



INVESTIGATION REPORT 109-2017

Englefeld Protestant Separate School Division #132

September 26, 2017

Summary:

The Complainant was dissatisfied with a decision by Englefeld Protestant Separate School Division #132 (Englefeld) to disclose personal information to the Ministry of Social Services. The Commissioner found that Englefeld had authority to disclose the personal information pursuant to subsection 28(2)(s) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) and subsection 10(a)(iii) of *The Local Authority Freedom of Information and Protection of Privacy Regulations*. He recommended that Englefeld develop a policy and procedure for notifying individuals when personal information is disclosed with legislative authority but without consent.

I BACKGROUND

- [1] The Complainant alleged that Englefeld Protestant Separate School Division #132 (Englefeld) disclosed her child's personal information to the Ministry of Social Services (the Ministry) without authorization. She raised her concerns with the Director of Education of Englefeld verbally on February 23, 2017.
- [2] On April 7, 2017, Englefeld replied to the Complainant in writing. It indicated that its investigation concluded that Englefeld was authorized to disclose the personal information pursuant to subsection 28(2)(s) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) and subsection 10(a)(iii) of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (the Regulations).

[3] The Complainant was dissatisfied with Englefeld's response. On May 23, 2017, she made a complaint to our office. On June 13, 2017, my office provided notification to both the Complainant and Englefeld of my intention to undertake an investigation.

II DISCUSSION OF THE ISSUES

1. Does LA FOIP apply in these circumstances?

[4] LA FOIP applies to privacy matters when three elements are present. The first element is a local authority, the second element is personal information and the third element is if the personal information is in the possession or control of the local authority.

[5] Englefeld qualifies as a local authority pursuant to subsection 2(f)(viii) of LA FOIP, which provides:

2 In this Act:

(f) "local authority" means:

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

[6] The Complainant alleges that the Ministry contacted Englefeld to ask about a decision to homeschool the Complainant's child. Englefeld confirmed that the personal information that was disclosed to the Ministry was the status of the Complainant's child's enrolment in Englefeld School and the availability of appropriate supports at the school for the child and her special needs.

[7] Subsection 23(1) of LA FOIP provides a definition of personal information. Some of the relevant clauses are 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:

...

(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;

...

(k) the name of the individual where:

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

(ii) the disclosure of the name itself would reveal personal information about the individual.

[8] Information regarding the Complainant’s decision to homeschool her child would qualify as her child’s education history and her personal information pursuant to subsection 23(1)(b) of LA FOIP. Information about the child’s health history which required supports at school would qualify as the child’s personal information pursuant to subsection 23(1)(c) of LA FOIP. Any other information of a personal nature regarding the supports in place for the child would also qualify as personal information pursuant to 23(1)(k)(i) of LA FOIP.

[9] Finally, Engelfeld acknowledged it collected this personal information. Therefore, it is in the possession and under the control of Engelfeld. LA FOIP is engaged in this privacy matter.

2. Did Englefeld have authority to disclose the personal information in question to the Ministry?

[10] The Complainant applied for funding to the Ministry's Cognitive Disability Strategy to help her child and her application was turned down. She then appealed to the Cross Ministerial Appeals Committee (CMAC). It also denied her application.

[11] As noted, the Complainant raised her concerns with Englefeld. It is Englefeld's position that it did have authority to disclose personal information pursuant to subsection 28(2)(s) of LA FOIP and subsection 10(a)(iii) of the Regulations.

[12] Subsection 28(2)(s) of LA FOIP provides:

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:

...

(s) as prescribed in the regulations.

[13] Subsection 10(a)(iii) of the Regulations provides:

10 For the purposes of clause 28(2)(s) of the Act, personal information may be disclosed:

(a) to another local authority or a government institution for the purposes of:

...

(iii) verifying the accuracy of personal information held by the other local authority or government institution;

[14] Pursuant to subsection 28(1) of LA FOIP, a local authority may disclose personal information without consent if conditions listed in subsection 28(2) of LA FOIP are met. Subsection 28(2)(s) of LA FOIP points to additional circumstances listed in the regulations, such as subsection 10(a)(iii) of the Regulations which states a local authority may disclose personal information for the purpose of verifying the accuracy of personal information held by the other government institution.

- [15] Subsection 2(d) of LA FOIP defines “government institution” as a government institution in *The Freedom of Information and Protection of Privacy Act* (FOIP). In its submission, Englefeld indicated that the Ministry qualified as a government institution for the purposes of FOIP. My office has confirmed that the Ministry qualifies as a government institution pursuant to subsection 2(1)(d)(i) of FOIP.
- [16] Further, Englefeld indicated in its submission that it disclosed personal information to verify the accuracy of the personal information held by the government institution. The Ministry also confirmed that Englefeld was contacted by CMAC to verify the accuracy of personal information. It noted that an education representative indicated she wanted to assure herself that the child was not forced into homeschooling because Englefeld could not provide proper supports.
- [17] I am satisfied that Englefeld disclosed personal information to the Ministry for the purpose of verifying the accuracy of personal information. Therefore, the conditions for subsection 10(a)(iii) have been met. Englefeld had authorization to disclose the personal information.
- [18] I note that when public bodies disclose personal information pursuant to subsection 10(a)(iii) of the Regulations, they must ensure they respect the data minimization principle. The data minimization principle means that a public body should collect, use or disclose the least amount of identifying information necessary for the purpose. It appears that Englefeld did follow this principle.
- [19] Further, in some circumstances, it is best practice to notify individuals when personal information is disclosed without consent, but with proper legislative authority. I urge Englefeld to develop a policy and procedure that outlines the circumstances where notification would be appropriate and how notification should be given.

III FINDING

[20] I find that Englefeld had authority to disclose personal information to the Ministry in these circumstances pursuant to subsection 10(a)(iii) of the Regulations.

IV RECOMMENDATION

[21] I recommend that Englefeld develop a policy and procedure for notifying individuals when personal information is disclosed with legislative authority but without consent.

Dated at Regina, in the Province of Saskatchewan, this 26th day of September, 2017.

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