

**REPORT WITH RESPECT TO THE APPLICATION  
FOR REVIEW OF [REDACTED] IN RELATION TO INFORMATION  
REQUESTED FROM THE WEYBURN DEPARTMENT OF EDUCATION**

[REDACTED] ("the Applicant") is a resident of [REDACTED]. [REDACTED]  
[REDACTED] Early  
in the year 2000, she filed with the Weyburn Comprehensive School Board ("the Respondent") an  
Access to Information Request Form. The request for information was set forth in the following  
words:

"Copy of final exams - English 30A for [REDACTED] 1999 and English  
30B for [REDACTED] 1996."

The Applicant delivered with her Access to Information Request Form a cheque  
payable to the Weyburn Board of Education in the sum of \$20.00 to cover the photocopying cost  
of the examination papers.

By letter dated March 3, 2000, the Director of Education of the Respondent, Jan  
Chell, advised the Applicant that she could have access to the examination papers in question by  
making appropriate arrangements through the school principal. The Director of Education  
returned the cheque for \$20.00 and inferentially declined to forward to the Applicant copies of the  
papers that were requested.

The Applicant was provided, in the letter of March 3, 2000, with a guideline  
developed by the Respondent pertaining to the issue of access by students and parents to  
examination papers that had been completed and marked by members of staff of the Respondent.  
In her letter of March 3, 2000, Jan Chell outlined the policy, comprised of six points, as follows:

- “1. Final exams are given at the Weyburn Comprehensive School twice a year at semester end.
2. All final exams will be kept in an active file for one year from the exam session date.
3. All final exams will be kept in our inactive file for one year from the end of their active file date.
4. All final exams will be destroyed after (2) two years.
5. Parents and students will have access to exams for viewing and discussion during their two year life in the school.
6. Arrangements for viewing and discussion can be made through the principal.”

The Applicant filed a Request for Review with this office dated April 11, 2000. In her letter accompanying her Request for Review, the Applicant outlines a number of concerns regarding the procedures followed and actions taken by representatives of the Respondent. There apparently have been discussions between the Applicant and representatives of the Respondent for the Applicant to attend at the school and personally review the exam papers in question. Meetings apparently had been set up with the Applicant for the purpose of viewing both exam papers and the Applicant did not avail herself of the opportunity to review the exam papers as arranged.

The Access to Information Request initially made by the Applicant was for a “copy of the final exams” of [REDACTED]. English exams for the years 1999 and 1996 respectively were the specific exam papers requested. The Respondent takes the position that it is not obliged to produce copies of the exam papers and is prepared only to allow a visual review of exam papers in the possession of the school.

It may have been unreasonable of the Applicant not to avail herself of the opportunity to attend at the school, as arranged, and review the exam papers. However, that unreasonableness does not bar the Applicant to access to information, if she is entitled to such access pursuant to the provisions of *The Local Authority Freedom of Information and Protection of Privacy Act* ("the Act").

It is the position of the Applicant that she is entitled to full and unrestricted access to the English examination papers completed by [REDACTED] and that she is entitled to receive a copy of those documents. Indeed, that was the nature of her initial request and she forwarded to the Respondent a cheque for the purpose of covering the cost of reproducing the examination papers.

Counsel acting on behalf of the Respondent outlined the statutory provisions relied upon by the Respondent for declining to make available to the Applicant the copies of the exam papers in question. The position as set forth by counsel is reproduced in its entirety hereunder:

"June 28, 2000-08-09  
Gerald L. Gerrand, Q.C.  
Acting Freedom of Information and Privacy Commissioner  
Province of Saskatchewan  
C/o 700 - 1914 Hamilton Street  
Regina, Saskatchewan  
S4P 3N6

Dear Sir,

Re: [REDACTED] Request for Copy of Final Exams

Further to your letter of May 17, 2000 with regard to the above noted matter, the Weyburn Comprehensive School Board relies on the following

provisions of *the Freedom of Information and Protection of Privacy Act* to refuse disclosure of the exams.

Section 20 of the *Act* provides that a head may refuse to give access to a record that contains information relating to:

- a) testing or auditing procedures or techniques
- b) details of specific tests to be given or audits to be conducted if disclosure could reasonably be expected to prejudice the use or results of particular tests or audits.

The preparation of examination questions is a skilled and often difficult process – especially in the case of final examinations which are intended to cover an entire semester or year of learning. It is a long-established practice in education for questions to be prepared and, if appropriate, to be used on exams in several different years.

Disclosure of final exam questions from one year can be reasonably expected to prejudice the use of those questions in future years. In addition it can well be argued that the questions disclose testing procedures or techniques.

While the *Act* seems to be set up more for the protection of economic rather than intellectual interests, section 18 which deals with economic and other interests also has some application here. Section 18(1)(a) allows a head to refuse disclosure of trade secrets and section 18(h) allows the refusal of disclosure of information, the disclosure of which could reasonably be expected to result in an undue benefit or loss to a person.

