



INVESTIGATION REPORT 234-2020

Chinook School Division No. 211

March 1, 2022

Summary:

The Complainant filled out a consent form indicating which employees of Chinook School Division No. 211 (Chinook School Division) she authorized to have access to her daughter's personal information. However, she learned that emails that she had sent to the school division were being forwarded to individuals not listed on the consent form. She submitted a privacy complaint to the Chinook School Division, but was dissatisfied with its response. Therefore, she requested that the Commissioner undertake an investigation. The Commissioner found that section 27(a) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) authorized the use of the Complainant's daughter's personal information in some instances, but not in all. He found privacy breaches occurred when the Complainant's daughter's personal information was shared with employees without a "need-to-know". The Commissioner made a number of recommendations including that the Chinook School Division ensure its privacy policies and procedures addresses the need-to-know principle, that it review its policies and procedures to ensure it is not unnecessarily requesting consent from parents/guardians, that it ensure its employees are documenting its discussions completely and accurately, and that it ensure its employees are aware that section 5 of LA FOIP provides every person with a right of access to records in the possession or control of the school division.

I BACKGROUND

- [1] The Complainant indicated to my office that she met with Chinook School Division No. 211 (Chinook School Division) employees on January 20, 2020. At the meeting, she received a consent form to fill out. The form, with a Chinook School Division header, said the following:

I, the parent (or guardian) of _____, date of birth _____, hereby authorize the following agencies or persons to provide and/or exchange information.

Signature of Parent or Guardian _____ Date _____

Address _____

Signature of School Representative _____ Title _____

[2] The Complainant filled out the consent form and listed the following five employees on the form as persons who could “provide and/or exchange information”:

Kyle McIntyre
Duane Regier
Larry Kielo
Tracy Martens
Dan Marchand

[3] Then, at 4:30 p.m. on January 26, 2020, the Complainant sent an email to the five employees of Chinook School Division she had listed on the consent form. She attached the form and said: “I have also included the names of staff I am comfortable sharing [first name of daughter]’s confidential information with.”

[4] At 5:14 p.m. on the same day, Kyle McIntyre (Director of Education) forwarded the Complainant's emails to two Superintendents of Schools, Kathy Robson (Superintendent 1) and Mark Benesh (Superintendent 2). Then, both Superintendents responded to the email. The email chain, which is Record #126 on Review Report 173-2020, 190-2020, 234-2020, can be described as follows:

- Superintendent 2 responded to the email at 8:31 p.m. A portion of this email was about the Applicant and Applicant's daughter. The remainder is personal information of third parties.
- Superintendent 1 responded on January 27, 2020 at 6:50 a.m. However, the contents of this response did not contain any information about the Applicant or Applicant's daughter. It contained the personal information of third parties.
- Superintendent 2 responded on January 27, 2020 at 7:20 a.m. This response did not contain any information about the Applicant or Applicant's daughter.

[5] In this Investigation Report, I will reference the above email exchanges as Incident 1.

[6] On February 25, 2020 at 10:02 a.m., the Complainant sent an email to the Director of Education, Kim Pridmore (Chair of the School Board), and Larry Kielo (Principal). The Complainant said the following:

...I must insist that Kathy Robson is not to be included in communication regarding [first name of daughter] or any of my children. Ms. Robson is not to be given any information involving my family; nor shall she have any input on the education or care of my children.

[7] The Complainant's email was forwarded by the Principal to Superintendent 1 on February 25, 2020 at 2:10 p.m. I will refer to the above email exchange as Incident 2.

[8] On March 2, 2020 at 3:48 p.m., the Complainant sent an email to the Principal, Director of Education, a teacher and a support staff. The Director of Education proceeded to forward the email three times. First, he forwarded the email to Superintendent 1 and Superintendent 2 at 3:49 p.m. (herein referred to as Incident 3). Second, within a minute of the first email forward, he forwarded it to Jackie Wiebe (Executive Assistant), Rodney Quintin (Chief Financial Officer), and Joanne Booth (Communications Coordinator). Third, he forwarded

the email to Roberta McIntyre (teacher) on March 2, 2020 at 3:51 p.m. (herein referred to as Incident 5).

