

## SASKATCHEWAN

### OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

#### INVESTIGATION REPORT LA-2013-003

#### The Board of Education of Horizon School Division #205

**Summary:**

The Commissioner investigated two incidents of alleged unauthorized uses and disclosures of personal information of two students by the Board of Education of Horizon School Division #205 (Horizon). He found that the data elements involved in both incidents constituted personal information pursuant to section 23(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). He found that both disclosures by Horizon were not authorized by section 28 of LA FOIP. The Commissioner did find, however, that in one case an internal use of the personal information was authorized by section 27(a) of LA FOIP and that disclosure of one of the student's cumulative files to another school division was authorized by section 28(2)(p) of LA FOIP. Finally, the Commissioner found that a lack of training for staff and written policies and procedures addressing physical and administrative safeguards were the root causes of the breaches. Horizon made no attempt to prevent future occurrences.

**Statutes Cited:**

*The Local Authority Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. L-27.1, ss. 2(f)(viii), 23(1), 23(1)(a), 23(1)(b), 23(1)(k)(i), 27, 27(a), 28, 28(1), 28(2), 28(2)(a), 28(2)(p), 28(2)(r), 32(d); *The Local Authority Freedom of Information and Protection of Privacy Regulations*, S.S. 1993, c. L-27.1 Reg 1, s. 10(a)(i); *The Education Act*, 1995, S.S. 1995, c. E-0.2, ss. 142, 156.

**Authorities Cited:**

Saskatchewan OIPC Investigation Reports F-2012-003, F-2012-002, F-2009-001, F-2007-001, LA-2013-001; *Canada (Information Commissioner) v. Canada (Commissioner of the Royal Canadian Mounted Police)*, 2003 SCC 8, [2003] 1 SCR 66.

## Other Sources

**Cited:** Saskatchewan OIPC: *Glossary of Common Terms: The Health Information Protection Act (HIPA), Helpful Tips: Privacy Breach Guidelines*; Ministry of Education: *The Student Cumulative Record: Guidelines* (September 2012); Horizon School Division: *Ituna School Profile* (No date); Access and Privacy Branch, Service Alberta: *FOIP Guidelines and Practices* (2009).

## I BACKGROUND

[1] This Investigation Report deals with two breach of privacy complaints brought to my office's attention by the Complainant against the Board of Education of Horizon School Division #205 (Horizon).

[2] On May 18, 2010, my office received a written complaint concerning Incident #1 from the Complainant. It indicated that his daughter, a student of Horizon (Student A), received a telephone message on a piece of paper which on the reverse side was personal information about another student (Student B).

[3] After receiving instructions from my office, we received a second letter from the Complainant dated May 25, 2010. This letter provided the original note and more detail surrounding the incident. The letter stated:

I have enclosed [sic] the original [sic] document which was given to our daughter by [a Learning Resource Teacher] whom is currently employed with the Horizon School Division at the Ituna School were [sic] our children attend. It was given to our daughter [Student A] with the instruction "**do not read the back**" and it contains enough information that I **was able to identify the student to whom the information was about**, which happens to be a peer of our daughter's [Student B].

[emphasis added]

[4] On August 24, 2010, my office wrote to the Complainant, thanking him for bringing it to our attention and informing him that we would proceed with an *own motion* investigation as the personal information in question was not his own or that of his children.

- [5] On or about September 9, 2010, my office wrote to Horizon alerting it to Incident #1 and asking for details surrounding the incident and/or an internal investigation report.
- [6] On October 4, 2010, my office received a letter dated September 29, 2010 in response from Horizon. My office wrote to Horizon again on or about December 14, 2010 asking for more detail about the incident and its internal investigation.
- [7] On March 22, 2011, my office received a second letter from the Complainant dated March 15, 2011 which described Incident #2 as follows:
- ... a form requesting our children be discharged from the Horizon School Division was sent to [the Horizon Superintendent].
- Information about this request was leaked to the school, and a teacher made a classroom announcement that my son [Student C] was going to be attending a new school and where it was.
- We did not provide consent for the release of that information....
- [8] It appears that there are two components to this second complaint: 1) the Superintendent of Horizon told the Principal of Ituna School<sup>1</sup> who in turn told Student C's teacher that Student C would be attending a specific school in another school division; and 2) the teacher then told Student C's former classmates.
- [9] The Complainant informed my office that he had previously raised his concerns regarding Incident #2 with Horizon, however was not satisfied with its response.
- [10] We notified Horizon and the Complainant of our intention to undertake a breach of privacy investigation with respect to Incident #2 with letters dated April 13, 2011.
- [11] We received a submission for both Incidents #1 and #2 dated August 18, 2011 from a lawyer acting on behalf of Horizon.

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<sup>1</sup>Ituna School is a school under the direction of the Board of Education of Horizon School Division #205.

[12] My office shared our preliminary analysis for both incidents with Horizon's lawyers on or about August 31, 2012. We asked for more information to assist with these investigations. After reminders dated October 1, 2012, January 21, 2013, February 25, 2013, April 9, 2013, April 25, 2013 as well as a meeting on November 21, 2012 between the Director of Compliance and a Portfolio Officer from my office and the lawyer representing Horizon, we received a response from the lawyer on May 6, 2013.

[13] My office provided our final updated analysis to Horizon and its lawyer on or about May 14, 2013 making recommendations and asking for a response by June 30, 2013. After reminder e-mails and telephone conversations of July 3, 2013 and July 16, 2013 with Horizon's lawyer, we received no communication with respect to Horizon's intentions. On or about August 20, 2013, I sent a letter to Horizon's lawyer with a copy to Horizon's Director of Education asking again for a response by September 4, 2013. No response was received from Horizon to indicate whether the recommendations had been accepted. Accordingly, I saw no other choice but to issue this Investigation Report.

## II ISSUES

1. **Did the data elements involved in Incident #1 and Incident #2 qualify as personal information pursuant to section 23 of *The Local Authority Freedom of Information and Protection of Privacy Act*?**
2. **Did the Board of Education of Horizon School Division #205 have authority to disclose the personal information of Student B in Incident #1 pursuant to section 28 of *The Local Authority Freedom of Information and Protection of Privacy Act*?**
3. **Was the use of the personal information of Student C in incident #2 authorized pursuant to section 27 of *The Local Authority Freedom of Information and Protection of Privacy Act*?**
4. **Did the Board of Education of Horizon School Division #205 have authority to disclose the personal information of Student C in Incident #2 to the other students in**

**his former class pursuant to section 28 of *The Local Authority Freedom of Information and Protection of Privacy Act*?**

- 5. What contributing factors has the Board of Education of Horizon School Division #205 identified with respect to these breaches and was there appropriate safeguards in place to prevent it or future occurrences?**

### **III DISCUSSION OF THE ISSUES**

[14] Horizon is a “local authority” pursuant to section 2(f)(viii) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP)<sup>2</sup> which states:

2 In this Act:

...

