

**SASKATCHEWAN
INFORMATION AND PRIVACY COMMISSIONER**

INVESTIGATION REPORT 121/2014

Lloydminster Public School Division

Summary:

The Office of the Information and Privacy Commissioner (OIPC) received three complaints involving the collection, use, disclosure and safeguarding of the personal information of the Complainant's son by the Lloydminster Public School Division (LPSD). The Commissioner found that the LPSD had authority to use and disclose the personal information of the Complainant's son pursuant to subsections 27(b) and 28(2)(s) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) and subsections 10(d), (f) and (g)(i) of *The Local Authority Freedom of Information and Protection of Privacy Regulations*. Further, the Commissioner found no evidence to support the allegation that the LPSD collected and used photographs of the Complainant's son in the classroom or that the LPSD had failed to safeguard personal information. Given these findings, no recommendations were made.

I BACKGROUND

[1] On April 4, 2014, my office received a complaint regarding the Lloydminster Public School Division (LPSD). On October 15, 2014 and October 16, 2014 my office received additional complaints from the same individual. The nature of the complaints centered on collection, use and disclosure of personal information of the Complainant's child. The complaints stated the following:

I wish to complain about the collection and dissemination of my personal information. On August 15, 2013 communication between [LPSD] and the Alberta College of Speech and Language Pathologists and Audiologists (ACSLPA), supplying personal emails and notes to ACSLPA... [LPSD] did not ask, nor did receive permission to communicate my personal communications with the Board Chair...

I submit a complaint against [LPSD] for unlawfully collecting, using and distributing photographic images of our son [name removed]...

...I am complaining about the unacceptable custody and loss of our son's personal information by [LPSD]. On page 9 and page 18 of the ACSLPA investigation report...indicates that [LPSD] did not maintain proper custody of our son's educational records (home speech book, calendar, homework and strategies papers)...

[2] The Complainant alleged to our office that he sent his concerns to the LPSD on or about August 15, 2014 and September 14, 2014. He asserted he did not receive a response. In response, the LPSD advised my office that the Complainant was aware that the Complainant was to communicate solely and directly with LPSD's legal counsel and legal counsel only received these complaints from the Complainant in two emails dated October 16, 2014.

[3] In an email dated November 4, 2014, my office notified both parties of our intention to conduct an investigation. My office requested the LPSD provide it with a submission. On November 27, 2014 my office received a submission from the LPSD.

[4] In summary, the following are the three allegations addressed in this investigation report:

1. Use/Disclosure by LPSD

- Personal emails & notes disclosed unsevered to the Alberta College of Speech-Language Pathologists and Audiologists (ACSLPA);
- Internal use of the information (shared them with LPSD Board Chair)

2. Collection/Use of photographs

- LPSD took photographs of child and used them in the classroom.

3. Safeguarding of records

- Child's student records left in classroom and/or lost.

II DISCUSSION OF THE ISSUES

[5] The LPSD is a “local authority” pursuant to subsection 2(f)(viii) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

1. Is there personal information involved?

[6] Our customary analysis when dealing with a complaint under Part IV of LA FOIP is to first determine whether there is “personal information” involved and then to consider which of the three data transactions are engaged, i.e. collection, use and/or disclosure.

[7] The definition of “personal information” is found at section 23(1) of LA FOIP and includes:

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;

...

(k) the name of the individual where:

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

...

[8] For allegation #1, the Complainant asserted that the LPSD provided non-severed versions of emails and notes to the ACSLPA. The Complainant provided the severed emails and notes he took issue with to our office. The LPSD provided our office with the unsevered versions. From a review of the unsevered emails and notes it is clear that the severed information constitutes the personal information of the Complainant’s son pursuant to subsections 23(1)(b) and 23(1)(k)(i) of LA FOIP.

[9] For allegation #2, the Complainant asserted that the LPSD took photographs of his child. Identifiable photographs of an individual would constitute personal information pursuant to subsection 23(1)(k)(i) of LA FOIP.

