



INVESTIGATION REPORT 211-2022

Prairie South School Division No. 210

May 17, 2023

Summary:

The Complainant's parents disagreed with a decision of the Prairie South School Division No. 210 (PSSD) made under section 178 of *The Education Act, 1995*. As such, the parents requested a review be undertaken pursuant to section 178.1 of *The Education Act, 1995*. PSSD proceeded with disclosing the Complainants' personal information to the agreed upon members of the review committee. However, the parents, who believed the review committee had not been fully formed yet, did not consent to the disclosure of the Complainants' personal information to the two members of the review committee. The Complainant's parents requested that the Commissioner investigate. The Commissioner found that subsection 28(2)(a) of LA FOIP authorized PSSD to disclose personal information to the two agreed upon members of the review committee since the purpose of the disclosure is for a use consistent with the original purpose the information was obtained. As a result, the Commissioner found that a privacy breach did not occur. However, he recommended that PSSD implement a policy and/or procedures to provide notice of its authority to collect and the anticipated uses and/or disclosures personal information without consent to its students, parents and guardians. Further, if the review pursuant to section 178.1 of *The Education Act, 1995* was no longer going to occur, he recommended that PSSD request that the two agreed upon members of the review committee delete and destroy the Complainant's personal information they had received.

I BACKGROUND

- [1] The Complainant in this Investigation Report is a person less than 18 years of age. Pursuant to subsection 49(d) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP), the Complainant's parents are acting on the Complainant's behalf. It should also be noted that the Complainant's parents are not together. However, a partner

of one of the parents (parent's partner) corresponds with the Prairie South School Division No. 210 (PSSD) on behalf of both parents at times.

[2] PSSD made a decision regarding the placement and programming for the Complainant. The parents disagreed with the decision, and on July 13, 2022, emailed PSSD's Director of Education (Director) to request a formal review of PSSD's decision "under Policy #13 of the Board of Education".

[3] In an email dated August 9, 2022, the Director responded to the parents by indicating that PSSD will follow section 178.1 of *The Education Act, 1995* regarding the review. He indicated that "a person" would do the review. The Director stated as follows:

In response to the email I received from [parent's partner] on your behalf on August 5, 2022, Prairie South will follow the provision set out in section 178.1 of *The Education Act, 1995*, concerning the requested review. **As the first step, I will seek out a suitable person who did not participate in the assessment to review the decision. I hope to have a couple of names to give to you in the next few days. Once we agree upon a person to do the review, they will proceed with the review and provide a report.**

In speaking with SSBA legal services, I learned Prairie South's Policy 13 is outdated and that some of the language within the policy may be based on previous legislation. Specifically, section 7 that calls for a review committee with members to be independently designated by the school division and parents. The Act, however, requires that the person appointed to do the review must be suitable to both the school division and the parents.

[Emphasis added]

[4] The Director provided a list of individuals who could do a review to the parents.

[5] On August 22, 2022, the Complainant's parents responded to identify two individuals from the list (Person A and Person B) with whom they were okay with conducting a review. They also proposed two other names (Person C and Person D) "to arrive at a 3-person review committee". This contrasts with the Director asserting only one person would do the review.

[6] On that same day, the Director stated as follows to the parents:

I'm pleased to share that I've spoken with [Person A] today, and [they have] agreed to conduct the review. I've cc'd [Person A] in this email, and you can reach [them] at [Person A's email address].

In speaking with [Person A], [they] will begin the review process soon. As part of the process, [Person A] will reach out to you, [Names of three PSSD employees] to set up times to meet, discuss the process, and gather information.

[7] On August 23, 2023, the parents responded to the Director asserting that the review committee required three members. They also requested the Director obtain their consent prior to disclosing the Complainant's medical information as follows:

Good to hear that [Person A] agreed to be part of the review committee. As you are aware (and as we noted below), the committee needs to have 3 members. Please confirm you will contact [Person B]. We can contact [Person C] and [Person D] to see who can be part of the committee. We assume since you added [Person A] that you will add [Person B] to this email chain and we will add [Person C] or [Person D]. If [Person B] is not available, we can ask if both [Person C] and [Person D] can participate.