(f) “local authority” means:

...

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

[15] My authority to investigate these matters is found in section 32(d) of LA FOIP which states:

32 The commissioner may:

...

(d) from time to time, carry out investigations with respect to personal information in the possession or under the control of local authorities to ensure compliance with this Part.

- 1. Did the data elements involved in Incident #1 and Incident #2 qualify as personal information pursuant to section 23 of *The Local Authority Freedom of Information and Protection of Privacy Act*?**

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<sup>2</sup>*The Local Authority Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. L-27.1.

[16] Section 23(1) of LA FOIP provides a definition of “personal information” 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;
- (f) the personal opinions or views of the individual except where they are about another individual;
- (g) correspondence sent to a local authority by the individual that is implicitly or explicitly of a private or confidential nature, and replies to the correspondence that would reveal the content of the original correspondence, except where the correspondence contains the views or opinions of the individual with respect to another individual;
- (h) the views or opinions of another individual with respect to the individual;
- (i) information that was obtained on a tax return or gathered for the purpose of collecting a tax;
- (j) information that describes an individual’s finances, assets, liabilities, net worth, bank balance, financial history or activities or credit worthiness; or
- (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.

[17] In Incident #1, Student A was given a note with the following text on the reverse side of the paper:

[Name of Student B]

- [name of unknown individual]
- Social Services
- call Mom?
- meeting with Dad?

[18] The note appears to indicate that there are problems in the family life of Student B. The text in the note qualifies as personal information as it reveals information about the family status of Student #2 pursuant to section 23(1)(a) of LA FOIP.

[19] Further, the use of the term “and includes” in section 23(1) of LA FOIP means that this is a non-exhaustive list. In my Investigation Report F-2012-002,<sup>3</sup> I referenced the Supreme Court of Canada decision *Canada (Information Commissioner) v. Canada (Commissioner of the Royal Canadian Mounted Police)*<sup>4</sup>, to support this interpretation.

[20] In addition, the suggestion that the Ministry of Social Services is involved with a family constitutes information of a personal nature pursuant to section 23(1)(k)(i) of LA FOIP.

[21] In order to qualify as personal information pursuant to section 23(1) of LA FOIP, the information must also be about an “identifiable individual”. Student A who received the note could foreseeably identify the individual to which the information referred, as Student B was her classmate and Ituna School has a student population of approximately 185.<sup>5</sup> Student A did in fact identify Student B.

[22] The text involved in Incident #1 disclosed to Student A qualifies as the personal information of Student B.

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<sup>3</sup>Saskatchewan Information and Privacy Commissioner (hereinafter SK OIPC) Investigation Report F-2012-002 at [33], available at [www.oipc.sk.ca/reviews.htm](http://www.oipc.sk.ca/reviews.htm).

<sup>4</sup>*Canada (Information Commissioner) v. Canada (Commissioner of the Royal Canadian Mounted Police)*, 2003 SCC 8, [2003] 1 SCR 66.

<sup>5</sup>Horizon School Division, *Ituna School Profile*, retrieved from <http://itunaschool.hzsd.ca/> on October 2, 2013.

[23] In the case of Incident #2, the complaint indicated that “a teacher made a classroom announcement that [Student C] was going to be attending a new school and where it was.”

[24] Horizon’s submission of August 18, 2011 confirms that the data elements involved are the fact that Student C would no longer be attending Ituna School and would be attending a specific school in another school division.

[25] Alberta’s *FOIP Guidelines and Practices* (2009) defines “education history” as follows:

*Educational history* refers to any information regarding an individual’s schooling and formal training, including names of schools, colleges or universities attended, courses taken, and results achieved.<sup>6</sup>

[26] As this appears to indicate a past tense, the fact that Student C no longer attended Ituna School and would be attending school in another school division would qualify as personal information of Student C pursuant to section 23(1)(b) of LA FOIP if Student C had been enrolled in the school in another school division prior to the disclosure. I have not been made aware of the relevant timelines.

[27] Nonetheless, the fact that he was planning to attend the school in another school division is still information of a personal nature. This can qualify as personal information pursuant to section 23(1)(k) of LA FOIP because it is a non-exhaustive list, as noted earlier.

[28] I find that the fact that Student C was going to be attending school in another school division is captured by section 23(1) of LA FOIP.

**2. Did the Board of Education of Horizon School Division #205 have authority to disclose the personal information of Student B in Incident #1 pursuant to section 28 of *The Local Authority Freedom of Information and Protection of Privacy Act*?**

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<sup>6</sup>Access and Privacy Branch, Service Alberta, *FOIP Guidelines and Practices* (2009) at p. 126, available at [www.servicealberta.ca/foip/resources/chapter-4.cfm](http://www.servicealberta.ca/foip/resources/chapter-4.cfm).



[29] Section 28(1) of LA FOIP states:

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.

[30] Section 28(2) of LA FOIP provides a list of possible circumstances for a local authority to disclose personal information without consent. However, there is no need to examine each one as Horizon has admitted that this was an unintentional and unauthorized disclosure of personal information. Its submission of August 18, 2011 stated: “This action was wrong and should not have happened.”

[31] I have defined “disclosure” in past Investigation Reports.<sup>7</sup>

[32] Our office, in our resource *Glossary of Common Terms: The Health Information Protection Act (HIPA)*, has defined “privacy breach” as follows:

PRIVACY BREACH happens when there is an unauthorized collection, use or disclosure of [personal information], REGARDLESS OF WHETHER THE [personal information] ENDS UP IN A THIRD PARTY’S POSSESSION.<sup>8</sup>

[33] Horizon’s letter of September 29, 2010 stated: “My investigation did confirm that a breach of privacy had occurred...”. Further, Horizon’s submission dated August 18, 2011 stated: “The teacher and the Horizon Board of Education acknowledge that this was a breach of the privacy of [Student B].”

[34] As such, an unauthorized disclosure of Student B’s personal information occurred.

