

Bill 33: Privacy Issues

Further to @issue No. 2009-28 distributed earlier today, following please find more comprehensive and detailed information with respect to potential privacy issues in the Bill 33 process.

Privacy Legislation

The following are some relevant sections of the *Freedom of Information and Protection of Privacy Act* (FIPPA):

- **Schedule 1 – Definitions:** “Personal information” means recorded information about an identifiable individual other than contact information.
- **Section 30:** A public body must protect personal information in its custody or under its control by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal.
- **Section 31.1:** The requirements and restrictions established by this Part [Part 3 – Protection of Privacy] also apply to:
 - (a) the employees, officers and directors of a public body (...)
- **Section 30.4:** An employee, officer or director of a public body (...) who has access, whether authorized or unauthorized, to personal information in the custody or control of a public body, must not disclose that information except as authorized under this Act.
- **Section 74.1 (1):** A person who contravenes section 30.4 (unauthorized disclosure) (...) commits an offence.
- **Section 32:** A public body must ensure that personal information in its custody or under its control is used only
 - (a) for the purpose for which that information was obtained or compiled, or for a use consistent with that purpose (see section 34),
 - (b) if the individual the information is about has identified the information and has consented, in the prescribed manner, to the use, or

(c) for a purpose for which that information may be disclosed to that public body under sections 33 to 36.

- **Section 34 (1):** A use of personal information is consistent under section 32 or 33.2 with the purposes for which the information was obtained or compiled if the use
 - (a) has a reasonable and direct connection to that purpose, and
 - (b) is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information or causes the information to be used or disclosed.

Information Package Provided to Teachers for the Purpose of Consultation Under Bill 33

1. Can the teacher provide the information package received by the principal to his/her union representative?

Union representatives are not entitled, either under the *School Act* or by the Dorsey awards, to receive a copy of the information package provided to the teacher by the principal. There are no provisions of FIPPA that would authorize employees of public bodies such as teachers to disclose the often sensitive personal information of their students to union representatives without the consent of the students concerned, as given by their parents or guardians. Therefore, it is an offence under FIPPA for teachers to provide student personal information to their union representative and is contrary to their professional responsibilities.

Further, on May 15, 2009, the Information & Privacy Commissioner of British Columbia launched an investigation to determine if the BC Teachers' Federation (BCTF) was authorized to collect student personal information under the *Personal Information Protection Act* (PIPA). (Since the BCTF is not a "public body", it is not subject to FIPPA; however, it is subject to PIPA, which governs the private sector.)

The BCTF staff representatives were collecting, from teachers, information about their students' specialized support needs. The personal information at issue consisted of the student's name and their associated support requirement. The Commissioner delegated his authority to a "Portfolio Officer" in his Office, who concluded that the BCTF was not authorized under PIPA to collect student personal information. Please reference the attached @issue No. 2009-20 dated June 22, 2009 and Office of the Information and Privacy Commission (OIPC) letter that describes and addresses this matter.

2. What should be done with the information package provided to teachers after the Bill 33 consultation with the principal has taken place?

Pursuant to section 31.1(a) of FIPPA, teachers are required to comply with the protection of privacy provisions of FIPPA. Therefore, teachers should ensure that they are not responsible for any unauthorized disclosure of student personal information. Further, any personal information received during the Bill 33 consultation process should only be used for the purpose for which it was obtained or compiled. Therefore, once the teacher and principal have consulted regarding the particular class, the personal information provided during the Bill 33 consultation process should be destroyed — unless it remains necessary for the performance of the teacher's job duties and responsibilities.

Teachers are responsible for ensuring that students' personal information is kept confidential at all times. This requires proper storage of materials as well as proper disposal once its use has been completed. All district policies and professional obligations regarding student privacy and the handling of confidential information also apply in this situation.

Information Acquired at the Bill 33 Consultation Meetings

1. Can teachers or union representatives use the personal information that they receive as a result of being at the consultation meeting for any other purpose?

Section 32(a) of FIPPA states that a public body must ensure that personal information in its custody or under its control is used only for the purpose for which that information was obtained or compiled, or for a use consistent with that purpose. A use of personal information will only be considered "consistent" with the original purposes for which the personal information was obtained or compiled if its use has a reasonable and direct connection to that purpose, and is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information or causes the information to be used or disclosed (section 34).

