

Manitoba Ombudsman

REPORT UNDER

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2019-0345

EDUCATIONAL BODY

PRIVACY COMPLAINT: DISCLOSURE OF PERSONAL INFORMATION

PROVISIONS CONSIDERED: 42(1), 42(3)

REPORT ISSUED ON MARCH 2, 2020

SUMMARY: The complainant made similar requests for access to information under the Freedom of Information and Protection for Privacy Act (FIPPA or the act) to a number of different educational bodies. A request to one (the public body) was later withdrawn. Subsequently, the complainant was contacted by a different educational body about the withdrawal, leading the complainant to believe that the public body had made an unauthorized disclosure of the complainant's personal information. Our investigation concluded that the public body had inadvertently disclosed personal information about the complainant; therefore, the complaint is supported.

BACKGROUND

The complainant made access to information requests under the Freedom of Information and Protection for Privacy Act (FIPPA or the act) for statistical information about student suspensions to a number of educational bodies. The complainant decided to withdraw the request made to one educational body (the public body) because the information was determined to be publicly available. However, the access requests made to the other educational bodies remained active. Subsequently, one of the other educational bodies communicated with the complainant about the withdrawal of the access request to the public body. This led the complainant to believe that the public body had informed another educational body of the complainant's

decision to withdraw the request and therefore made an unauthorized disclosure of the complainant's personal information.

Subsection 59(3) of FIPPA states that an individual who believes that his or her own personal information has been collected, used or disclosed in violation of Part 3 of FIPPA may make a complaint to the ombudsman. A complaint regarding an unauthorized disclosure of the complainant's personal information was received by our office on June 27, 2019.

INVESTIGATION

The FIPPA Application for Access (the request form) requires applicants to: provide their name and contact information (mailing address, day time phone/fax); identify whether they are requesting their own or general information; identify the public body to whom the request is made; and, provide a description of the records to which they would like to obtain access. The access application also contains the following statement:

The personal information you provide on this form is needed to respond to your access request. It is collected under the authority of clause 36(1)(a) of The Freedom of Information and Protection of Privacy Act (the "Act") and the Access and Privacy Regulation. Your personal information is protected by the Act. We cannot use or disclose your personal information for other purposes unless you consent or we are authorized to do so by the Act.

On receiving the complaint, our office contacted the educational body from which the complainant had withdrawn his access request (the public body in this complaint). We asked it to provide information to our office about any disclosures of the complainant's personal information which related to or referenced the access to information request he had made to that public body. We also considered the provisions of FIPPA that are relevant to this complaint.

As defined by FIPPA, personal information means recorded information about an identifiable individual, including:

- (a) the individual's name
- (b) the individual's home address, or home telephone, facsimile or email number
- (c) information about the individual's age, sex, sexual orientation, marital or family status
- (d) information about the individual's ancestry, race, colour, nationality, or national or ethnic origin
- (e) information about the individual's religion or creed, or religious belief, association or activity
- (f) personal health information about the individual

- (g) the individual's blood type, fingerprints or other hereditary characteristics
- (h) information about the individual's political belief, association or activity
- (i) information about the individual's education, employment or occupation, or educational, employment or occupational history
- (j) information about the individual's source of income or financial circumstances, activities or history
- (k) information about the individual's criminal history, including regulatory offences
- (l) the individual's own personal views or opinions, except if they are about another person
- (m) the views or opinions expressed about the individual by another person
- (n) an identifying number, symbol or other particular assigned to the individual

The use of the word 'including' in the act indicates that this list is not conclusive or exhaustive and, as articulated by our office in several previous investigation reports, personal information includes information that does not directly identify an individual but, when combined with information otherwise available, could allow an individual to be identified. Nonetheless, to qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.

The general duties of public bodies under FIPPA with regard to the use and disclosure of personal information are as follows:

General duty of public bodies

42(1) *A public body shall not use or disclose personal information except as authorized under this Division.*

Limit on amount of information used or disclosed

42(2) *Every use and disclosure by a public body of personal information must be limited to the minimum amount of information necessary to accomplish the purpose for which it is used or disclosed.*

Limit on employees

42(3) *A public body shall limit the use of personal information in its custody or under its control to those of its employees who need to know the information to carry out the purpose for which the information was collected or received or to carry out a purpose authorized under section 43.*

Generally speaking a public body may use or disclose personal information only as follows:

- for the purpose for which the information was collected or compiled (or for a use consistent with that purpose)
- if the individual the information is about has consented to the use or disclosure, or
- if one of the circumstances for disclosure without consent set out under subsection 44(1) applies

Our office notes that the complainant did not consent to the disclosure of their personal information. Further, the public body has not represented (and our office has not identified) that one of the circumstances for disclosure without consent set out under subsection 44(1) of FIPPA applied. As explained in the collection notice found on the FIPPA access application form, the purpose for the collection of the access applicant's personal information is to respond to the access request and, generally speaking, the personal information should be used and disclosed only for that purpose and only to the extent necessary to accomplish that purpose. Therefore, the access applicant's personal information should not be made known outside those tasked with making the public body's response. In most circumstances the need to know is limited to the public body's access and privacy coordinator and/or access and privacy officer.

