



## REVIEW REPORT 044-2017

### Horizon School Division

May 18, 2017

**Summary:** The Applicant requested records regarding Horizon School Division's (Horizon) investigation into incidents involving her daughter and other students. She was dissatisfied with Horizon's response so she appealed to the Information and Privacy Commissioner (IPC). The IPC made a number of recommendations, including Horizon release de-identified information regarding the investigation to the Applicant.

#### I BACKGROUND

[1] On January 16, 2017, the Horizon School Division (Horizon) received the following access to information request:

I am now formally requesting detailed information on the investigation that took place...the day that [name of Student #1] spat on my daughter [name of daughter]. I am requesting the outcome of that investigation. I am also requesting the steps that have taken place regarding previous incidents of bullying on my daughter, [name of daughter] by [name of Student #2].

I am requesting a copy of the plan that is apparently in place, regarding the continued bullying of my daughter, [name of daughter], at [name of high school].

[2] In a letter dated March 10, 2017, Horizon responded to the Applicant. It provided the Applicant with some records and withheld other records citing subsection 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) as its reason for refusal. It also indicated it had no records in its possession or under its control regarding the third part of the request – which was about Horizon's plan regarding the bullying of her daughter.

[3] On March 13, 2017, the Applicant requested a review by my office.

[4] On March 13, 2017, my office notified both the Applicant and Horizon that it would be undertaking a review.

**II RECORDS AT ISSUE**

[5] The following records are at issue in this review.

<b>Record #</b>	<b>Horizon Reference #</b>	<b>Description</b>	<b>Reasons for Refusal</b>
A	2	Incident Details Report dated October 21, 2016 (1 page)	Entire record withheld under subsection 28(1) of LA FOIP
B	3	Incident Details Report dated January 6, 2017 (2 pages)	Entire record withheld under subsection 28(1) of LA FOIP
C	4	Copy of investigative notes dated from September 2, 2016 to January 16, 2017 (6 pages)	Entire record withheld under subsection 28(1) of LA FOIP
D	5	Incident Details Report dated January 20, 2017 (2 pages)	Entire record withheld under subsection 28(1) of LA FOIP
E	6	Email between Superintendent of Learning Services and Director of Education/Chief Executive Officer dated January 16, 2017 (3 pages)	Entire record withheld under subsection 28(1) of LA FOIP
F	7	Screenshot of student tracking record (1 page)	Entire record withheld under subsection 28(1) of LA FOIP

[6] The search efforts of Horizon are also at issue in this review.

**III DISCUSSION OF THE ISSUES**

[7] Horizon qualifies as a local authority as defined by subsection 2(f)(viii) of LA FOIP.

**1. Did Horizon meet its obligations under section 8 of LA FOIP?**

[8] Section 8 of LA FOIP provides as follows:

8 Where a record contains information to which an applicant is refused access, the head shall give access to as much of the record as can reasonably be severed without disclosing the information to which the applicant is refused access.

[9] In order to comply with section 8 of LA FOIP, a line-by-line analysis of the records at issue is required to determine which exemptions apply to which portions of the records. The local authority is required to sever those portions that may qualify for a mandatory or discretionary exemption and release the balance of the record to the Applicant.

[10] Based on a review of the records at issue, it appears as though Horizon took a blanket approach to withholding records. In other words, instead of reviewing and withholding portions of records and releasing the remainder of records, the records at issue were withheld in their entirety. While there are circumstances in which records can be legitimately withheld in their entirety, the records at issue in this case do not present such circumstances. I will discuss this in greater detail in the next issue.

[11] I find that Horizon has not complied with section 8 of LA FOIP.

**2. Did Horizon properly withhold records pursuant to subsection 28(1) of LA FOIP?**

[12] Subsection 28(1) of LA FOIP provides:

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.

