



## **REVIEW REPORT 052-2018**

### **Creighton School Division No. 111**

**March 4, 2019**

**Summary:**

The Applicant requested a number of records from Creighton School Division No. 111 (Creighton School Division). Creighton School Division provided a response to the Applicant providing some records and indicating that other records requested did not exist. The Applicant requested a review by the Office of the Information and Privacy Commissioner. Upon review, the Commissioner found that the search conducted by Creighton School Division was reasonable and adequate for purposes of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Commissioner recommended that Creighton School Division take no further action.

## **I BACKGROUND**

[1] On February 8, 2018, the Creighton School Division No. 111 (Creighton School Division) received the following access to information request from the Applicant:

A detailed incident report of the incident which took place on January 23rd, 2018 involving my child, [name removed], from the school's perspective. Details to include time line of events from initial notification brought to the attention of the Creighton School Office to the time my child, [name removed], left the school, as well as every procedure, protocol, policy or otherwise followed that day by Creighton School Administration and Creighton School Staff involved. Also to be included is the number of persons interviewing my child, [name removed], without a parent or guardian present, as well as the deciding factors leading to the 5 day suspension during exam time along with reasoning behind the 5 day suspension including specific reference to the requirements needed for a 4-10 day suspension stated in The Education Act 1995 including proof of reasoning. This report will exclude names of any student(s) or teacher(s) involved. Also requested is the completed, signed, Threat Assessment Report Form ( Appendix F + Steps 1-11) from the Northern Saskatchewan Community Violence Threat Risk Assessment and Support Protocol, which is signed by Creighton

School Division #111 Director of Education, from the incident dated January 23rd, 2018 involving my child, [name removed]. In addition, I am requesting information as to which stage of the Violent Threat Risk Assessment did the School Threat Assessment Team (TAT) reached before it was determined that the incident of January 23, 2018 involving my child, [name removed], was Low Risk and at what point was the School Threat Assessment Team (TAT) protocol initially activated. I would also like clarification of the letter from the Creighton School Division #111 dated February 1st, 2018 as to what is considered as a “threat towards the school” and how it was determined that the incident of January 23, 2018 involving my child, [name removed] was deemed as a direct threat towards Creighton School.

[2] By letter dated March 9, 2018, Creighton School Division responded to the Applicant indicating that access was fully granted for some of the records requested. Further, that other records requested did not exist.

[3] On March 15, 2018, my office received a Request for Review from the Applicant. The Request for Review stated that the Applicant did not receive all of the records requested from Creighton School Division.

[4] On March 20, 2018, my office notified Creighton School Division and the Applicant of my office’s intent to undertake a review and invited both parties to provide submissions. On March 26, 2018, the Applicant provided a submission to my office. Creighton School Division provided its submission on April 6, 2018.

## **II RECORDS AT ISSUE**

[5] Creighton School Division claims the following records do not exist:

1. Time line of events;
2. Number of persons interviewing the Applicant’s child;
3. Deciding factor leading to the 5 day suspension;
4. Reasoning behind the 5 day suspension;
5. Signed Threat Assessment Report;
6. Stage of threat assessment reached;
7. What was considered a threat against the school, other than what was set out in the documents already provided to the Applicant;

8. How it was determined that the incident was deemed a direct threat, other than what was set out in the documents already provided to the Applicant; and
9. Interview notes as no notes were taken.

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

#### **1. Does the Commissioner have jurisdiction to conduct this review?**

[6] Creighton School Division is a “local authority” pursuant to subsection 2(f)(viii) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). Thus, I have jurisdiction to conduct this review.

#### **2. Did Creighton School Division conduct an adequate search?**

[7] Section 5 of LA FOIP provides every applicant the right of access to records in the possession or control of a local authority:

**5** Subject to this Act and the regulations, every person has a right to and, on an application made in accordance with this Part, shall be permitted access to records that are in the possession or under the control of a local authority.

[8] Section 5 is clear that access to records must be granted if they are in the possession or under the control of the local authority subject to any applicable exemptions under LA FOIP.

[9] Prior to an analysis of the search efforts conducted by Creighton School Division, it is important to clarify that LA FOIP does not require local authorities to answer questions that come in an access to information request. For example, access to information requests that ask why the local authority made certain decisions. LA FOIP provides access to records and unless answers are in a record, the local authority is not required under LA FOIP to answer them. However, it does have a duty to answer questions as to whether it has responsive records.

[10] A *record* is defined at subsection 2(j) of LA FOIP as “a record of information in any form and includes information that is written, photographed, recorded or stored in any manner, but does not include computer programs or other mechanisms that produce records”.

[11] I will now turn my attention to the search efforts conducted by Creighton School Division. To lay the foundation for this analysis it is important to note that LA FOIP does not require a local authority to prove with absolute certainty that records responsive to an access to information request, do not exist. However, it must demonstrate that it has conducted a reasonable search to locate them.