[10] For allegation #3, the Complainant asserted that the LPSD left his child's school records in the classroom and/or lost them. The school records are described by the Complainant as home speech book, calendar, homework and strategies papers. This type of information would constitute personal information pursuant to subsections 23(1)(b) and 23(1)(k)(i) of LA FOIP.

[11] Therefore, as there is personal information involved LA FOIP is engaged on these matters and the rules around collection, use and/or disclosure apply.

2. Did the LPSD have authority to “use” and “disclose” the personal information of the Complainant’s son to the ACSLPA and LPSD Board Chair?

[12] As noted above, the allegation involves the use of personal information by the LPSD (sharing with the LPSD Board Chair) and the disclosure of the personal information to the ACSLPA.

[13] *Use* is defined as the internal utilization of personal information by a public body and includes sharing of the personal information in such a way that it remains under the control of that public body.

[14] Section 27 of LA FOIP sets out the rules for the use of personal information by a local authority as follows:

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).

[15] In its submission, the LPSD asserted that it had authority to use the personal information pursuant to subsection 27(b) of LA FOIP. Subsection 27(b) provides authority for a local authority to use personal information if it is “for a purpose for which the information may be disclosed to the local authority pursuant to subsection 28(2)” of LA FOIP. Therefore, I must consider whether the LPSD had authority to disclose pursuant to subsection 28(2) of LA FOIP.

[16] *Disclosure* is defined as the sharing of personal information with a separate entity, not a division or branch of the public body. The LPSD Board Chair is not a separate entity from its administration; therefore any sharing with the LPSD Board Chair would constitute a use rather than a disclosure. However, disclosure occurred in this case when the LPSD provided the ACSLPA with unsevered versions of the emails and notes.

[17] The LPSD asserted that it had authority to disclose the emails and notes to the ACSLPA pursuant to subsection 28(2)(s) of LA FOIP. This subsection 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.

[18] The LPSD pointed to subsections 10(d), (f) and (g)(i) of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations) for authority to disclose. These subsections provide:

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

...
(d) to a professional association or professional regulatory body for the purpose of carrying out the lawful activities of the association or body;

...
(f) for the purpose of commencing or conducting a proceeding or possible proceeding before a court or tribunal;

(g) to any person where the information pertains to:

(i) the performance of any function or duty or the carrying out of any responsibility by an officer or employee of a local authority;

[19] The LPSD asserted in its submission that the Complainant had requested that the ACSLPA investigate one of LPSD's employees, a registered speech-language pathologist. As a result, the ACSLPA began an investigation pursuant to Alberta's *Health Professions Act*. The ACSLPA then requested all records from the LPSD for purposes of its investigation. Finally, section 63 of the *Health Professions Act* gives authority to the investigator to search and seize records in such an investigation. Therefore, it argued, it was complying with ACSLPA's authorized investigation as a regulatory body that oversees speech-language pathologists.

[20] The ACSLPA is a regulatory body that oversees speech-language pathologists and audiologists in Alberta with the authority to conduct investigations pursuant to the Alberta *Health Professions Act* and the *Speech-Language Pathologist and Audiologist Profession Regulation*. The LPSD clarified in its submission that the speech-language pathologist employed by the LPSD was registered as a speech-language pathologist in both Alberta and Saskatchewan. The ACSLPA conducts professional conduct hearings and acts as a tribunal. Finally, the complaint made to the ACSLPA which prompted the investigation was focused on the conduct of an employee of the LPSD – one of its speech-language pathologists.

[21] Therefore, I find that the LPSD had authority to disclose the unsevered emails and notes to the ACSLPA pursuant to subsection 28(2)(s) of LA FOIP and subsections 10(d), (f) and (g)(i) of the LA FOIP Regulations.

[22] In addition, I also find that the LPSD had authority to use the information pursuant to subsection 27(b) of LA FOIP.

3. Did the LPSD “collect” and “use” photographs of the Complainant’s son in the classroom?

[23] As noted above, the allegation involves the collection and use of photographs of the Complainant’s son in the classroom by the LPSD.