- [9] On May 22, 2020, the Complainant had submitted an access to information request to Chinook School Division. As discussed in Review Report 173-2020, 190-2020, 234-2020, the Applicant was sent a response where she received copies of records. She learned that her daughter's information had been shared with individuals whom she did not list on the consent form.
- [10] In an email dated September 9, 2020, the Complainant sent her concerns over her daughter's privacy being breached to Chinook School Division. In her email, the Complainant described her concerns over Incidents 1 through 5.
- [11] In a letter dated October 30, 2020, Chinook School Division responded to the Applicant. Chinook School Division explained that the consent form that the Applicant signed, "was to address the sharing of [first name of Applicant's daughter] between the [Chinook] School Division and external third parties such as medical professionals or the Saskatchewan Health Authority."
- [12] Then, Chinook School Division explained that it uses personal information internally based on the "need-to-know" principle under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).
- [13] In the letter, Chinook School Division only addressed the Director of Education forwarding emails on March 2, 2020 (Incidents 3, 4, and 5). It did not address Incidents 1 or 2. Chinook School Division indicated that section 27(a) of LA FOIP authorized the forwarding of personal information within the March 2nd, 2020 email by the Director of Education to the two Superintendents, an Executive Assistant, and the Communications Coordinator as they are "senior administrators". However, Chinook School Division acknowledged that the forwarding of the March 2, 2020 email to the Chief Financial Officer and the teacher was not an authorized use of the personal information under LA FOIP.

[14] To address the unauthorized use of personal information under LA FOIP, Chinook School Division indicated to the Complainant that it would provide “awareness training” to its staff regarding “proper security and use of information as soon as possible” and that the school board would have staff review the school board’s privacy policies, procedures and expectations regarding employee conduct and require staff to annually sign a form indicating that they understand the policies and procedures and agree to abide by them.

[15] Finally, Chinook School Division indicated to the Complainant that it regretted the unauthorized uses and reassured the Complainant that the teacher and the Chief Financial Officer double-deleted the email from their devices.

[16] On November 19, 2020, the Complainant requested that my office investigate.

[17] On November 25, 2020, my office notified both the Complainant and the Chinook School Division that my office would be undertaking an investigation.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[18] Chinook School Division is a “local authority” as defined by subsection 2(f)(viii) of LA FOIP. Therefore, I have jurisdiction to investigate this matter.

2. Is personal information involved and is LA FOIP engaged?

[19] In order for LA FOIP to be engaged in a privacy breach investigation, there must be personal information, as defined by section 23(1) of LA FOIP, involved. Section 23(1) of LA FOIP provides in part:

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:

...

(c) information that relates to health care that has been received by the

individual or to the health history of the individual;

...

(k) the name of the individual where:

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

[20] The email exchanges in Incidents 1 to 5 contain information about the Complainant's daughter as defined above in sections 23(1)(c) and (k)(i) of LA FOIP. Therefore, I find that personal information is involved and that LA FOIP is engaged.

[21] Before I proceed, I note that section 49(d) of LA FOIP provides the Complainant the authority to act on her daughter's behalf in this matter. Section 49(d) of LA FOIP provides:

49 Any right or power conferred on an individual by this Act may be exercised:

...

(d) where the individual is less than 18 years of age, by the individual's legal custodian in situations where, in the opinion of the head, the exercise of the right or power would not constitute an unreasonable invasion of the privacy of the individual;

3. Did privacy breaches occur?

[22] Part IV of LA FOIP outlines the circumstances in which local authorities are authorized to collect, use, and/or disclose personal information. A privacy breach occurs when personal information is collected, used and/or disclosed without authority under LA FOIP. To "collect" means to gather, obtain access to, acquire, receive or obtain personal information from any source by any means ([Investigation Report F-2014-002](#) at paragraphs [29] to [30]). To "use" means to reference or manipulate personal information by the local authority that has possession or control of the information but does not include the disclosure to another separate entity ([Review Report 395-2019, 396-2019](#) at paragraph [14]). To "disclose" means to share personal information with a separate entity, not a division or branch of the local authority in possession or control of that record/information ([Investigation Report F-2014-002](#) at paragraph [53]).