We do not believe the board can disclose **all** of [Complainant's] medical information that it has—we suggest you confirm with the family and obtain consent before you release such information. We are of course in principle OK with disclosure **to the extent necessary for the review**, provided that at all time the personal health information will always be protected. That said, you should, nonetheless, ensure you have consent to disclose.

[Bold in original]

[8] On August 23, 2022, the Director indicated the school division was following section 178.1 of *The Education Act, 1995*, and reiterated Policy 13 was out of date. The Director also said that Person A will conduct the review alone. Finally, the Director indicated not all medical information has to be shared for the review process but there needs to be an understanding of the Complainant's current medical restrictions and limitations as follows:

If you do not want to share updated medical information for the review process, that is fine. However, we will not be able to provide the best possible services for [Complainant] until we fully understand [their] current medical restrictions and limitations.

- [9] On August 24, 2022, the parents responded indicating they did not agree to a one-person review committee, but they agreed with Person A being a member of a three-person committee that includes Person B, Person C and/or Person D. They said:

In our August 22 email (below), we did not agree to a 1-person review committee, but agreed with, and were happy for, [Person A] being a member of a 3-person committee that includes [Person B], [Person C], and/or [Person D].

A 3-person committee does not violate the Act. We urge the board to reconsider and to ask [Person B] to join the review committee. We can ask [Person C] and/or [Person D]. Please let us know if the board will contact [Person B] or if it will not proceed with the review unless it is limited to 1 person.

- [10] On the same day, the Director responded indicating that Person A will conduct the review themselves. The Director also requested that Complainant's parents identify any medical information they objected to releasing as follows:

For [Person A] to assess [the Complainant's] programming, [Person A] would need to understand [the Complainant's] current limitations and restrictions as [the Complainant's] program plan is based on the medical information the school division has on file. Limiting [Person A's] access to this information would make it challenging for [Person A] to assess [the Complainant's] programming plan accurately. If you have objections to releasing certain medical information, please specify the information you would not like released.

- [11] On August 29, 2022, the Director appeared to agree to having Person B work with Person A on the review (I had noted earlier that the parents had indicated that they were okay with Person B conducting the review.) The Director's email said:

We connected with [Person B] today, and [they have] agreed to work with [Person A] on the review.

To clarify, only [Person A] and [Person B] will work together on the review.

- [12] On September 16, 2022, Person A emailed the Complainant's parents. Person A indicated they were hoping to conduct a review interview with them on the evening of September 22nd or September 28th. Based on information provided to my office, it appears the Complainant's parents did not respond or agree to meet on either date.

[13] On September 22, 2022, PSSD shared the following types of information (the “documentation at issue” about the Complainant with Person A and Person B:

- Draft of 2022/2023 Inclusion and Intervention Plan
- Current Behaviour Support Plan
- Inclusion and Intervention Plan and Behaviour Support Plan Progress reports
- The most current occupational therapy report
- 2016 psychological assessment
- Psychiatry letters
- Notes page with “some further context to a few of the documents and accommodations”.

[14] On October 5, 2022, the parent’s partner emailed a privacy complaint on behalf of the parents by email to the Director:

I understand [Person A] and [Person B] recently contacted [Complainant’s mother] and [Complainant’s father] to propose dates for interviews to conduct a review.

As the Board is aware, a review committee acceptable to [Complainant’s mother] and [Complainant’s father] has not been formed yet. Given that [Person A] and [Person B] were ready to interview the parents, a step not possible without having known personal information about [the Complainant] including that [they are] a student with intensive needs, we believe there is unauthorized disclosure of [the Complainant’s] personal information to [Person A] and [Person B] in violation of *The Local Authority Freedom of Information and Protection of Privacy Act* (Saskatchewan).

As the Board is aware, [Complainant’s] parents more than once warned against disclosing any personal information to anyone, specifically including [Person A] and [Person B], relating to [Complainant] until a committee acceptable to them is formed.