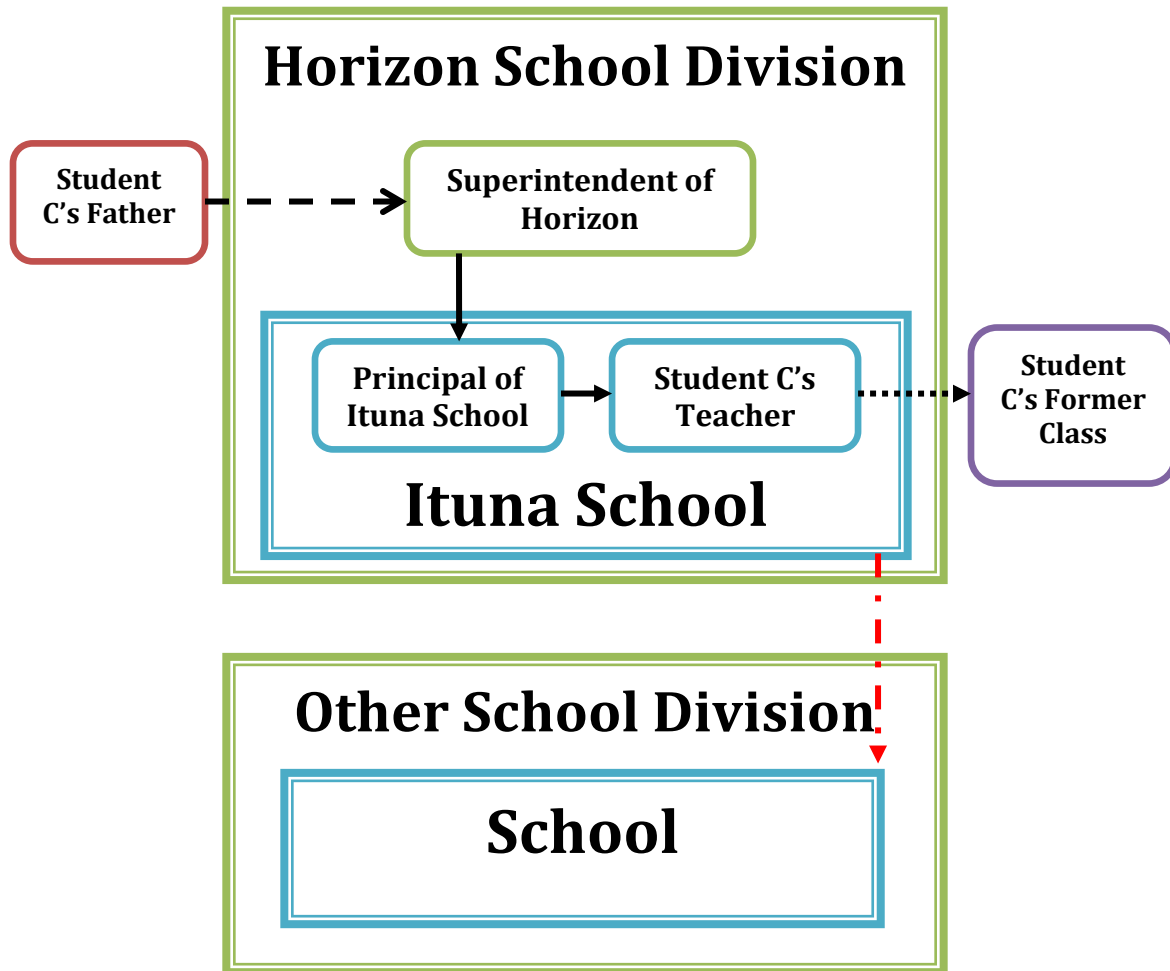
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<sup>7</sup>SK OIPC Investigation Reports F-2007-001 at [179] and F-2012-003 at [22], available at [www.oipc.sk.ca/reviews.htm](http://www.oipc.sk.ca/reviews.htm).

<sup>8</sup>SK OIPC *Glossary of Common Terms: The Health Information Protection Act (HIPA)*, available at [www.oipc.sk.ca/resources.htm](http://www.oipc.sk.ca/resources.htm).

3. Was the use of the personal information of Student C in incident #2 authorized pursuant to section 27 of *The Local Authority Freedom of Information and Protection of Privacy Act*?

### Data Flow Chart – Incident #2



--->	Indicates a collection of personal information by Horizon (Student will attend school in another school division)
—>	Indicates a use of personal information by Horizon (Student will attend school in another school division)
.....>	Indicates a disclosure of personal information by Horizon (Student will attend school in another school division)
- . ->	Indicates a disclosure of personal information by Horizon (the student's file)

[35] As per the Complainant's letter, it appears that the Complainant was upset that the information about his son's (Student C) change of school was disclosed from the central administration of Horizon to Ituna School.

[36] It is my understanding that Ituna School is administered by and a part of Horizon. As such, this action would not constitute a "disclosure" of personal information to a third party, but an internal "use" of personal information.

[37] I discussed the difference between a "use" and a "disclosure" of personal information in my Investigation Report F-2009-001 at paragraph [78]:

[78] In any event, section 28 relates to "use" of personal information under its control without consent yet the sharing of information by WCB with E.T. would have been a "disclosure". In my 2008-2009 Annual Report, I defined the terms as follows:

"Disclosure is sharing of personal information with a separate entity, not a division or branch of the public body or trustee in possession or control of that record/information."

"Use indicates 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."

[38] This is also depicted by the "Data Flow Chart – Incident #2" above.

[39] Section 27 of LA FOIP deals with use of personal information:

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).

[40] On this topic, Horizon's submission of August 18, 2011 stated the following:

24. As is the normal process in such cases, [the Superintendent of Horizon] informed the principal of the school who in turn informed the classroom teacher of [Student C]. The records of students are kept at the school by the principal and classroom teacher. Such records are passed on to the new school that the student will be attending. In some cases there is a need for communication between the schools and between teachers of the students in order to ensure a smooth transition for the student. Both the principal and the classroom teacher would require the information about the transfer of the student in the ordinary course of their work.

...

27. The investigation concluded that the Superintendent of Schools appropriately disclosed the information to the principal in the course of his duties. The principal appropriately disclosed the information to the classroom teacher. As indicated this is a standard process and was done as part of the duties of the persons involved.

[41] It appears that the principal and the classroom teacher would have needed to know that Student C was transferring schools for the performance of their duties and consistent with section 27(a) of FOIP. However, did they need to know which school Student C would be transferring to?