[23] In this case, since it was the Complainant sending her daughter's personal information to Chinook School Division, then "collection" is not at issue. At issue is whether there was

authority for the Chinook School Division to forward the Complainant's emails to individuals who were not listed by the Complainant on the consent form. Since Chinook School Division's letter dated October 30, 2020 brings up the distinction between use and disclosure, I will first need to determine whether the forwarding of the Complainant's emails qualify as a use or a disclosure. Then I will need to discuss if there was authority for the forwarding of the Complainant's emails. Finally, I will need to discuss the issue of the consent form.

a. Does the forwarding of the emails qualify as a "use" or a "disclosure"?

[24] At paragraph [22], I have already provided the definitions of "use" and "disclosure". When I consider the Incidents 1 to 5, the Complainants emails were shared among Chinook School Division employees. Therefore, I find that this type of sharing qualifies as a "use", not a disclosure.

b. Was there authority for the "use" of personal information?

[25] Section 27 of LA FOIP outlines the circumstances in which a local authority may use personal information. It says:

27 No local authority shall use personal information under its control without the consent, given in the prescribed manner, of the individual to whom the information relates, except:

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

(b) for a purpose for which the information may be disclosed to the local authority pursuant to subsection 28(2).

[26] In order for a local authority to be able to rely on any provision in LA FOIP for its use and/or disclosure of personal information, it must also abide by the need-to-know and data minimization principles. Authority to use and disclose only exists when these principles are abided by (see [Investigation Report 074-2018, 075-2018](#) at paragraphs [38] and [43]). These two important principles underlie Part IV of LA FOIP. Need-to-know requires a local authority to use or disclose on a need-to-know basis. This means that the personal

information should only be available to those that have a legitimate need to know the information for the purpose of delivering their mandated services. Data minimization requires a local authority to use or disclose the least amount of personal information necessary for the purpose.

[27] As noted earlier, Chinook School Division indicated that section 27(a) of LA FOIP authorized the forwarding of the Complainant's email by the Director of Education to the two Superintendents, an Executive Assistant, and the Communications Coordinator. In the course of my office's investigation, Chinook School Division provided my office with its Privacy Breach Management Report (Privacy Breach Report). This report only addressed Incidents 3, 4, and 5 - the forwarding of the Complainant's March 2, 2020 email by the Director of Education. It did not address Incidents 1 and 2. Nevertheless, the Privacy Breach Report explained the role of the following individuals and their need-to-know for the email forwards detailed in Incidents 3, 4, and 5:

- Superintendent 2 was the superintendent of the school from which the Applicant's daughter transferred.
- Superintendent 1 was the superintendent of the school to which the Applicant's daughter transferred.
- Superintendent 2 covered for Superintendent 1 when she was away.
- The Director of Education's Executive Assistant received emails as a result of ongoing issues with the Complainant and she had been involved to set up meetings.
- The Communications Coordinator provides support to the Director of Education and Superintendents with correspondence, "that may be required in contentious issues when they arise".

[28] However, Chinook School Division acknowledged that the Chief Financial Officer in Incident 4 and the teacher in Incident 5 did not have a need-to-know.

[29] Later in this Investigation Report, I will address the issue of the consent form. However, even though I note that the Complainant did not list the Superintendents, the Executive Assistant or the Communications Coordinator in her consent form, I am satisfied that based

on their roles in the school division, they would have a legitimate need-to-know. I find that section 27(a) of LA FOIP authorized the sharing of the Complainant's emails with these individuals.

[30] However, I find that privacy breaches occurred in Incidents 4 and 5, as it is clear that neither the Chief Financial Officer nor the teacher had a need-to-know the personal information in the Complainant's March 2, 2020 email. In its Privacy Breach Report, Chinook School Division acknowledged these breaches and indicated that both the Chief Financial Officer and the teacher had double-deleted the email and no longer have a copy of the Complainant's email on their devices. I recommend that Chinook School Division ensure that the Complainant's email dated March 2, 2020 (or any subsequent email thread that contains the email) has been deleted from the Chief Financial Officer and the teachers' devices, applications, and any where else the email may be saved and restored from by the Chief Financial Officer, teacher, or any other person without a need-to-know.