I will quote only one such paragraph warning against such disclosure (appearing below in the email of August 28, 2022 at 10:16 AM):

On disclosure, please refer to our email of August 23, 2022 at 5:10 PM. As noted then, we will of course consent to appropriate disclosure. Necessarily, that can only be to a committee that is acceptable to the family once such a committee is formed in the future. However, all disclosure of [the Complainant’s] personal information that occurred or occurs before then (including what disclosure already made to [Person A]) is disclosure without consent.

Notwithstanding that clear message, the Board still disclosed some of [Complainant’s] personal information to both [Person A] and [Person B] without the parents’ consent.

Please refer this matter to PSSD's Privacy Officer and confirm when done (preferably by copying us), or advise us and we will contact [them] directly.

[Emphasis added]

[15] On October 12, 2022, the parent's partner emailed PSSD's Privacy Officer directly and asked the following:

We hope the Privacy Officer of the School Division is able to handle this matter without delay. As noted above, we believe that you, as Privacy Officer, have all of the information you need to investigate and report on this matter, including to answer the following questions:

- Did the Division disclose [the Complainant's] personal information under the Division's control to third parties (including [Person A] and [Person B])?
- If a disclosure occurred:
 - What personal information has been disclosed?
 - Did the Division have the necessary consent to make such disclosure?

[16] On October 13, 2022, the Director of Legal Services for the Saskatchewan School Boards Association (SSBA) responded:

These emails specifically allege a breach of privacy in relation to the two individuals named to the review panel. Your client, as you know, is requesting that the panel convene immediately, and each email I receive from you expresses urgency that the review panel proceed immediately, once your client names a third panel member. I note as well, that your client has still not named the third panel member. Clearly, these privacy breach allegations are directly related to the ongoing correspondence that the two of us are having. Of course [name redacted], the division's Privacy Officer, could investigate this allegation, however you know as well as I do that the conclusion would be a simple one, given our recent correspondence: **any information that was disclosed to these two individuals was done in anticipation of the review commencing, and on the understanding that these two individuals were (and still are) agreed to individuals to conduct the review that is to commence as soon as possible.** This privacy breach allegation is completely confusing in that context and appears to be frivolous.

[Emphasis added]

[17] On November 2, 2022, the parents submitted a complaint to my office.

[18] On December 1, 2022, my office notified PSSD and the Complainant’s parents that my office would be undertaking an investigation.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[19] Subsection 2(f)(viii) of LA FOIP defines “local authority” as follows:

2 In this Act:

...
(f) “**local authority**” means:

...
(viii) any board of education or conseil scolaire within the meaning of *The Education Act*;

[20] Section 2 of *The Education Act, 1995* defines “board of education” as follows:

“**board of education**” means the board of education of a school division that is elected pursuant to *The Local Government Election Act, 2015*; (« commission scolaire »)

[21] Therefore, PSSD qualifies as a “local authority” pursuant to subsection 2(f)(viii) of LA FOIP. I find that I have jurisdiction to investigate.

2. Did a privacy breach occur?

[22] A privacy breach occurs when personal information is collected, used, and/or disclosed without authority under LA FOIP (*Guide to LA FOIP*, Chapter 6: “Protection of Privacy”. Updated February 27, 2023. [*Guide to LA FOIP*, Ch. 6], p. 234).

[23] In order to determine if a privacy breach occurred, I must first determine if personal information is involved. If so, then, I must determine if there was a collection, use, and/or disclosure of personal information. If so, then, I need to determine if there was authority for the collection, use, and/or disclosure of the personal information.

a. Is personal information involved?