[42] Horizon's argument is that the principal and the classroom teacher needed to know where Student C was transferring in order to share the student's file with the new school. Presumably, the student's file contained personal information pursuant to section 23 of LA FOIP. As such, the action of the principal and the classroom teacher sharing the student's file would have been a disclosure of personal information as it is my understanding that the school in another school division is not within Horizon's district.

[43] Therefore, in order for the Superintendent's use of the personal information – informing the principal and classroom teacher that Student C would be attending the school in another school division – to be justified pursuant to section 27(a) of LA FOIP, the disclosure of the student's file must be authorized by section 28 of LA FOIP.

[44] Section 28 of LA FOIP states:

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.

(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;

(b) for the purpose of complying with:

(i) a subpoena or warrant issued or order made by a court, person or body that has the authority to compel the production of information; or

(ii) rules of court that relate to the production of information;

(c) to the Attorney General for Saskatchewan or to his or her legal counsel for use in providing legal services to the Government of Saskatchewan or a government institution;

(d) to legal counsel for a local authority for use in providing legal services to the local authority;

(e) for the purpose of enforcing any legal right that the local authority has against any individual;

(f) for the purpose of locating an individual in order to collect a debt owing to the local authority by that individual or make a payment owing to that individual by the local authority;

(g) to a prescribed law enforcement agency or a prescribed investigative body:

(i) on the request of the law enforcement agency or investigative body;

(ii) for the purpose of enforcing a law of Canada or a province or territory or carrying out a lawful investigation; and

(iii) if any prescribed requirements are met;

(h) pursuant to an agreement or arrangement between the local authority and:

(i) the Government of Canada or its agencies, Crown corporations or other institutions;

- (ii) the Government of Saskatchewan or a government institution;
- (iii) the government of another province or territory of Canada, or its agencies, Crown corporations or other institutions;
- (iv) the government of a foreign jurisdiction or its institutions;
- (v) an international organization of states or its institutions; or
- (vi) another local authority;

for the purpose of administering or enforcing any law or carrying out a lawful investigation;

(h.1) for any purpose related to the detection, investigation or prevention of an act or omission that might constitute a terrorist activity as defined in the *Criminal Code*, to:

- (i) a government institution;
- (ii) the Government of Canada or its agencies, Crown corporations or other institutions;
- (iii) the government of another province or territory of Canada, or its agencies, Crown corporations or other institutions;
- (iv) the government of a foreign jurisdiction or its institutions;
- (v) an international organization of states or its institutions; or
- (vi) another local authority;

(i) for the purpose of complying with:

- (i) an Act or a regulation;
- (ii) an Act of the Parliament of Canada or a regulation made pursuant to an Act of the Parliament of Canada; or
- (iii) a treaty, agreement or arrangement made pursuant to an Act or an Act of the Parliament of Canada;

(j) where disclosure is by a law enforcement agency:

- (i) to a law enforcement agency in Canada; or
- (ii) to a law enforcement agency in a foreign country;

pursuant to an arrangement, a written agreement or treaty or to legislative authority;

(k) to any person or body for research or statistical purposes if the head:

(i) is satisfied that the purpose for which the information is to be disclosed is not contrary to the public interest and cannot reasonably be accomplished unless the information is provided in a form that would identify the individual to whom it relates; and

(ii) obtains from the person or body a written agreement not to make a subsequent disclosure of the information in a form that could reasonably be expected to identify the individual to whom it relates;

(l) where necessary to protect the mental or physical health or safety of any individual;

(m) in compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased;

(n) for any purpose where, in the opinion of the head:

(i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure; or

(ii) disclosure would clearly benefit the individual to whom the information relates;

(o) to the Government of Canada or the Government of Saskatchewan to facilitate the auditing of shared cost programs;

(p) where the information is publicly available;

(q) to the commissioner;

(r) for any purpose in accordance with any Act or regulation that authorizes disclosure; or

(s) as prescribed in the regulations.

[45] In my office's August 31, 2012 analysis, we asked that Horizon provide my office with its "authority to share students' files with other school divisions".

[46] In its May 6, 2013 response, Horizon provided the following:

- The authority to share student files with other school division [sic] arises from:
  - Section 142 of *The Education Act, 1995* provides that students have the “right to receive instruction appropriate to that person’s age and level of educational achievement”. In order to provide the appropriate instruction a board of education requires information about the level of educational achievement of the child. The information required will be both current and historical. It would include test results and report of consultants.
  - Section 156 of *The Education Act, 1995* provides that school attendance is compulsory for students of compulsory school age. Section 160 requires boards of education to enforce the attendance at school or compulsory school age children. In order to properly ensure that students are attending school, boards of education must be able to share information about the student with each other.
  - Section 10 (a) of the Regulations for LAFOIPP provide that:
    - Personal information may be disclosed
      - to another local authority for the purposes of determining the eligibility of an individual to receive a service form [sic] another local authority (10)(a)(i)
      - Where disclosure may reasonably be expected to assist in the provision of services for the benefit of the individual to whom it relates
  - Section 28(2)(n) of LAFOIPP allows the release of personal information for any purposes where in the opinion of the head the public interest in the disclosure clearly outweighs and [sic] invasion of privacy or where disclosure would clearly benefit the individual to whom the information relates.
  - School divisions have traditionally shared information about students in two ways:
    - By transferring the cumulative record of the student
    - By direct contact between the sending and receiving schools and school division.
  - *The Student Cumulative Record Guidelines* issued by the Ministry of education set out what would be contained in the cumulative record and the process for transfer of cumulative records. (We have attached a copy of the September 2012 version of the document.)

[47] It appears that Horizon is relying on several different authorities to justify the transfer of the student’s file without consent.