[31] Chinook School Division also indicated that it believes that the root cause of the privacy breaches was the poor judgement by the Director of Education. As described earlier in the background section of this Investigation Report, Chinook School Division indicated that it would undertake take two initiatives to mitigate the same or similar privacy breaches in the future: 1) it will provide "awareness training" to its staff regarding "proper security and use of information as soon as possible," and 2) that the school board would have staff review the school board's privacy policies, procedures and expectation regarding employee conduct and require staff to annually sign a form indicating that they understand the policies and procedures and agree to abide by them.

[32] I find that Chinook School Division's two initiatives are similar to the two recommendations I made to it in my office's [Investigation Report 211-2019, 215-2019 to 241-2019](#) (issued on June 25, 2020). The recommendations were as follows:

[101] I recommend that Chinook School Division continue with its awareness initiatives and its practice of providing an annual reminder to its teachers and staff about its privacy policies and procedures.

- [102] I recommend that Chinook School Division require its teachers and staff to sign a form on an annual basis that indicates they understand the policies and procedures and they agreed to abide by them.
- [33] In response to the above two recommendations, Chinook School Division indicated to my office it would comply with both in an email dated August 14, 2020. While I find that it is appropriate that Chinook School Division is committing to comply with the above two recommendations from my previous investigation report, it should take steps to address the root cause of the privacy breach that occurred in this case. In other words, it should take steps to prevent the sharing of personal information with individuals who do not have a need-to-know.
- [34] I recommend that Chinook School Division ensure that its privacy policies and procedures address the “need-to-know” principle. If it does, I recommend that it provide a copy of the privacy policy and/or procedures. If it does not, I recommend that it revise its privacy policies and/or procedures within 30 days of the issuance of this Investigation Report and then provide a copy of the policies and/or procedures to my office.
- [35] I also recommend that Chinook School Division ensure that its annual reminder to its teachers and staff address the need-to-know principle.

c. The consent form

- [36] In [Investigation Report F-2010-001](#) at paragraph [43], the former Commissioner explained that public sector privacy laws (such as LA FOIP) are not consent based. He explained:

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.** This fundamental difference is neither acknowledged nor reflected in the Privacy Framework.

[Emphasis added]

- [37] While LA FOIP has consent provisions, consent is the exception and not the prevailing practice when it comes to local authorities using or disclosing personal information. Local authorities have the authority to use and/or disclose personal information without consent in the circumstances prescribed in LA FOIP. Therefore, it is a confusing practice when a local authority provides a consent form to a parent to be filled out. The consent form creates a false sense of control over how personal information will be used and/or disclosed.
- [38] In this case, as described in the background of this Investigation Report, the Complainant was under the impression that only the employees within the school division she had listed would have access to her daughter’s personal information. In Chinook School Division’s letter dated October 30, 2020, Chinook School Division explained that the form was meant to address the “disclosure” of personal information, not the “use”.
- [39] Since LA FOIP is not consent based, individuals cannot fill out a consent form to dictate which employees can or cannot have access to their personal information. Upon receipt of the consent form, it should have been apparent to the Chinook School Division that the Complainant did not understand that LA FOIP allowed for the sharing of emails among employees with a need-to-know without her consent. Chinook School Division should have clarified with the Complainant its authority to use and/or disclose personal information under LA FOIP.

[40] If it does not already do so, I recommend that Chinook School Division implement a practice where it provides a written notice to parents/guardians and students regarding LA FOIP and its authority to collect, use, and/or disclose personal information at the beginning of the school year or when a new student arrives at a school. Such a notice should explain the main purposes of why it collects personal information and the anticipated uses and disclosures of the personal information (and the authority for such uses and disclosures). This would be in keeping with section 25 of LA FOIP, which provides:

25(1) A local authority shall, where reasonably practicable, collect personal information directly from the individual to whom it relates.

(2) A local authority that collects personal information that is required by subsection (1) to be collected directly from an individual shall, where reasonably practicable, inform the individual of the purpose for which the information is collected.