[24] As described in the background of this Investigation Report, inclusion and intervention plans, behaviour support plans, progress reports, an occupational therapy report, a psychological assessment, psychiatry letters, as well as notes that provide context to the documents were provided to Person A and Person B. Such information qualifies as “personal information” as defined by subsections 23(1)(a), (b)(c), (d), (e) and (k)(i) of LA FOIP as follows:

23(1) Subject to subsections (1.1) and (2), “**personal information**” means personal information about an identifiable individual that is recorded in any form, and includes:

(a) information that relates to the race, creed, religion, colour, sex, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;

(b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

(c) information that relates to health care that has been received by the individual or to the health history of the individual;

(d) any identifying number, symbol or other particular assigned to the individual;

(e) the home or business address, home or business telephone number, fingerprints or blood type of the individual;

...

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual;

[25] Since personal information is involved in this matter, I will continue with my analysis.

b. Was there an authorized collection, use, and/or disclosure of personal information?

[26] “Collection” means to bring or come together; assemble; accumulate; obtain personal information from any source by any means (*Guide to LA FOIP*, Ch. 6, p. 132). Section 24(1) of LA FOIP provides as follows:

24 No local authority shall collect personal information unless the information is collected for a purpose that relates to an existing or proposed program or activity of the local authority.

[27] PSSD had collected the Complainant’s personal information (the documentation at issue) for the purpose of section 178 of *The Education Act, 1995*. PSSD indicated that the documentation at issue was “used to assess the needs for an intensive supports plan/accommodation, or a plan that was in place and/or proposed plan for the student, in accordance with section 178 of *The Education Act, 1995*”. As such, I find that PSSD had authority pursuant to section 24 of LA FOIP to have collected the Complainant’s personal information.

[28] “Use” is the internal utilization of personal information by a local authority and includes the sharing of the personal information in such a way that it remains under the control of the local authority (*Guide to LA FOIP*, Ch. 6, p. 152).

[29] “Disclosure” is the sharing of personal information with a separate entity, not a division or branch of the local authority in possession or control of that information (*Guide to FOIP*, Ch. 6, p. 163).

[30] As described in the background of this Investigation Report, PSSD shared the following types of information about the Complainant with Person A and Person B on September 22, 2022. This sharing would qualify as a “disclosure” as defined above. I find that there was a disclosure of personal information.

[31] Since there was a disclosure of personal information, I must determine if there was authority under LA FOIP for PSSD to have disclosed the personal information. Specifically, section 28 of LA FOIP provides the circumstances in which a local authority may disclose personal information.

[32] First, the Complainant's parents' position is that PSSD should have had their consent prior to disclosing any of the Complainant's personal information to Person A and Person B. Section 28(1) of LA FOIP provides as follows:

28(1) No local authority 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 29.

[33] However, while LA FOIP has a consent provision for disclosure, consent is the exception and not the prevailing practice when it comes to local authorities disclosing personal information. Local authorities have the authority to disclose personal information without consent in the circumstances prescribed in LA FOIP set out in section 28(2) of LA FOIP (see [Investigation Report 234-2020](#) at paragraph [37]).

[34] PSSD indicated it disclosed the personal information to Person A and Person B for the purpose of an anticipated review pursuant to section 178.1 of *The Education Act, 1995*.

[35] As I have said earlier, PSSD had collected the documentation at issue for the purpose of section 178 of *The Education Act, 1995*, which is about the responsibility of boards of education to accommodate and make education services available to students with intensive needs.

[36] Section 178.1 of *The Education Act, 1995* provides that the parent or guardian of a student may request a review of decisions made pursuant to section 178 of *The Education Act, 1995*. Section 178.1 of *The Education Act, 1995* provides:

178.1(1) The parent or guardian of a pupil may request that the principal of the pupil review the matter if the parent or guardian of the pupil disagrees with the board of education or the conseil scolaire with which the pupil is registered with respect to any of the following:

(a) the results of an assessment conducted pursuant to subsection 178(5);

(b) a failure to conduct an assessment of a pupil to determine if the pupil is a pupil with intensive needs;

