's personal privacy. In making this determination, schools must weigh several factors including whether disclosure is likely to promote public health and safety but, generally speaking, the following information would not be disclosed: a teacher's home address, telephone number, or marital status, employment or educational history, and medical or psychiatric information.



The most common type of information parents want to access regarding teachers is complaint or disciplinary information. The Information and Privacy Commissioner has considered this issue in several orders. Although each case is different and must be assessed on its own merits, the Commissioner has generally concluded that complaint and disciplinary information about public service employees is private. If a complaint is referred to the College of Teachers, however, different rules apply. The College's mandate and legislation permit it to report its findings to the public.

6. Can a parent receive information about a school bully?

All students have privacy rights, including bullies. Under the *Freedom of Information and Protection of Privacy Act*, a student's personal information can only be disclosed for limited, specific reasons. Disclosure to someone other than the student's parent, or another government agency for educational reasons should only occur if "compelling circumstances affecting anyone's health or safety" are at issue. Compelling health or safety concerns override individual privacy rights. Therefore, if the school has reason to believe that a student or other individual is at risk, it may release personal information about the bully to the person at risk, or the police.

Because the above situations are rare, schools, for the most part, must be cautious about how much personal information about bullies they shares with concerned parents. On the other hand, to inform a victim or a victim's parent that no information can be shared is also problematic when the victim is naturally fearful and needs assurances that the school is managing the problem. A compromise position is, therefore, best. Concerned parents should be informed how the school is managing the problem and how it will deal with future incidents. It is not necessary, however, to share details of the bully's home life, behavioral problems, medications, etc... Disclosure of this type of information would be an unreasonable invasion of the student's personal privacy.

7. Can a parent have information about her child's best friend?

As stated above, all students have privacy rights. Even if a parent wants the information for the best of intentions (e.g.: want the home telephone number to invite the child to a party), the school cannot release this information without the consent of the child's parent.

8. Can a parent request access to school policy?

School policy is not personal information and release of non-personal information is not limited or restricted by the *Freedom of Information and Protection of Privacy Act*. It is also not normally necessary to file a formal Freedom of Information request for school policies. In most cases, policy is available routinely without a request under the Act.



9. Can a parent find out the results of background checks conducted on teachers, non-teaching staff, volunteers and parent helpers?

In this context, background checks mainly take the form of references and criminal record checks. However, there may also be other kinds of informal feedback that a school or school board receives.

Every person in the Province of British Columbia that works with children in an employment or professional capacity must undergo a criminal record check through the Ministry of Attorney General. The results of these checks are provided to employers for employment purposes only and are considered to be confidential. The *Freedom of Information and Protection of Privacy Act* (the FOIPP Act) defines personal information to include information about an individual's criminal history. It also strictly limits the circumstances under which personal information can be disclosed. Unless there are mitigating circumstances, (see Offender Notification) the criminal record check of a teacher or non-teaching professional would not normally be disclosed without their consent.

At present, the Criminal Record Review Act does not apply to volunteers or parent helpers. However, many organizations are requiring individuals in these capacities to have a criminal record check done through the local police department. The results of these checks would be treated in the same way as ones conducted for teachers and non-teaching staff.

Usually when staff are hired they submit references as part of their employment application or during the selection process. The FOIPP Act defines personal information to include employment or educational history. It further states that in response to a request for access to information that it would be presumed to be an unreasonable invasion of a personal privacy to disclose personal recommendations or evaluations, character references or personnel evaluations about a person other than the requester. Unless there were some unusual circumstances that out weighed the person's right to privacy the content of references would not generally be disclosed to another individual. This same reasoning would hold true for information collected through more informal channels.

10. Is the school required to notify parents that complaints have been made against a teacher?

Under the *Freedom of Information and Protection of Privacy Act* (the FOIPP Act), notification to the public is required only where a risk of significant harm to the environment or to the health or safety of the public exists or where a matter is clearly in the public interest. Complaints about a teacher are unlikely to fall into this category.