(3) Subsections (1) and (2) do not apply where compliance with them might result in the collection of inaccurate information or defeat the purpose or prejudice the use for which the information is collected.

[Emphasis added]

[41] Such a notification would be distinct from a “consent form”. Often times, my office notes that local authorities and government institutions conflate the two concepts. Notifying individuals of the purpose for which information is collected and the authority under LA FOIP for the anticipated uses and disclosures is distinct from requesting individuals to fill out a consent form for uses and disclosures of personal information. Notifying individuals ensures they are informed and empowered to ask questions before or at the time personal information is being collected. Requesting a consent form to be signed for the use and/or disclosure of personal information when LA FOIP does not require consent simply gives individuals a false sense of control. This only leads to distress when personal information is used and/or disclosed in a way that the individual did not expect.

[42] While I recognize there could be circumstances in which Chinook School Division would be required to obtain consent from parents/guardians, seeking consent is the exception and not the norm. Chinook School Division’s letter dated October 30, 2020 to the Complainant

explained the consent form was for “disclosures”. As I have already noted, LA FOIP provides authority to local authorities for disclosures in prescribed circumstances without consent. Therefore, I recommend that Chinook School Division review its policies and procedures to ensure it is not unnecessarily requesting consent from parents/guardians.

[43] I note that the Complainant expressed distrust with certain employees of the school division, which is the reason why she did not wish for certain employees to have access to her daughter’s personal information. While LA FOIP does not provide individuals with the ability to control which employees of a local authority have access to their personal information, section 5 of LA FOIP provides individuals with the right of access to records in the possession or control of local authorities (subject to limited and specific exemptions). This is to ensure employees of local authorities are accountable to the public. Once accountability is established, trust can be fostered. I recommend that the Chinook School Division ensure its employees are documenting its discussions and decisions completely and accurately. I also recommend that Chinook School Division ensure its employees are aware that section 5 of LA FOIP provides every person with a right to access records in the possession or control of the school division. Should any employee receive a formal access to information request, they should forward such a request to the school division’s access and privacy officer.

III FINDINGS

[44] I find that I have jurisdiction to investigate this matter.

[45] I find that the personal information of the Applicant’s daughter is involved and that LA FOIP is engaged.

[46] I find that the sharing of the Complainant’s emails among Chinook School Division employees qualifies as a “use”, and not a disclosure.

[47] I find that section 27(a) of LA FOIP authorized the sharing of the personal information in Incidents 1, 2, and 3.

[48] I find that section 27(a) of LA FOIP did not authorize the sharing of the personal information with the Chief Financial Officer and the teacher in Incidents 4 and 5.

IV RECOMMENDATIONS

[49] I recommend that Chinook School Division ensure that the Complainant's email dated March 2, 2020 (or any subsequent email thread that contains the email) has been deleted from the Chief Financial Officer and the teachers' devices, applications, and any where else the email may be saved and restored from by the Chief Financial Officer, teacher, or any other person without a need-to-know.

[50] I recommend that Chinook School Division ensure that its privacy policies and procedures address the need-to-know principle. If it does, I recommend that it provide a copy of the privacy policy and/or procedures to my office. If it does not, I recommend that it revise its privacy policies and/or procedures within 30 days of the issuance of this Investigation Report and then provide a copy to my office.

[51] I also recommend that Chinook School Division ensure that its annual reminder to its teachers and staff address the need-to-know principle.

[52] If it does not already do so, I recommend that Chinook School Division implement a practice where it provides a written notice to parents/guardians and students regarding LA FOIP and its authority to collect, use, and/or disclose personal information at the beginning of the school year or when a new student arrives at a school, as described at paragraph [40].

[53] I recommend that Chinook School Division review its policies and procedures to ensure it is not unnecessarily requesting consent from parents/guardians.

[54] I recommend that the Chinook School Division ensure its employees are documenting its discussions and decisions completely and accurately. I also recommend that Chinook School Division ensure its employees are aware that section 5 of LA FOIP provides every

person with a right to access records in the possession or control of the school division. Should any employee receive a formal access to information request, they should forward such a request to the school division's access and privacy officer.

Dated at Regina, in the Province of Saskatchewan, this 1st of March, 2022.

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