[12] A *reasonable search* is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records which are reasonably related to the request. A reasonable effort is the level of effort you would expect of any fair, sensible person searching areas where records are likely to be stored. What is reasonable depends on the request and related circumstances.

[13] When conducting a review of a local authority’s search efforts, details are requested that help my office understand the level of effort made to locate the records. The submission to my office should outline the search strategy conducted which can include:

- For personal information requests – explain how the individual is involved with the local authority (i.e. client, employee, former employee etc.) and why certain departments/divisions/branches were included in the search.
- For general requests – tie the subject matter of the request to the departments/divisions/branches included in the search. In other words, explain why certain areas were searched and not others.
- Identify the employee(s) involved in the search and explain how the employee(s) is experienced in the subject matter.
- Explain how the records management system is organized (both paper & electronic) in the departments/divisions/branches included in the search:
  - Describe how records are classified within the records management system. For example, are the records classified by:
    - alphabet
    - year

- function
- subject

Consider providing a copy of your organizations record schedule and screen shots of the electronic directory (folders & subfolders).

If the record has been destroyed, provide copies of record schedules and/or destruction certificates.

- Explain how you have considered records stored off-site.
  - Explain how records that may be in the possession of a third party but in the local authority's control have been searched such as a contractor or information service provider.
  - Explain how a search of mobile electronic devices was conducted (i.e. laptops, smart phones, cell phones, tablets).
- Which folders within the records management system were searched and explain how these folders link back to the subject matter requested?
    - For electronic folders – indicate what key terms were used to search if applicable.
  - On what dates did each employee search?
  - How long did the search take for each employee?
  - What were the results of each employee's search?
    - Consider having the employee that is searching provide an affidavit to support the position that no record exists or to support the details provided. For more on this, see the IPC resource, *Using Affidavits in a Review with the IPC* available on our website.

[14] The above list is meant to be a guide. Each case will require different search strategies and details depending on the records requested.

[15] In its submission, Creighton School Division indicated that the Secretary Treasurer is responsible for keeping the records of the school division and was the person assigned by the Director to complete the search for records. The Secretary Treasurer has five years of experience with the school division as Secretary Treasurer.

[16] In terms of records management, Creighton School Division explained that all student records are kept in the student cumulative file. The file is only kept in hard copy and is not kept electronically. Further, it asserted that the information in the file accumulates over

the time the student is enrolled with the school. The same file is used for the entire time the student is with the school. Finally, it asserted that any administrative records including incident reports created by teachers or other staff or by the school administration would be placed in the student cumulative file. In cases where a student is involved with special services such as an educational psychologist, a separate file is created for the student, which is also only in hard copy. In the case of the Applicant's child, the only file was the student cumulative record.

[17] Creighton School Division further explained that all student cumulative files are kept in file cabinets arranged by year and name of student. The file cabinets are located in the principal's office. Emails sent to, from, and within the school division, as well as documents created on the school internet system are accessible electronically.

[18] According to Creighton School Division, the search was conducted by the Secretary Treasurer between February 12, 2018 and March 7, 2018. This did not include the week school was out on February break from February 19 - 23. Based on the submission from Creighton School Division, the following details of the search undertaken are as follows:

- *The cumulative file of the student was reviewed;*
- *A check of the file system was made to see if there were any other files related to the student;*
- *The principal and vice principals were asked if there were other records such as documents, emails, text, or any other records relating to the matter;*
- *The principal was specifically asked if there were any interview notes taken or report created relating to the VTRA assessment;*
- *The principal checked with the teacher involved in the incident to determine if there were any other records;*
- *The Director was asked if he had any records such as documents, emails, text, or any other records relating to the matter;*
- *The counselor was asked if she had any records such as documents, emails, text, or any other records relating to the matter;*

- *An electronic search was undertaken of the school division internet and email system to identify any records related to the January 23, 2018 incident.*

[19] Creighton School Division also indicated that the school division offices are located right within the school and there were several verbal conversations between the Director, Secretary Treasurer, Principal and Vice Principal regarding any records or documentation that might relate to the January 23, 2018 incident. No further records were located.

[20] As noted earlier, a local authority does not have to prove with absolute certainty that records responsive to an access to information request do not exist. However, it must demonstrate that it has conducted a reasonable search to locate them. The threshold that must be met is one of “reasonableness”. Reasonableness does not mean perfection but rather an effort that is objectively diligent and prudent in all the circumstances.

[21] Based on what has been provided to my office, I find that Creighton School Division has demonstrated that its search for records was reasonable and adequate for purposes of LA FOIP.

#### **IV FINDING**

[22] I find that Creighton School Division has demonstrated that its search for records was reasonable and adequate for purposes of LA FOIP.

#### **V RECOMMENDATION**

[23] I recommend that Creighton School Division take no further action.

Dated at Regina, in the Province of Saskatchewan, this 4<sup>th</sup> day of March, 2019.

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