[48] Horizon is relying on sections 142 and 156 of *The Education Act, 1995*.<sup>9</sup> The section that appears relevant is section 142 of *The Education Act, 1995* which states:

142(1) Subject to the other provisions of this Act, every person who has attained the age of six years but has not yet attained the age of 22 years has the right:

(a) to attend school in the school division where that person or that person's parents or guardians reside; and

(b) **to receive instruction appropriate to that person's age and level of educational achievement.**

(2) A person's right to receive instruction mentioned in clause (1)(b) is the right to instruction in courses of instruction approved by the board of education:

(a) in the schools of the school division; or

(b) subject to the stated policies, requirements and conditions of the board of education, **in any schools or institutions outside the school division with which the board of education has made arrangements to provide certain services to pupils of the school division.**

[emphasis added]

[49] In addition, Horizon has provided us with a Ministry of Education publication entitled *The Student Cumulative Record: Guidelines* (September 2012). It also provides the following:

**What procedures should schools follow when transferring and receiving Cumulative Records?**

The school that receives a new student is responsible for requesting the Cumulative Record as soon as possible after the student's arrival at school. The following steps provide a general guideline to follow in successfully transferring a Cumulative Record:

- The receiving school completes a form, similar to the one in **Appendix B** of this document, to request the student's Cumulative Record from the student's previous school. The SDS [Student Data System] provides an indicator of the last location of the student's Cumulative Record.
- **A school that receives a request for the transfer of a Cumulative Record** sends the Cumulative Record to the student's new school using the most cost effective, secure method that will allow the package to be tracked. Options

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<sup>9</sup>*The Education Act, 1995*, S.S. 1995, c. E-0.2.

can include Registered Mail, Priority Post and courier. The request form, which indicates the date that the Cumulative Record was sent, accompanies the Cumulative Record.

- Upon receipt of the Cumulative Record, the school updates the location of the Cumulative Record in the SDS.
- When a student transfers to a Custody School, the student's Cumulative Record should remain at the school from which he/she transferred. When program decisions for the student are being made by the Custody School, a Custody School official should contact the student's previous school to discuss the programming decisions and request any necessary information from the student's file.

If a school does not receive a request for a Cumulative Record within a reasonable period of time after a student has left the school, the following steps should be taken:

- The principal should run a *Not Re-enrolled Report* through the SDS to determine whether the student has re-enrolled in another school.
- If the student appears as "not re-enrolled", steps should be taken to determine the location of the student.
- If the student does not appear on the *Not Re-enrolled Report*, the student may have registered in another school, left the province, passed the school-leaving age of 16, or is deceased.
- At this point, the sending school should retain the Cumulative Record. It is recommended that the school contact Student and Educator Services staff at the Ministry of Education at (306)787-6081 to determine if other information is available concerning where the Cumulative Record should be sent.

*Standards of Practice for Student Enrolment and Withdrawal from the SDS* and instructions for use of the Cumulative Record indicator are described in the appendices of the *Registrar's Handbook for School Administrators*.

**Is it necessary to obtain permission from a student's parent or guardian before transferring a Cumulative Record?**

**Section 28(2)(a) of LAFOIPP states that a local authority may disclose personal information "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".**

As the Cumulative Record is necessary for the child's education and the transfer is consistent with the purpose for which the information is collected, permission from the student's parent or guardian is **not** required for a school to release a Cumulative Record to another school division.<sup>10</sup>

[emphasis added]

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<sup>10</sup>Ministry of Education, *The Student Cumulative Record: Guidelines* (September 2012), available at [www.education.gov.sk.ca/Cumulative-Record-Guidelines](http://www.education.gov.sk.ca/Cumulative-Record-Guidelines) at pp. 7-8.

[50] In this case, it appears that Horizon had received a form requesting transfer of the student's file as the Complainant wrote on March 15, 2011:

... a form requesting our children be discharged from the Horizon School Division was sent to [the Horizon Superintendent].

[51] As noted in the Ministry of Education's publication, section 142 of *The Education Act, 1995* would satisfy requirements of section 28(2)(a) of LA FOIP which states:

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;

[52] The transfer of the student's file, upon request from the new school division, was authorized pursuant to section 28(2)(a) of LA FOIP. It was disclosed for a purpose for which it was compiled by the local authority. That purpose is found under section 142 of *The Education Act, 1995*. And further, or in the alternative, section 28(2)(r) of LA FOIP would apply.

[53] However, it is unclear why section 156 of *The Education Act, 1995* would be relevant. At the time of the student's transfer of schools, it ceases to be Horizon's duty to enforce attendance and becomes the new school division's responsibility. As such, it is unclear why past attendance records and other information on the student's file would be relevant.

[54] Horizon has not provided further analysis to support its assertions that section 28(2)(n) of LA FOIP and section 10(a)(i) of *The Local Authority Freedom of Information and Protection of Privacy Regulations*<sup>11</sup> apply.

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<sup>11</sup>*The Local Authority Freedom of Information and Protection of Privacy Regulations*, S.S. 1993, c. L-27.1 Reg 1.

**4. Did the Board of Education of Horizon School Division #205 have authority to disclose the personal information of Student C in Incident #2 to the other students in his former class pursuant to section 28 of *The Local Authority Freedom of Information and Protection of Privacy Act*?**

[55] The other portion of the complaint of Incident #2 was that the classroom teacher told the class that Student C was no longer at the school and transferring to the school in the other school division.

[56] Horizon confirmed this event in its letter of August 18, 2011 as follows:

25. Shortly after receiving the information the classroom teacher [name] was in a conversation with the classroom with students who were wondering where [Student C] was. They had noticed his absence from school. The teacher told the students that [Student C] was no longer going to Ituna school but that he was attending a new school in [another town in another school division], Saskatchewan. No other information about [Student C] or his family was shared.

[57] The students would be third parties to Horizon and therefore this would constitute a disclosure of personal information. I must consider if the disclosure was authorized by section 28 of LA FOIP. This section was reproduced earlier in this Report.

[58] Horizon's letter of August 18, 2011 made the following observations:

28. The classroom teacher then disclosed the information to her students. However, it was determined that there was minimal information disclosed – only that [Student C] had moved and was going to school in [another school division].

...

30. In this case, the fact that the student was no longer going to school was readily apparent to the students and confirming that he was gone was a minimal breach of personal information. Telling the students that [Student C] was in [name of school in another school division] was personal educational information of [Student C] and should not have been disclosed. Again the information divulged **was a minimal breach** – the address of a person or family is readily available from public records and there is usually only one school in such communities that could not be accessed by searching public records.

31. However, this incident was a breach and the teacher and Board of Education acknowledge that it should not have occurred.

[emphasis added]

***Disclosure that Student C was no longer attending Ituna School***

[59] Horizon's argument that the information that Student C was no longer attending Ituna School would have eventually been apparent to the students may be valid. As such, we look to section 28(2)(p) of LA FOIP which states:

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:

...

(p) where the information is publicly available;

[60] The question then becomes was this information in the public domain at the time of the disclosure.