It is admittedly stretching the point to look at exam questions as trade secrets, especially since the intent is not to prevent rival educators from access to the information. However, the “trade” of education does involve the ability to test students in as fair and impartial a way as possible. If some students, by use of the *Act*, have access to information that others don't, it jeopardises the impartiality of the exams and gives those students an undue benefit. The obvious response might be that copies of all exams should be given to all students. This becomes an expensive task, especially if this includes previous year exams, which it would have to, to be fair, since those exams could also be accessed under the *Act*.

Such disclosure would mean that educators would not be able to use previous exam questions. The amount of extra time and effort required would be an additional burden to an already stressed educational system. The best example is in the case of multiple choice questions. These are the types of questions that are the most difficult to produce, yet their answers are the most easily memorised [sic].

At the same time, educators understand the value to an individual student of being able to review his or her performance on a particular test. We recognise [sic] as well that a student might argue that the responses to an exam may be considered as personal information of the student. Some assistance for this dilemma can be found in section 10(2)(b) which allows a head to give access to a record where it is not reasonable to reproduce the record, by giving the applicant an opportunity to examine the record. The student will have access to his or her responses but copies of the questions will not be given.

This is exactly what the school has agreed to do in the present case. We would submit that this is a reasonable approach that allows the interests of both educators and students to be recognised [sic].

I trust this is the information you require. Please do not hesitate to call if you have any further questions.

Yours truly,

Geraldine Knudsen

cc. Weyburn Comprehensive School Board"

Counsel for the Respondent refers in her letter to *The Freedom of Information and Protection of Privacy Act*. The governing legislation is *The Local Authority Freedom and Information and Protection of Privacy Act* but this legislation contains essentially the same provisions as the sections of *The Freedom of Information and Protection of Privacy Act* quoted and referred to in counsel's letter. Section 20 of *The Freedom of Information and Protection of*

*Privacy Act* is exactly reproduced in Section 19 of *The Local Authority Freedom of Information and Protection of Privacy Act*. Similarly, Section 18(a) and (h) of the former *Act* are reproduced in Section 17(a) and (g) of the latter *Act*. Also, Section 10 of the former *Act* relating to manner of access is exactly duplicated in Section 10 of the latter *Act*.

In the course of this report, when I refer to the *Act*, I will be referring to the provisions of *The Local Authority Freedom of Information and Protection of Privacy Act*.

Essentially, the position of the Respondent is that it will give limited access to the Applicant to the exam papers completed by [REDACTED]. The Respondent is prepared to have the Applicant physically review the exam questions and the answers given and any other notations that apparently appear on the examination papers but the Respondent refuses to provide the Applicant with a copy of those examination papers and refuses to permit her to make copies of the papers she inspects.

In my view, the Applicant is entitled to receive copies of the documentation, if the Applicant had a right to access to the record under the *Act*. The only limitation to the receiving of copies of documentation is the limitation set forth in Section 10(2)(b) of the *Act* "where it is not reasonable to reproduce the record". I interpret that provision to be limited to circumstances where the record is so voluminous that it would be too costly in the circumstances to photocopy the record. In that situation, an Applicant is entitled to examine the record and make copies at the expense of the Applicant. In the circumstances of this application, there is no issue regarding the unreasonableness of reproducing the record, having regard to the cost; it is the position of the Respondent that the Applicant is not entitled to have a copy of the examination papers, not by reason of the cost of reproducing same, but for the reasons outlined in the letter of counsel of June 28, 2000.

I have concluded that Section 19 of the *Act* is not a basis for the head refusing to provide copies of the examination papers as asserted by the Respondent. There presumably is nothing in the examination papers that would fall within the provisions of Section 19(a) related to “testing or auditing procedures or techniques”. Section 19(b) refers to “details of specific tests to be given or audits to be conducted...”. The providing of copies of the examination papers in question would not provide the details of any testing or audits to be conducted, since the examination in question has already been given. Section 19(b) speaks of future tests or audits as a basis for refusing access.

The Respondent clearly is reluctant to provide copies of past examination papers to members of the public as it fears that the examination questions will be used by students in preparing for future exams. That may well be the case but I fail to see that this practice would cause the harm speculated by the Respondent in the letter of its counsel. The providing of copies of previous exam papers simply furnishes members of the public with questions that have been asked; there is no revealing of any standard answers or optimum answers to the questions that are posed, which answers may be the criteria upon which marks are based by those that assess the answers given to the questions asked.

The Respondent acknowledges that the Applicant is entitled to some form of access to the examination papers, at least to the extent that the Applicant can view the examination papers, the questions asked and the answers given and any notations that appear on the examination papers. The Respondent takes the position that access is limited to that extent and copies need not be furnished to the Applicant of the examination papers themselves.

There is nothing in the *Act* that indicates to me that once it has been determined that a citizen is entitled to access to a record that that access is limited in the fashion suggested by the Respondent.

I therefore recommend that the Respondent provide the Applicant with copies of the examination papers in question.

Dated at Regina, in the Province of Saskatchewan, this 16<sup>th</sup> day of August, 2000.

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GERALD L. GERRAND, Q.C.  
Commissioner of Information  
and Privacy for Saskatchewan