Complaints and disciplinary information about a teacher is the personal information of the teacher and would normally not be released to the public. Complainants, however, may be entitled to certain limited information about an investigation into their complaint about a teacher.

11. Is the school required to notify parents about known predators?

Information about a known predator could very well require public notification. If the school has reason to believe that students or the public is at risk from a predator, it must, without delay, disclose this information to the public. Notices may be general, simply warning students and parents, about recent incidents or may include a picture and details about a specific individual of concern to the police. The latter notice clearly contains personal information about an individual but where warranted, public safety will override individual privacy. These decisions are made after weighing several factors and are normally made by, or in consultation with, the police.

12. Is the school required to notify parents about students with violent histories or medical conditions?

Psychiatric, psychological and medical information is arguably the most sensitive type of personal information. This sensitivity is recognized in the *Freedom of Information and Protection of Privacy Act* (the FOIPP Act) in that disclosure of an individual's medical, psychiatric or psychological information is "presumed" to be an unreasonable invasion of an individual's privacy. Only a clear and significant risk to public health or safety should override the private nature of this information.

A student with a history of violent behavior or a communicable medical condition may pose a risk to other students or school staff. On the other hand, if the former behavior is now under control or if the medical condition is non-communicable, the risk to others may be negligible. Each case must be assessed individually, carefully weighing the potential risk to others with the private nature of the condition. The school may wish to consult the appropriate health professionals on the nature of the condition to fully understand the potential risks.

If the school determines there is a risk to staff and students, then notification may be necessary. In many cases, information about a risk to students can be provided without identifying the source (e.g.: in advising students and parents about an outbreak of head lice, there is no need to identify specific students with this condition). The identity of the student should only be provided when it is absolutely necessary, where, for example, direct contact with a student may have resulted in the transmission of a life-threatening disease. It is also preferable to seek the consent or at least advise the parents of the student that information about the condition may have to be released for public health or safety reasons.



13. Is a school required to notify parents about environmental hazards at the school?

Whether or not a request for access is made, section 25 of the *Freedom of Information and Protection of Privacy Act* (the Act) requires a school or school board to notify, without delay, the public or an affected group of people about a risk of significant harm to the environment or to the health or safety of the public. An environmental hazard at a school would fall into this category.

14. Can the school search student lockers?

Although this is a frequently asked question of this office, it isn't a freedom of information and protection of privacy issue. The *Freedom of Information and Protection of Privacy Act* (the FOIPP Act) only deals with "recorded information". The privacy violations this Office deals with are related to improper collection, use, protection and disclosure of recorded personal information. A locker search may be a privacy issue but it is not related to records. It is a physical search which is normally conducted if there is reasonable cause. Parents and students should direct questions about locker searches to the principal or the school board.

15. Can the school use video cameras for school safety?

The Office of the Information and Privacy Commissioner has long been concerned about the proliferation of video surveillance. Often these systems are seen as a cure-all and are implemented without fully considering the serious privacy ramifications of the technology.

Video surveillance should only be used as a last resort where the school can justify its use on the basis of verifiable, specific reports of incidents of theft, violence, breaches of security, public safety concerns or other compelling circumstances. Other less privacy-invasive means of deterring or detecting crime or enhancing public safety should be considered before video surveillance is entertained as a solution. It is also a good idea to consult affected individuals (students, parents, and staff) for their views before making a final decision.

Before implementing a video surveillance system, the school or school board should complete a Privacy Impact Assessment of the system. A Privacy Impact Assessment weighs the privacy impact of the technology against the public benefit. The system should be designed and operated to mitigate the privacy intrusion it creates. As an example, if a school is concerned about incidents of vandalism to school property, and an assessment of the incidents indicates that they occur, for the most part, in the evenings, then the school should consider limiting the operation of the system to those hours.



The Office of the Information and Privacy Commissioner also recommends that the school have policies in place that govern the use of the system and address the secure storage of video tapes and the conditions under which the tapes will be viewed.