[61] On this note, the Complainant's letter of March 15, 2011 questioned the following: "We did not provide consent for the release of that information, further the information was released by way of a classroom announcement before it was even fact." The Complainant did not elaborate on this point, nor did he provide a timeline of events.

[62] Nevertheless, the burden of proof is borne by the local authority and Horizon has not provided evidence that the absence of Student C was noticeable before the information was released (i.e. dates or a timeline).

[63] As such, this action is an unauthorized disclosure of personal information.

***Disclosure that Student C would be attending a school in another school division***

[64] Horizon has admitted it had no authority to disclose the personal information that Student C would be attending school in another school division.

[65] However, its argument that this was a “minimal breach” because “the address of a person or family is readily available from public records and there is usually only one school in such communities that could not be accessed by searching public records” is unreasonable.

[66] First of all, LA FOIP does not contemplate the severity of a disclosure. More importantly, a student has options for education other than a public school in its area such as home schooling, private boarding school, or living with relatives other than parents in another division. As Student C appears to be a minor, it is not likely he would have a dwelling of his own and his address would be publically available if he were not living with his family.

[67] This action was an unauthorized disclosure of personal information.

**5. What contributing factors has the Board of Education of Horizon School Division #205 identified with respect to these breaches and was there appropriate safeguards in place to prevent it or future occurrences?**

[68] Horizon lawyer’s letter of August 18, 2011 served as its internal investigation report for both Incident #1 and #2. The letter identified the following as contributing factors in Incident #1: the absence of the school secretary when the telephone call in question occurred and the lack of filing of personal information. It did not identify any contributing factors for Incident #2.

[69] My office has produced the resource *Helpful Tips: Privacy Breach Guidelines*<sup>12</sup> to assist public bodies in responding to privacy breaches which is available on our website. This resource lists steps for responding to the breach and what information to include in an investigation report, such as the root cause of the breach. The investigation report from Horizon was deficient. As such, through this investigation, I have also identified other contributing factors as I will discuss.

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<sup>12</sup>SK OIPC *Helpful Tips: Privacy Breach Guidelines*, available at [www.oipc.sk.ca/resources.htm](http://www.oipc.sk.ca/resources.htm).

***Absence of School Secretary – Incident #1***

[70] Horizon’s lawyer recounted the following in its letter of August 18, 2011:

9. On May 6, 2010 [name of Learning Resource Teacher] answered the school phone while the school secretary was away from her desk. This was not a normal part of her job and she did it in passing to assist at a busy time. The caller asked [the Learning Resource Teacher] to take a message to [Student A] regarding a babysitting job.
10. Shortly after answering the phone [the Learning Resource Teacher] met [Student A] in the hall just outside her office. She asked [Student A] to step into the Learning Resource Teacher’s office so that she could jot down the name and phone number from the phone message for her. She inadvertently jotted the note on the piece of paper that she had used two days before when making the notes of her talk [about Student B].
11. [The Learning Resource Teacher] did not check and did not realize that the paper had other information on it. This action was wrong and should not have happened.

[71] In terms of mitigation for future breaches occurring due to the missing school secretary, the submission stated:

20. The school has also revised its processes for taking messages. Specific people will be identified to fill in when the receptionist is not available. Specific forms will be used to take messages so that other pieces of paper will not be used.

[72] It is unclear as to how big a role this factor actually played in this breach and if the specified course of action will be effectual in preventing future breaches.

[73] It is possible that having specific sheets of paper for messages will have some impact on the reoccurrence of similar situations. However, messages often contain personal information and specific paper will not necessarily prevent an individual from writing a different message on either side of the page and then delivering it to one of the intended individuals, as occurred in Incident #1.

[74] All employees of Horizon that handle personal information must be adequately trained on LA FOIP and the importance of protecting personal information. Therefore, it is not clear

what the effect of allowing only certain individuals to take messages will have on future incidents, unless they understand the privacy requirements of LA FOIP.

***Filing Personal Information – Incident #1***

[75] Horizon’s submission of August 18, 2011 stated:

14. The facts set out above summarize the finding of the facts. The investigation concluded that this was **an isolated incident due to human error.** If the teacher had filed the material it would not have been available on the desk. If she had checked the piece of paper before she used it to write the message there would not have been a breach.

[emphasis added]

[76] The suggestion that personal information is being left unsecured on a teachers’ desk is very concerning to me. As corrective measures, Horizon’s submission reported the following:

19. The offices used by the Learning Resources Teachers are shared and this was identified as a cause of concern. Staff using the office were advised that

- they need to ensure that their documents are properly stored and filed or otherwise secured when they leave the office
- they need to ensure that the office is kept locked when no teachers are present.

[77] The above statement raises more concerns that the office in which personal information is stored is left accessible to students, teachers and members of the public.

[78] Section 28 of LA FOIP prohibits a local authority to disclose personal information without authority. In order to comply, a local authority must have physical, technical and administrative safeguards in place to ensure as much as possible that personal information will not be accidentally disclosed.



[79] I discussed this in paragraphs [52] to [57] of my Investigation Report LA-2013-001 as follows:

[52] It is imperative that Providence have established written policies and procedures to guide its employees with what is required by law with regards to privacy protection for personal information and personal health information when disclosing to external parties such as WCB.

[53] Section 16 of HIPA reads as follows:

16 Subject to the regulations, a trustee that has custody or control of personal health information must establish policies and procedures to maintain administrative, technical and physical safeguards that will:

- (a) protect the integrity, **accuracy** and confidentiality of the information;
- (b) protect against any reasonably anticipated:
  - (i) threat or hazard to the security or integrity of the information;
  - (ii) loss of the information; or
  - (iii) unauthorized access to or use, disclosure or modification of the information; and
- (c) otherwise ensure compliance with this Act by its employees.

[emphasis in original]

[54] I have discussed in Investigation Report F-2007-001 what is required of a trustee in order to comply with section 16 of HIPA. This includes having written policies and procedures:

[48] As of this date, there have been no regulations enacted under HIPA that are relevant to the standards required of a health information trustee such as WCB for *administrative, technical or physical safeguards*". Our office has concluded in past Reports that section 16 requires that a trustee establish **written policies and procedures.**

[emphasis in original]

[55] Further, in Investigation Report H-2011-001, I detail the requirements of section 16 of HIPA.