[24] *Collection* occurs when a public body gathers, acquires, receives or obtains personal information. It includes the gathering of information through forms, interviews, questionnaires, surveys, polling, and video surveillance. There is no restriction on how the information is collected. The means of collection may be writing, audio or videotaping, electronic data entry or other means. We have already defined use earlier in this Investigation Report.

[25] There is dispute between the parties in this case as to whether the LPSD collected and used photographs of the Complainant’s son in the classroom. Therefore, authority to have collected and used is not the focus here. Rather, whether there is sufficient evidence that this activity occurred. In situations where there are disputes such as this, my determination is made based on consideration of all facts and evidence provided to my office by both parties.

[26] The Complainant stated the following in his complaint to my office:

There is no name on the Speech/Language Consult notes dated November 1, 2012, but this date would likely indicate that these notes were written by [LPSD employee]...

I submit a complaint against [LPSD employee] for unlawfully collecting, using and distributing photographic images of our son [name removed] based upon these notes, assuming that they are from [LPSD employee], referencing her instructions...

[27] The LPSD provided a copy of the employees notes which the Complainant was referring to. The LPSD assert that the notes reflect discussions that took place amongst team members. The reference to taking photographs of the Complainant’s son was a

recommendation made by an external consultant to the LPSD but was never utilized. The LPSD assert that no photographs were taken as alleged by the Complainant.

[28] It appears the Complainant made the assumption that the notes he was reading reflected actual events that occurred when in fact they were notes from a team meeting where behavior strategies were discussed but not necessarily implemented.

[29] Based on what has been provided to my office, I find that there is no evidence to support the allegation that the LPSD collected and used photographs of the Complainant's son in the classroom. As such, the complaint is not well founded.

4. Did the LPSD fail to safeguard the personal information of the Complainant's son?

[30] As noted above, the allegation involves the school records of the Complainant's son being left in the classroom and/or lost.

[31] Again, there is dispute between the parties in this case as to whether the LPSD failed to safeguard these records. Therefore, the focus will be on whether there is sufficient evidence that the events alleged had occurred.

[32] The Complainant stated that:

I am complaining about the unacceptable custody and loss of our son's personal information by [LPSD employee]. On page 9 and page 18 of the ACSLPA investigation report released by [investigator], [LPSD employee] indicates that she did not maintain proper custody of our son's educational records (home speech book, calendar, homework and strategies papers), stating that on multiple occasions these records "fell by the way side". She indicates that she left these records in the classroom, but they were never received by us... We believe that the documents went missing in the classroom, and that anyone visiting the classroom had access to our son's records. It is possible that a third party accessed or took our son's records as they were not properly secured.

[33] The LPSD asserted that the references the Complainant makes to the ACSLPA investigation report do not accurately reflect what the report states and are taken out of

context. In support of its position, the LPSD provided the pages of the investigation report cited by the Complainant and additional pages to my office.

[34] I reviewed page 9 of the investigation report and it does not make any reference to records that “fell by the wayside” as alleged by the Complainant. I reviewed page 18 of the investigation report and it also makes no such reference. However, pages 11 & 13 of the investigation report make reference to communication books falling to the wayside but it is within the context of the books not returning back to the school after being sent home with the child and the communication books not being utilized as much.

[35] Based on what has been provided to my office, I find that there is no evidence to support the allegation that the LPSD failed to safeguard personal information. As such, the complaint is not well founded.

III FINDINGS

[36] I find that there was personal information involved in this matter.

[37] I find that the LPSD had authority to use and disclose the personal information of the Complainant’s son pursuant to subsections 27(b) and 28(2)(s) of LA FOIP and subsections 10(d), (f) and (g)(i) of the LA FOIP Regulations.

[38] I find that there is no evidence to support the allegation that the LPSD collected and used photographs of the Complainant’s son in the classroom. As such, the complaint is not well founded.

[39] I find that there is no evidence to support the allegation that the LPSD failed to safeguard personal information. As such, the complaint is not well founded.

IV RECOMMENDATIONS

[40] As it appears that the Lloydminster Public School Division had authority for the use and disclosure of the personal information in question, there are no recommendations at this time.

Dated at Regina, in the Province of Saskatchewan, this 15th day of December, 2014.

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