[13] In order for subsection 28(1) of LA FOIP to apply, the information in the record must contain third party personal information as defined by subsection 23(1) of LA FOIP. In its submission to my office, Horizon asserted that the information in the withheld records contained information that qualified as personal information as defined by subsection 23(1)(k) of LA FOIP. Subsection 23(1)(k) of LA FOIP provides:

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:

...

(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.

[14] Subsection 28(2) of LA FOIP provides local authorities with the authority to disclose personal information without the subject individual's consent in certain circumstances. However, Horizon's position is that subsection 28(2) of LA FOIP does not authorize disclosure in this circumstance. Therefore, it was withholding Records A, B, C, D, E, and F in their entirety.

[15] Based on a review of the records at issue, the records contain:

- information about incidents involving the Applicant's daughter and other students,
- information about what the school and Horizon did to investigate the incidents and respond to the investigation,
- the information of a number of individuals, including:
  - The Applicant,
  - The Applicant's daughter,
  - A relative of the Applicant's daughter,
  - Other students (Student #1, Student #2 and witnesses)
  - Other students' parents.

[16] Below is a determination whether Horizon properly withheld information within records pursuant to subsection 28(1) of LA FOIP from the Applicant or if the Applicant has a right to access information within the records.

**a. Does the Applicant have a right to access her own personal information?**

[17] First, the Applicant has a right to her own personal information pursuant to subsection 30(1) of LA FOIP, which provides:

- 30(1) Subject to Part III and subsections (2) and (3), an individual whose personal information is contained in a record in the possession or under the control of a local authority has a right to, and:
- (a) on an application made in accordance with Part II; and
  - (b) on giving sufficient proof of his or her identity;
- shall be given access to the record.

[18] The Applicant's personal information appears in Records C and E. I find that the Applicant is entitled to her own personal information. I recommend that Horizon release to the Applicant her own personal information.

**b. Does the Applicant have a right to access personal information she supplied to Horizon?**

[19] Second, the Applicant reported incidents involving her daughter and Student #1 and Student #2. Since she supplied the personal information of her daughter and other students to the school, then I find it would be an absurd result that Horizon withhold such information from her pursuant to subsection 28(1). For example, Record A contains a paragraph where the first three sentences describe the incident involving the Applicant's daughter and another student. The Applicant had reported this incident to the principal via email on October 19, 2016. When I review the contents of this email, I note the contents are very similar to the first three sentences in Record A. It would be absurd to withhold these first three sentences from the Applicant since she was the one who supplied such information in the first place. I recommend that Horizon review the records at issue and release to the Applicant any information she had originally supplied to Horizon.

**c. Does the Applicant have a right of access to her daughter's personal information?**

[20] Third, the Applicant's daughter herself has a right to her own personal information pursuant to subsection 30(1) of LA FOIP. The Applicant may be able to exercise this right on her daughter's behalf pursuant to subsection 49(d) of LA FOIP, which 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;

[21] The Applicant's daughter's personal information is on Records A, B, C, D, and E. I recommend that Horizon verify and confirm that the Applicant is indeed the legal custodian of her daughter. If so, and if the head of the Horizon determines releasing the daughter's personal information to the Applicant is not an unreasonable invasion of the daughter's privacy, then I recommend that Horizon release the daughter's personal information to the Applicant.

**d. Does the Applicant have a right to access other students' personal information?**

[22] The records at issue contain information about other students. For example, Records A, B, D, and F contain information that detail the discipline issued by Horizon to Student #1 and Student #2. Such information would qualify as personal information as defined by subsection 23(1)(k) of LA FOIP.

[23] Subsection 28(1) of LA FOIP provides that personal information can be disclosed with the individual's consent. Subsection 28(2) of LA FOIP provides for circumstances in which the personal information that can be disclosed without an individual's consent. I find that neither subsection 28(1) nor subsection 28(2) of LA FOIP authorizes the disclosure of the students' personal information to the Applicant. Therefore, I recommend that the portions of the records that contain information about other students to be withheld pursuant to subsection 28(1) of LA FOIP.