[56] **LA FOIP does not contain the same explicit language as that in section 16 of HIPA; it is my view nonetheless that it is implicit that all local authorities must**

**also have adequate safeguards in place to protect personal information in its possession or control. Therefore, I would expect that to be compliant with Part IV of LA FOIP, a local authority would have written policies and procedures for its employees.**

**[57] Without written policies and procedures a local authority and trustee has not taken reasonable steps to safeguard personal information or personal health information in its possession/custody and control.**

[emphasis added]

[80] As Incident #1 did not involve electronic systems, there is no need to consider technical safeguards. However, I must consider whether appropriate physical and administrative safeguards were in place.

[81] Physical safeguards for Student B's personal information could have included a locked filing cabinet for each faculty member assigned to a certain case load of students. The file cabinets should also be in a room that is either constantly supervised or which has a lock on the door. These physical safeguards would need to be described in written policies and procedures.

[82] Administrative safeguards, also described in written policies and procedures, would cover, among other things, the following:

- That all personal information should be kept within the cabinets at all times unless it is in use by authorized individuals. Individuals authorized to use the personal information should be clarified;
- Personal information should not be lying around on a desk in a room where students or staff without a need-to-know frequent;
- When file cabinets and rooms should be locked and who should have access;
- Personal information is subject to access to information requests and should be in a filing system where it is easily retrievable if required to do so; and
- The training programs to make employees aware of these policies and procedures as well as LA FOIP in general. I will discuss this in more detail below.

[83] Among the attachments provided with Horizon's submission of August 18, 2011, only one mentions anything about the physical security of personal information. This is the document *Information about our Privacy Policy for Parents and Guardians*. It states:

***Is the personal information secure?***

The Board takes all reasonable precautions to ensure that personal information is kept safe from [sic] loss, unauthorized access or disclosure. This includes secure storage, restricted file access, internal passwords and **security policies**.

[emphasis added]

[84] This document does not provide enough detail to constitute an adequate administrative or physical safeguard. Horizon has not provided my office with a copy of the policies alluded to in this statement.

[85] Horizon also provided the following information in its letter dated August 18, 2011:

38. Another in-service for principals on this issue is scheduled for August 25, 2011. Copies of the following materials that will be provided to all principals are attached:

- LAFOIPP Summary (2 pages)
- Top Ten Guidelines (1 page)
- Information about our Privacy Policy for Parents (1 page)
- Privacy & Access to Information Q & A for Administrators (5 pages)

39. Principals will be expected to share these materials with staff. They will also be aided in providing further resources and training for their staff on these issues.

[86] In my office's analysis of August 31, 2012, we asked for written policies and procedures describing the physical and administrative safeguards of personal information at Ituna School and specifically, a copy of the "security policies" mentioned in the resource *Information about our Privacy Policy for Parents and Guardians*.

[87] In its response of May 6, 2013, Horizon did not address the requirement for policies and procedures for administrative and physical safeguards for personal information. It did, however, provide copies of the following policies:

AP - 140 – Acceptable Use of Technology  
AP - 143 – Stolen or Missing Technology Equipment  
AP - 147 – Social Media and Web Based Service Procedures  
AP - 180 – LAFOIPP  
AP - 182 – Video Surveillance  
AP - 185 – Records retention and Disposal

[88] Policies AP-140, AP-143, AP-147 and AP-182 concern technical safeguards such as technology, Internet and electronic media and have no bearing on this investigation. As such, have no relevance and I will not comment on these policies at this time.

[89] Upon review of policies AP-180 – LAFOIPP and AP-185 – Records retention and Disposal, there does not appear to be anything that addresses the above noted concerns and issues related to administrative and physical safeguards. Further, in my office's analysis of May 14, 2013, we provided specific critiques of these two policies for the consideration of Horizon.

[90] Horizon must develop policies or supplement existing policies to address administrative and physical safeguards of personal information as discussed.

***LA FOIP Training for Horizon Staff – Incidents #1 and #2***

[91] Underlying both Incidents #1 and #2, is the question of whether the Horizon staff members involved had training on LA FOIP and the protection of personal information.

[92] In its letter of August 18, 2011, Horizon's lawyer claims that the Learning Resource Teacher involved in Incident #1 supposedly had knowledge of Horizon's duty to protect personal information. It stated:

15. The Learning Resource Teachers were aware of the need for confidentiality when dealing with sensitive issues with students. The fact that the record in question was not treated in a proper manner is understood and the teacher who released the information in question was clearly told:

- this action was not acceptable; and

- that in future steps needed to be taken to prevent such errors from happening again.

16. A similar message was conveyed to all the Learning Resource Teachers who use the office.

[93] The lack of detail provided to support these assertions raises certain questions with respect to the training Learning Resource Teachers have received.

- How did the Learning Resource Teacher know about “the need for confidentiality when dealing with sensitive issues with students”? How does one define “sensitive issues”? Does this mean she does not know how to treat personal information that is not sensitive? I note confidentiality and privacy are not synonymous.
- What kinds of “future steps” were described to the Learning Resource Teacher with respect to preventing further issues?
- Was the Learning Resource Teacher provided training on LA FOIP prior to the incident? By who? What material was provided at the time of the training?
- Were the other Learning Resource Teachers who were conveyed a similar message trained on LA FOIP?
- Are the answers to these questions found in written policies and procedures?

[94] Horizon’s submission also stated the following:

21. The Principal of Ituna School went through the requirements of *LAFOIPP* with the staff of the school. He also clarified with staff the procedure for taking messages as well. He also took the opportunity to identify what should and should not be shared with people over the phone.

[95] Horizon has not confirmed if this included both the Learning Resource Teacher involved in Incident #1 and the teacher involved in Incident #2.

[96] However, later in the letter, Horizon stated:

36. As a result of the two incidents at Ituna School the Superintendent of Human resources spent two and a half hours in June 2011 **with all principals of the school division** regarding the proper handling of documentation and the basic principles of privacy. She discussed the provision of *LAFOIPP* and dealt in particular with issues relating to medical information.

37. She spoke about:

- application of LAFOIPP;
- *Education Act* requirements for protection of students including privacy;
- Explained the instances of breaches and [sic] that had occurred and the need to prevent further breaches and the need to keep student information secure;
- discussed specific fact situation such as;
  - Sharing with other professionals such as social workers;
  - Sharing within the school on a need to know basis;
  - Sharing with parents
- Sharing information about student when getting calls from other schools.

...