- (c) the educational services provided pursuant to section 178 to a pupil with intensive needs.
- (2) If a request pursuant to subsection (1) has been received by the principal of the pupil, the principal shall review the matter in consultation with the parent or guardian of the pupil to resolve the matter.
- (3) If the parent or guardian of the pupil and the principal of the pupil fail to resolve the matter in consultation with one another pursuant to subsection (2), the parent or guardian of the pupil may request that the board of education or conseil scolaire review the matter.
- (4) If a request has been received pursuant to subsection (3), the board of education or conseil scolaire, as the case may be, shall cause a review to be conducted within 30 days after receipt of the request.
- (5) The review of a matter pursuant to subsection (4) shall be conducted by a person or persons who:
 - (a) did not participate in any of the following matters that is the subject of the review:
 - (i) an assessment conducted pursuant to subsection 178(5);
 - (ii) the decision not to conduct an assessment;
 - (iii) the decision respecting the educational services to be provided pursuant to section 178 to a pupil with intensive needs; and
 - (b) is or are acceptable to:
 - (i) the board of education or conseil scolaire; and
 - (ii) the parent or guardian of the pupil.
- (6) Every board of education and the conseil scolaire shall have written policies and procedures for undertaking reviews pursuant to this section that are not inconsistent with the regulations or any policies that may be established by the minister.
- (7) The person or persons conducting a review pursuant to subsection (5) shall provide a written report, within 30 days after completion of the review, to:
 - (a) the parent or guardian of the pupil; and
 - (b) the board of education or conseil scolaire, as the case may be.

[37] As described in the background of this Investigation Report, the Complainant's parents had requested a review pursuant to subsection 178.1 of *The Education Act, 1995*. Further, the Complainant's parents and PSSD agreed Person A and Person B being a part of the review panel. Subsection 28(2)(a) of LA FOIP provides as follows:

28(2) Subject to any other Act or regulation, personal information in the possession or under the control of a local authority may be disclosed:

(a) for the purpose for which the information was obtained or compiled by the local authority or for a use that is consistent with that purpose;

[38] PSSD had obtained the documentation at issue for the purpose of section 178 of *The Education Act, 1995*. It then disclosed the documentation at issue pursuant to section 178.1 of *The Education Act, 1995*, in order to facilitate a review of the decisions made pursuant to section 178 of *The Education Act, 1995*. I find that subsection 28(2)(a) of LA FOIP authorized PSSD to disclose personal information to Person A and Person B since the purpose of disclosure is for a use consistent with the original purpose. I find, therefore, that a privacy breach did not occur.

[39] For clarity, PSSD did not require consent in order to disclose the personal information. In my office's [Investigation Review F-2010-001](#), this office concluded that privacy laws such as LA FOIP are not consent based as follows:

In Canada, we now have 27 years of experience with public sector privacy laws. Those public sector laws however are not and have not been consent based. There is provision for consent but obtaining consent is the exception and not the prevailing practice when it comes to 'use' or 'disclosure'. There is no consent requirement for 'collection' of personal information. The limiting statutory requirement for collection is that "No government institution shall collect personal information unless the information is collected for a purpose that relates to an existing or proposed program or activity of the government institution." The experience in Canada with public sector privacy laws is that the greatest part of use or disclosure by public bodies would be founded on the power to use or disclose without consent if the use or disclosure is "for the purpose for which the information was obtained or compiled, or for a use that is consistent with that purpose". In addition, there are no less than 22 prescribed circumstances under which personal information can be used or disclosed by any government institution without consent of the individual. **The reason is that government institutions require a vast amount of personal information from citizens to provide the services that those citizens expect. This includes the**

operation of schools, hospitals, social services and countless other services. To require express consent every time a public body collected, used or disclosed such personal information would likely be unwieldy, inefficient and cumbersome not to mention expensive.