**e. Does the Applicant have a right to access other individuals' personal information?**

[24] The names of other individuals, such as the names of parents of other students or the name of a relative of the daughter appears in the records. I find that such information qualifies as personal information pursuant to subsection 23(1)(k) of LA FOIP. I recommend that such information be withheld pursuant to subsection 28(1) of LA FOIP.

[25] The names of Horizon employees appear in the records too. I find that such information does not qualify as personal information as the Horizon employees were carrying out

their employment responsibilities when they were either responding to or being asked about the incidents. Subsection 23(2) of LA FOIP provides that information about employment responsibilities does not qualify as personal information:

23(2) “Personal information” does not include information that discloses:

(a) the classification, salary, discretionary benefits or employment responsibilities of an individual who is or was an officer or employee of a local authority;

[26] In the course of the review, my office recommended that information about Horizon employees acting in their professional capacities be released to the Applicant, including the names. In an email dated May 16, 2017, Horizon disagreed with releasing the names of Horizon employees by asserting the names are not captured by subsection 23(2)(a) of LA FOIP. It asserted that subsection 23(2) of LA FOIP relates to information about the classification, salary, benefits and job responsibilities of an employee and that it does not include the name of an employee.

[27] Horizon did not provide arguments as to how the names of Horizon employees would qualify as personal information as defined by subsection 23(1) of LA FOIP. Subsection 23(1)(k) of LA FOIP, which was quoted earlier, provides that the name of the individual is personal information if it appears with other personal information that relates to the individual, or if the disclosure of the name itself would reveal personal information about the individual. However, I find that disclosing the name of Horizon employees in this context does not reveal any personal information about the employees. It reveals information about the employees acting in their professional capacities. I recommend that Horizon disclose the names of the Horizon employees.

**f. Does information about the school’s investigation qualify as “personal information”?**

[28] The records contain information about the school’s investigation, including steps they took to verify allegations of bullying by other students and the outcome of the investigation. Information about the investigation itself is not personal information. For

example, in Record B, the investigator noted that he/she spoke to witnesses and he/she noted the names of the witnesses and what they said. The fact that the investigator spoke to witnesses is not personal information. However, the names of students who were witnesses are personal information. In this instance, Horizon could easily sever the names of the witnesses pursuant to subsection 28(1) of LA FOIP but release the remainder of the sentence.

[29] Therefore, I find the information about the investigation itself is not personal information. I recommend that Horizon review the records at issue and de-identify the information as much as possible. In some cases, it could be as easy as severing names of other students or parents (but not the names of Horizon employees). In other cases, de-identification may require removing portions or entire sentences. Then I recommend that Horizon release the de-identified information regarding its investigation to the Applicant.

### **3. Has the purpose of LA FOIP been achieved?**

[30] One of the purposes of LA FOIP is so that the activities of a local authority can be scrutinized. In this case, the Applicant wishes to access records regarding Horizon's response to the harassment and bullying her daughter faces.

[31] Subsections 152 to 155 of *The Education Act, 1995* addresses student discipline. Subsection 152(2) of *The Education Act, 1995* provides that every board of education shall make provisions that guide the expeditious investigation and treatment of problems arising in the relationship between a pupil and the school. These provisions are to be set out in its bylaws or administrative manual and are to be applicable to schools within its jurisdiction. I note that Horizon has made its administrative procedures available on its website.

[32] Therefore, the question is whether the Applicant has received enough information regarding the school's response to incidents involving her daughter so that the Applicant can assess whether or not Horizon has responded to the incidents in accordance with *The Education Act, 1995* and Horizon's administrative procedures.



[33] In its submission, Horizon asserted that disclosure should be limited to the fact the incident was treated seriously and discipline was issued according to school policy. To support its assertion, Horizon cited Order F2004-015 by the Alberta Office of the Information and Privacy Commissioner (AB OIPC), which provided that disclosing the exact discipline might be an unreasonable invasion of privacy but the fact there was discipline would not be an unreasonable invasion of privacy.

