

**SASKATCHEWAN  
INFORMATION AND PRIVACY COMMISSIONER**

**REVIEW REPORT F-2014-005**

**Ministry of Education**

**Summary:**

In September 2012, the Applicant submitted an access to information request to the Ministry of Education (Education) for access to records. Education released portions of the record to the Applicant and withheld the remainder citing subsection 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Applicant proceeded to submit a request for review to the Office of the Information and Privacy Commissioner. The Commissioner found that Education appropriately applied subsection 29(1) of FOIP to some information in the record as it was the personal information of individuals other than the Applicant. Further, the Commissioner found that Education did not appropriately apply subsection 29(1) of FOIP to other information in the record as it was not personal information as defined under subsection 24(1) of FOIP. The Commissioner recommended Education continue to withhold the information found to be personal information in the record and release the remainder.

**I BACKGROUND**

[1] On September 18, 2012, the Ministry of Education (Education) received the following access to information request:

We request copies of all Employer Report Forms filed to the Ministry of Education's educator services unit since 2009 regarding professional misconduct or incompetence of teachers.

We also request any reports, documents, data or records associated with those reports, including, but not limited to correspondence to and from school divisions regarding the teacher or incident in question, correspondence to and from [a professional organization] regarding the teacher or incident in question, and reports or decisions of

a government hearing panel or discipline committee regarding teacher certification in Saskatchewan.

We also request copies of records of all certification sanctions taken against Saskatchewan teachers since 2009, including teacher certificate suspensions or revocations, including the date a certificate was suspended or revoked and for how long.

We also request copies of any complaints about teacher conduct submitted directly to the ministry since 2009.

[2] On or about April 21, 2013, Education responded to the Applicant indicating it was denying access in part pursuant to subsection 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[3] My office received a Request for Review from the Applicant on May 10, 2013.

[4] My office sent notification letters dated July 11, 2013, advising both parties of my office's intention to conduct a review. At that time, my office requested that Education provide a copy of the record, index of records (Index) and submission to my office.

[5] On September 4, 2013, my office received a copy of the record from Education and its submission. No submission was received from the Applicant.

## **II RECORDS AT ISSUE**

[6] Based on Education's Index, the record in question for this review involves approximately 200 pages containing letters, reports, emails, notice of hearings, etc. pertaining to professional misconduct or incompetence involving 10 different teachers and their victims in Saskatchewan.

## **III DISCUSSION OF THE ISSUES**

[7] According to subsection 2(1)(d)(i) of FOIP, Education is a government institution.

**1. Did the Ministry of Education appropriately apply subsection 29(1) of FOIP?**

[8] Education claimed subsection 29(1) of FOIP for the information withheld in the record. Subsection 29(1) of FOIP provides:

**29(1)** No government institution shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 30.

[9] For subsection 29(1) of FOIP to apply, the information in question must first constitute “personal information” of someone other than the Applicant pursuant to subsection 24(1) of FOIP. Subsection 24(1) of FOIP defines what constitutes personal information.

[10] It appears that Education severed the names of teachers, their home addresses, dates of birth, and a teaching certificate number assigned to the teachers on a number of pages. A name by itself does not constitute personal information unless the name itself reveals something of a personal nature about the individuals. For example, the name combined with the home address, home phone number and/or ages of the individuals would constitute personal information. (Review Report F-2012-006 at [146])

[11] Therefore, I find that the teacher’s name combined with the home address constitutes personal information pursuant to subsections 24(1)(e) and 24(1)(k)(i) of FOIP. As this information constitutes personal information, it should continue to be withheld pursuant to subsection 29(1) of FOIP.

[12] With regards to the teacher’s certificate number severed on the record, I find that the name combined with the teacher’s certificate number constitutes personal information pursuant to subsections 24(1)(d) and 24(1)(k)(i) of FOIP. As such, it should be withheld pursuant to subsection 29(1) of FOIP.

- [13] Further, I find that the name combined with the teacher's dates of birth also constitute personal information pursuant to subsections 24(1)(a) and 24(1)(k)(i) of FOIP. As such, it should be withheld pursuant to subsection 29(1) of FOIP.
- [14] Finally, where the name of a victim appears, the name by itself would reveal the fact that the individual was a victim of the teacher's professional misconduct or incompetence due to the nature of the records and the information already released to the Applicant. Therefore, the names of the victims should continue to be withheld pursuant to subsection 24(1)(k)(ii) of FOIP. As such, it should be withheld pursuant to subsection 29(1) of FOIP.
- [15] Education has asserted that data elements were severed from the record under the proposition that the data elements, when combined, would make it possible to identify the teachers involved in each case and their victims. In this case, the name was severed along with other pieces of information considered "identifying" by Education.
- [16] The records in question relate to investigations and disciplinary actions taken against teachers accused of professional misconduct and incompetence. This information would constitute employment history. Employment history includes information about an individual's work record. Typically, it would include the type of information that would be found in a personnel file such as performance reviews, evaluations, disciplinary actions taken, reasons for leaving a job and leave transactions. (Review Report LA-2012-002 at [22])
- [17] Therefore, where the information combined or alone would reveal employment history of an identifiable individual (including disciplinary action) the information would constitute personal information pursuant to subsections 24(1)(b), 24(1)(k)(i) and 24(1)(k)(ii) of FOIP and should be withheld.
- [18] Some of the information withheld would normally not constitute personal information. For example, work contact information (i.e. name, phone, email, fax, street addresses) are

considered business card information and not personal in nature unless there is a linkage of the employees name to other details of a personal nature contained within the record.