[Emphasis added]

- [40] In my office's [Investigation Report 234-2020](#), I dealt with a matter where a school division unnecessarily obtained consent from parents and guardians when LA FOIP provided it with authority to disclose personal information. In that case, I said that seeking consent when LA FOIP does not require consent simply gives individuals a false sense of control. Instead, I recommended that the school division provide a written notice regarding LA FOIP and the school division's authority to collect, use, and/or disclose personal information.
- [41] Similarly, in this case, PSSD should have explained to the parents that subsection 28(2)(a) of LA FOIP authorized it to disclose the Complainant's personal information, without consent, for the review that was occurring pursuant to section 178.1 of *The Education Act, 1995*. Such an explanation perhaps could have facilitated a discussion of precisely what types of personal information would be disclosed and when the information would have been disclosed by PSSD to Person A and Person B.
- [42] I add that the Complainant's parents indicated to my office that, at the time, the review pursuant to section 178.1 of *The Education Act, 1995* had not occurred yet and may never occur. If a review is not going to occur, then, I recommend that PSSD contact Person A and Person B to request that they delete any copies of the Complainant's personal information from their email accounts, computers and any other place the documentation at issue may be stored (hard drives, the cloud, flash drives, etc.). PSSD should also request that Person A and Person B destroy any paper copies of the documentation at issue. PSSD should request that Person A and Person B confirm in writing that they have deleted and destroyed any and all copies of the documentation at issue.
- [43] I also note that PSSD indicated Person A has since been contracted as a superintendent temporarily and may require the documentation for use in their current role. This is not a reason for Person A to maintain copies of the documentation at issue if the review is not

going to occur. If Person A requires the documentation at issue in their new role as Superintendent, they should gain access through appropriate channels in their role as Superintendent.

[44] When the Complainant’s parents asked that PSSD not disclose personal information before obtaining consent, PSSD should have clarified with them that subsection 28(2)(a) of LA FOIP authorized such disclosure without consent to review panel members. As such, I recommend that PSSD implement a policy and/or procedures to provide notice of its authority collect personal information and the anticipated uses and/or disclosures of personal information without consent to its students, parents and guardians. This would include informing individuals of PSSD’s authority pursuant to subsection 28(2)(a) of LA FOIP in the event of a review pursuant to section 178.1 of *The Education Act, 1995*.

[45] As PSSD develops its policy, it should take into consideration the data minimization principle. “Data minimization” is the rule that an organization should always collect, use, and disclose the least amount of personal information necessary for the purpose (*Guide to LA FOIP*, Ch. 6, p. 24).

[46] As described in the background of this Investigation Report, the Director indicated to the Complainant’s parents in an email dated August 23, 2022, that they can specify which of the Complainant’s medical information they objected to releasing. It is unclear if the Complainant’s parents specified which medical information they objected to releasing, especially if they were under the impression no medical information could be released without their consent. Nonetheless, I note that in PSSD’s email dated September 22, 2022 to Person A and Person B, PSSD had noted other types of information existed, but was not being shared at that time. This suggests that PSSD shared what it thought was necessary for the review, which aligns with the data minimization principle.

III FINDINGS

[47] I find that I have jurisdiction to investigate.

[48] I find that subsection 28(2)(a) of LA FOIP authorized PSSD to disclose personal information to Person A and Person B since the purpose of disclosure is for a use consistent with the original purpose.

[49] I find that a privacy breach did not occur.

IV RECOMMENDATIONS

[50] If the review pursuant to section 178.1 of *The Education Act, 1995* is not going to occur, then, I recommend that PSSD contact Person A and Person B to request that they delete any copies of the Complainant's personal information from their email accounts, computers and any other place the documentation at issue may be stored (hard drives, the cloud, flash drives, etc.).

[51] I recommend that PSSD request that Person A and Person B destroy any paper copies of the documentation at issue. PSSD should request that Person A and Person B confirm in writing that they have deleted and destroyed any and all copies of the documentation at issue.

I recommend that PSSD implement a policy and/or procedures to provide notice of its authority collect personal information and the anticipated uses and/or disclosures of personal information without consent to its students, parents and guardians. This would include informing individuals of PSSD's authority pursuant to subsection 28(2)(a) of LA FOIP in the event of a review pursuant to section 178.1 of *The Education Act, 1995*.

Dated at Regina, in the Province of Saskatchewan, this 17th day of May, 2023.

Ronald J. Kruzeniski, K.C.
Saskatchewan Information and Privacy
Commissioner