The public body explained to our office that it is a member of an association of similar educational bodies and it frequently consults with other educational bodies and/or the association on the application of FIPPA. In doing so, it may share general information about the subject of access requests it has received. The public body acknowledged that, in this case, it had consulted with other educational bodies regarding a request for access to statistical information. The public body explained to our office that the complainant's name was never disclosed to the other educational bodies. However, the public body did later reveal to at least one other educational body that the access request under discussion had been withdrawn and it would, therefore, not be responding to the complainant's request for information. On receiving notification of our complaint investigation, the public body realized that, even though the complainant's name was not mentioned, the complainant was, nonetheless, rendered identifiable from the limited information relating to the access request which had been disclosed.

Our investigation determined that there were two steps to the public body's actions in this matter. The first instance was a consultation with similar public bodies about the access request. The public body verbally shared information about the nature of the access request. It did not disclose any personal information about the complainant. As a result of that consultation the public body became aware that other educational bodies had received requests for similar information.

In the second instance of consultation, the public body disclosed information about the complainant when it revealed to another public body that the complainant had withdrawn his access request. Although the complainant's name was not disclosed, the complainant's access

applications to other educational bodies were sufficiently similar so as to allow an accurate inference to be drawn by the other educational body as to the identity of the person who made (and later withdrew) the access request to the public body. The other educational body contacted the complainant regarding the withdrawal of his access request. The information that the complainant had withdrawn his access request is personal information because he was reasonably identifiable to the other educational body who had received the same request from him. As there is no provision in FIPPA that authorizes this disclosure, the complaint is supported.

Our office notes that, when informed about this complaint, the public body immediately contacted the complainant and apologized that sharing information about the access request resulted in another public body accurately inferring his identity. The public body also reviewed its practices for responding to access requests with a view to improving its protection of the identity of access applicants.

COMMENTARY

FIPPA prohibits the disclosure of personal information of any individual, including access applicants, unless the disclosure is authorized under provisions of the act. Therefore, public bodies are required to take all reasonable measures to protect the identity of access applicants, including compliance with the limiting provisions of subsections 42(2) and (3) of FIPPA. Generally, an applicant's identity should only be shared when there is a clear need to do so in order to perform duties and functions related to FIPPA, such as when individuals request their own personal information and their name needs to be shared to search for responsive records about them.

In light of the potential risks to privacy of access applicants, our office published a practice note, *Protecting the Privacy of Access Requesters*,¹ to provide guidance for public bodies on the handling of personal or personal health information when responding to access requests.

Our office notes that consultation to seek advice on the interpretation and application of FIPPA is not inherently wrong and can enhance public body compliance with the act. Our office recognizes that, in order to make good access decisions, public body access and privacy coordinators may need to seek outside expertise; for example, on the appropriate application of FIPPA or if the records at issue contain information originating with another public body other than the one that received the request. In fact, our office frequently receives questions from public bodies and we provide guidance and resources on the interpretation of FIPPA and the associated Access and Privacy Regulation.

¹ Available for download on our website at <https://www.ombudsman.mb.ca/uploads/document/files/pn-bbt13-protecting-the-privacy-of-access-requesters-en.pdf>.

There are other risks associated with consultations in addition to the risk of inadvertently revealing the identity of access applicants. One such risk is that there may be a perception by access applicants, whether founded or not, that a public body engaged in this type of consultation may not have acted independently when making access decisions under FIPPA. We recognize that consultation does not necessarily result in the inappropriate coordination of decision making but when public bodies engage in consultation they should take steps to preserve their independent discretion, making each access decision impartially, on its own merits and in compliance with the act. While there may be a need for public bodies to consult about, or coordinate their responses to, some access to information requests, the process should relate to the content of the outgoing information and not to the identity or type of requester asking for the information. In this case, the complainant's identity as an access applicant was revealed as a result of a consultation involving a group of related public bodies. Consultations of this type, when the same request is made to multiple public bodies, increase the risk that an individual will be rendered identifiable. These are important considerations for public bodies choosing to consult or coordinate a response because the value of access applicant anonymity lies not only in protecting the privacy of access applicants but also in ensuring impartiality in the processing of access requests.

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March 2, 2020