38. Another in-service for principals on this issue is scheduled for August 25, 2011. Copies of the following materials that will be provided to all principals are attached:

- LAFOIPP Summary (2 pages)
- Top Ten Guidelines (1 page)
- Information about our Privacy Policy for Parents (1 page)
- Privacy & Access to Information Q & A for Administrators (5 pages)

39. **Principals will be expected to share these materials with staff.** They will also be aided in providing further resources and training for their staff on these issues.

40. The update on privacy and access policy and procedure is expected to be completed this fall and the introduction of the revisions will be used as an opportunity for further discussion of privacy, the need for confidentiality and the appropriate care and use of records.

[emphasis added]

[97] As a result of this information from Horizon, several questions arise:

- Had the staff at Ituna School received training on LA FOIP prior to the incident in question? Why just the Principals?
- What kind of LA FOIP training has the Superintendent of Human Resources received?
- Did the meeting with Ituna staff and principal mentioned at paragraph 21 of Horizon's letter occur before or after the meetings mentioned in paragraphs 36 and 38?
- "Sharing" is not the same as a "use" or "disclosure". Do Horizon's staff know the nuances essential for a solid understanding of LA FOIP?

[98] Upon review of the documents provided as part of Horizon's submission, I found no discussion of the need for training of staff of Horizon. Horizon has not given much detail on the training regimes and other safeguards that may be in place. If these training programs and safeguards do not exist, Incident #1 or #2 cannot simply be attributed solely to human error as suggested by Horizon.

[99] In our preliminary analysis on August 31, 2012, we asked Horizon to provide us with the following:

- Details surrounding the privacy/LA FOIP training that the Learning Resource Teachers had received prior to the incident and any written policies and procedures that speak to such training.

[100] In its response of May 6, 2013, Horizon's lawyer stated:

- The Learning Resource teachers did not receive any specific privacy/LAFOIPP training before the incident. The teachers would, however, have been made aware of the requirements for confidentiality in dealing with student information throughout their training as a teacher. **For example, section 17 of the Saskatchewan Teacher's Federation Code of Ethics specifically states that teachers are "to keep the trust under which confidential information is exchanged."**
  - The Horizon School Division recognizes that it has an obligation to ensure that training is available for its staff so that they understand their obligations under LAFOIPP. After the incident occurred principals were given instruction in LAFOIPP and were instructed to share such information with their staff. We have previously provided you with the information materials that were used.
  - At the time of the incident there were no written policies or procedures relating to such training.
  - **The Horizon school division recognizes the value of setting out in writing the policies and procedures relating to such training.**

[emphasis added]

[101] As such, it appears that the Learning Resource Teacher involved in Incident #1 and Teacher involved in Incident #2 had not received any training with respect to LA FOIP prior to the incident in question. LA FOIP has been in force since September 1<sup>st</sup>, 1994 for school divisions.

[102] Further, LA FOIP is paramount to the Saskatchewan Teacher's Federation *Code of Ethics* as one is a code and one is a quasi-constitutional statute. In any event, LA FOIP provides much more detail and direction than a single statement in the code.

[103] The privacy breaches were not "isolated incident[s] due to human error" as presented by the lawyer for Horizon. They were two separate incidents in which lack of training of Horizon staff was a major contributing factor. Horizon could not demonstrate that either the Learning Resource Teacher or Student C's teacher received any privacy training before the incidents resulting in a lack of awareness for the need to protect the privacy of Students B and C. Further, lack of written policies and procedures for administrative and physical safeguards for personal information was a factor in Incident #1.

[104] My office's preliminary analysis provided to Horizon on May 14, 2013 recommended that Horizon develop written policies and procedures that address training of all staff and those that manage physical and administrative safeguards for the protection of personal information. As an unauthorized disclosure of Student C's personal information had occurred, we also recommended that Horizon provide a written apology to the Complainant, the father of Student C. My office asked Horizon to complete these tasks by June 30, 2013.

[105] As described in the background section, my office gave several reminders to Horizon that we were waiting for a response. I sent a final reminder letter in August 2013 asking for a response by September 4, 2013. No response was received. As such, Horizon has not demonstrated it took steps to address the root causes of these breaches and to help prevent future occurrences.

#### **IV FINDINGS**

[106] The information disclosed to Student A qualifies as the personal information of Student B pursuant to section 23(1) of *The Local Authority Freedom of Information and Protection of Privacy Act*.



- [107] The information in question in Incident #2 qualifies as the personal information of Student C pursuant to section 23(1) of *The Local Authority Freedom of Information and Protection of Privacy Act*.
- [108] Incident #1 resulted in an unauthorized disclosure of personal information of Student B to Student A pursuant to section 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act*.
- [109] The Board of Education of Horizon School Division #205 had authority to use the personal information of Student C pursuant to section 27(a) of *The Local Authority Freedom of Information and Protection of Privacy Act* to facilitate the transfer of Student C to another division.
- [110] The Board of Education of Horizon School Division #205 had authority to disclose the personal information of Student C to the other school division pursuant to section 28(2)(a) or 28(2)(r) of *The Local Authority Freedom of Information and Protection of Privacy Act*.
- [111] Incident #2 resulted in an unauthorized disclosure of personal information of Student C to his former classmates pursuant to section 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act*.
- [112] The Board of Education of Horizon School Division #205 did not have appropriate training for staff regarding the protection of personal information in place prior to both Incident #1 and #2. As such, human error is not to blame for the breaches of privacy.
- [113] The Board of Education of Horizon School Division #205 did not have written policies and procedures that address administrative and physical safeguards for the protection of personal information in place before Incident #1.

**V RECOMMENDATIONS**

- [114] The Board of Education of Horizon School Division #205 should develop written policies and procedures that address the training of all staff that manage personal information. These policies and procedures should take into account current staff and new hires.
- [115] The Board of Education of Horizon School Division #205 should develop written policies and procedures that address physical and administrative safeguards for personal information.
- [116] The Board of Education of Horizon School Division #205 should consider and implement the feedback provided by my office on policies AP-180 – LAFOIPP and AP-185 – Records retention and Disposal.
- [117] The Board of Education of Horizon School Division #205 should offer a written apology to the Complainant for the unauthorized disclosure of his son’s personal information to his classmates.
- [118] The Board of Education of Horizon School Division #205 should provide breach notification to Student B’s parents in accordance with my office’s resource *Helpful Tips: Privacy Breach Guidelines*.

Dated at Regina, in the Province of Saskatchewan, this 2<sup>nd</sup> day of December, 2013.

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R. GARY DICKSON, Q.C.  
Saskatchewan Information and Privacy  
Commissioner