[34] Within that same Order, the AB OIPC found that it would be appropriate to disclose information that would reveal how the matter was dealt with:

[para 92] Given the serious nature of the matter, the response to the incident by the Public Body's officials should also be sufficiently transparent to enable those affected, and the public generally, to know whether it was an appropriate response – that justice was done and can be seen to have been done. This weighs in favour of disclosure of information that would reveal how the matter was dealt with.

[35] I agree with Horizon that the specific details of the discipline should not be disclosed. That is consistent with my office's finding earlier. However, consistent with Order F2004-015 by AB OIPC, information that reveals how the matter was dealt with should be disclosed.

[36] In its submission, Horizon submitted that it had provided a summary email dated January 16, 2017 to the Applicant. This summary email is an edited version of another email from the Superintendent of Learning Services to the Director of Education/CEO of Horizon (Record E). Horizon edited it by replacing names with terms such as "student #1", "teacher", and "parent". This summary email was to provide the Applicant with information about its investigation while protecting the privacy of individuals. Further, Horizon asserts that its Director of Education emailed the Applicant information about the investigation process. It provided my office with a copy of the email chain that documents the correspondence between it and the Applicant. I acknowledge Horizon's efforts to provide the Applicant with information about its investigation.

[37] In the course of the review, my office suggested that Horizon cite specific sections of *The Education Act, 1995* and its administrative procedures that it based its investigation upon. In response, Horizon requested that my office exclude any recommendation that Horizon

create a record to cite the specific sections of *The Education Act, 1995* and its administrative procedures that it based its investigation upon as this is not within the jurisdiction of my office and beyond the scope of LA FOIP.

[38] I agree that LA FOIP does not require local authorities to create records to respond to access to information requests. My office's suggestion to cite specific sections of *The Education Act, 1995* and its administrative procedures was in the same spirit of Horizon's attempts to provide the Applicant information in its emails dated January 16, 2017 to January 19, 2017 as described in paragraph [36].

[39] What LA FOIP does require is that local authorities provide Applicants access to records that already exist and are in the possession or control of the local authority. Therefore, I recommend that Horizon release as much information as it can regarding what it did to investigate the matter.

#### **IV FINDINGS**

[40] I find that Horizon has not complied with section 8 of LA FOIP.

[41] I find that the Applicant is entitled to her own personal information.

[42] I find it would be an absurd result that Horizon withhold information that the Applicant supplied to it pursuant to subsection 28(1) of LA FOIP

[43] I find that neither subsection 28(1) nor subsection 28(2) of LA FOIP authorizes the disclosure of the students' personal information to the Applicant.

[44] I find that information about other individuals such as parents of other students or the name of a relative of the daughter qualifies as personal information pursuant to subsection 23(1)(k) of LA FOIP.

[45] I find that information about Horizon employees, such as their names, does not qualify as personal information.

[46] I find the information about the investigation itself is not personal information.

## V RECOMMENDATIONS

[47] I recommend that Horizon release to the Applicant her own personal information.

[48] I recommend that Horizon review the records at issue and release to the Applicant any information she had originally supplied to Horizon.

[49] I recommend that Horizon verify and confirm that the Applicant is indeed the legal custodian of her daughter. If so, and if the head of the Horizon determines releasing the daughter's personal information to the Applicant is not an unreasonable invasion of the daughter's privacy, then Horizon release the daughter's personal information to the Applicant.

[50] I recommend that information about Horizon employees acting in their professional capacities be released to the Applicant.

[51] I recommend that Horizon review the records at issue and de-identify the information as much as possible. In some cases, it could be as easy as severing names of other students or parents (but not the names of Horizon employees). In other cases, de-identification may require removing portions or entire sentences.

[52] I recommend that Horizon release de-identified information regarding its investigation to the Applicant.

[53] I recommend that Horizon cite to the Applicant the specific sections of *The Education Act, 1995* and its administrative procedures that it based its investigation upon.

Dated at Regina, in the Province of Saskatchewan, this 18th day of May, 2017.

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