[19] Education severed the names of other teachers, the names of schools the teachers attended or worked at, classes they taught, extra-curricular activities involved in and the teachers work email addresses.

[20] In order to qualify, it must be reasonable to expect that an individual may be identified if the information were disclosed. *The Health Information Protection Act* (HIPA) defines what sufficient de-identification of information means:

2(d) **“de-identified personal health information”** means personal health information from which any information that may reasonably be expected to identify an individual has been removed;

[21] Some of the information severed, even though not considered personal information, could result in an individual being identified if released. This would be the case even if just the name were withheld. This is largely because Education has already released a large portion of the record. In some cases, additional data elements being released increases the chances of the individual being identified.

[22] The removal of the individual’s name alone does not necessarily qualify personal information as sufficiently de-identified. In fact, there has been a tremendous amount of work done by privacy professionals around the world on how to properly de-identify personal information. Canada is one of the jurisdictions that have established guidelines on sufficiently de-identifying.

[23] The ability to re-identify is increased when information contains unique characteristics (e.g., unusual occupation, unusual death or event) or where external sources of information can be used to identify individuals (e.g., voter registration records, newspapers, obituaries, social media sites and other public registries). Quasi-identifiers make it possible to identify an individual even in absence of a direct identifier such as a name or birth date.

- [24] There are a number of data elements severed in the record in question that could constitute quasi-identifiers. For example, the specific school attended by the teachers, classes taught, extra-curricular responsibilities at the school and work email addresses. This type of information should continue to be withheld pursuant to subsection 29(1) of FOIP as release of these unique identifiers makes it more possible to identify the specific individuals involved.
- [25] However, this reasoning does not include other business card information severed by Education. For example, Education severed the names of senior officials at the Board of Education and within school divisions along with their contact information. Examples of this can be seen on pages 42 and 109 of the record. The school divisions and Boards of Education are large and release of the names and business contact information for these senior officials would not likely result in the Applicant being able to identify the specific teachers involved. This type of information constitutes business card information and should be released.
- [26] Education also severed the names of school divisions in the record. Some of the school divisions contained a large number of schools within them. In some cases, in excess of 50. Education has not demonstrated how releasing the names of these large school divisions would result in the ability to identify the teachers or victims involved. Therefore, the names of school divisions do not qualify as personal information pursuant to subsection 24(1) of FOIP and should be released.
- [27] The ability to identify a teacher and victim increases when a community is small. The name of the community becomes a unique identifier and when combining with other data elements already released to the Applicant it could result in an identifiable individual. Therefore, Education appropriately severed the names of the small communities in the record pursuant to subsection 29(1) of FOIP.
- [28] Some of the information in the record refers to court cases involving different teachers. Some of these records include the names of the victims. For example, page 153 appears to be a copy of a conviction notice. Education severed the name of the court house, the

court house phone numbers, the name of the judge presiding over the proceedings, the town the proceeding occurred in, the date of the conviction notice, the name and birth date of the teacher, the town the offence occurred in and the name of the victim. The remainder of the record was released. In its submission to our office, received September 4, 2013, Education indicated that publication bans may be placed on certain cases. However, it did not confirm whether these specific cases had any publication bans.

[29] Education previously released a large portion of the record to the Applicant. If Education released information involving the court proceedings, it would make it possible for the Applicant to link other pieces of non-identified information already released. For example, having removed the name of the teacher, Education released the remainder of page 139 which includes the details of the disciplinary action taken against the teacher. In addition, Education severed identifying information on page 150 (name of teacher, name of victim, name of school, name of community etc.) and released the remainder of the page which details the teacher's employment history, the criminal offence laid etc. Page 153 is a copy of the conviction notice from the Court House. Education severed the identifying information (name of teacher, name of victim, name of judge and name of courthouse etc.). If Education released this severed information, the Applicant would be able to connect other information already released in pages 139 and 150 which has been found to constitute personal information (i.e. disciplinary action taken against the teacher).

[30] Another example is page 140. It is a written statement the accused teacher sent to Education. Education released the record but severed the teacher's name. If the court information severed on pages 151, 153 and 154 were released this written statement could then be linked to the accused teacher. The written statement could constitute personal information under subsection 24(1)(f) of FOIP once it is connected to an identifiable individual because it is the personal opinion of the individual.

[31] Therefore, the information severed on pages 151, 153 and 154 regarding the location of the court house, date of court hearing etc. should be withheld pursuant to subsection 24(1)(k)(i) of FOIP because when combined with other information previously released,

it may reveal an identifiable individual. In addition, the question of whether publication bans continue to be in place has not been clarified by Education.

[32] However, it appears in some cases that Education severed the name of the judges presiding over certain cases. An example of this is on page 154. Education severed the name of the judge. However, Education has not shown why severing the judges' names are necessary. Therefore, I recommend the names of the judges severed in the record be released.

#### **IV FINDINGS**

[33] I find that Education appropriately applied subsection 29(1) of FOIP to some of the information in the record. However, it did not appropriately apply this subsection to others.

#### **V RECOMMENDATIONS**

[34] I recommend that the Ministry of Education continue to withhold the personal information claimed for exemption under subsection 29(1) of *The Freedom of Information and Protection of Privacy Act* as outlined in this Review Report and release the information that does not qualify as personal information.

Dated at Regina, in the Province of Saskatchewan, this 12<sup>th</sup> day of August, 2014.

RONALD J. KRUZENISKI, Q.C.  
Saskatchewan Information and Privacy  
Commissioner