Teachers: In these circumstances, the information and documents are being provided to the teacher of a class for the purpose consultation under the Bill 33. Teachers may also use the information and documents if necessary in the performance of their duties. However, it is an offence for teachers to disclose student personal information to a union representative.

Union Representatives: Union representatives may not use the student personal information they receive as part of the Bill 33 consultation meeting for any purpose other than to represent the teacher during the Bill 33 consultation. Principals and teachers should be advised to make every attempt in the consultation meetings not to identify students by name. It would be a violation of PIPA for the union representative to take any personal information he/she was privy to at the consultation meeting and use it for any other purpose.

Information Compiled on the Union Consultation Forms

1. Can teachers provide their union representative with the information requested by the BCTF on its "Class Size and/or Composition Consultation Form, Report to Local Union Office" or similar form(s) used by local unions?

Teachers should not answer the questions that request specific information that might identify individual IEP students. The student's name is not included on the form. However, if it is possible that the student's identity could be discovered by means of the personal information used in completing the form, its disclosure to the union representative would be improper.

The BCTF and its union representatives may not use any student personal information recorded by the teacher on the Class Size and/or Composition Consultation Form Report to Local Union Office or similar forms for any purpose other than to determine whether Bill 33 consultation occurred in accordance with the School Act and/or for the purpose of internal grievance administration with respect to Bill 33.

District Forms

Districts must ensure that the student personal information recorded on employer consultation forms is protected from unauthorized access, collection, use, disclosure or disposal in accordance with privacy protection provisions of FIPPA.

Privacy Considerations for Districts When Providing Teacher's with the Bill 33 Consultation Information Package

As the relevant information and documents contain sensitive student personal information, confidentiality is extremely important. Section 30 of FIPPA requires public bodies to protect personal information by making reasonable security arrangements against risks such as unauthorized access, collection, use, disclosure or disposal. The following are some risks:

- **Hard Copies**

When providing teachers with hard copies of relevant information and documents, there is always a risk of unauthorized access, collection, use, disclosure or disposal. Therefore, it is important to caution teachers to ensure proper storage of the information and to carefully dispose of it once the use of the information has been completed.

- **E-Mail**

When e-mailing the relevant information and documents to teachers, one must be sure that the personal information that is being sent electronically is secure. Only work e-mail addresses should be used; the personal information should not be sent to home e-mail addresses. There is also a risk of unauthorized access, collection, use, disclosure or disposal.

- **Central Electronic Site (e.g., SharePoint)**

Providing teachers with the personal information by means of access to a central site (e.g., SharePoint) also creates a risk of unauthorized access, collection, use, disclosure or disposal. There is also a risk that teachers can access personal information from the site that is not relevant to the consultation process or necessary for the performance of their duties.

It is recommended that when providing teachers with the relevant information for consultation under Bill 33 in any format, the following notice accompany that release of relevant information:

The attached information is being provided to you solely for the purpose of class size consultation. You are responsible for ensuring the confidentiality of the personal information it contains at all times. This includes proper storage of all documentation as well as proper disposal once use of the documents has been completed.

As an employee of a public body, you are subject to the requirements and restrictions contained in Part 3 (Protection of Privacy) of the *Freedom of Information and Protection of Privacy Act*. Therefore, you are statutorily responsible for protecting the personal information contained in these documents from unauthorized access, collection, use, disclosure or disposal.

You are also required to abide by all District policies and professional obligations regarding student privacy and the handling of confidential information.

Please do not make copies of the documents or provide access to or disclose the personal information contained in these documents to any third parties. Once you have consulted with the principal regarding the organization of the class to which the information and documents relate, please destroy all personal information that is not necessary for the performance of your duties as a teacher. Any personal information that is necessary for the performance of your duties as a teacher should be handled in accordance with the District's policies and your professional obligations regarding student privacy.

Suggested Template Letters

In addition to the above noted notice to the teacher when providing the package of relevant information under the Bill 33 consultation process, BCPSEA suggests that the following letters be provided to the local union and, if applicable, staff rep. attending the Bill 33 consultation meeting.

Template Letter from District to Local Union President

If applicable, union representatives may attend consultation meetings for the sole purpose of providing union representation to the teacher during the Bill 33 consultation with his/her principal.

Union representatives are not entitled, either under the *School Act* or the Dorsey awards, to receive a copy of the information provided to the teacher by the principal for the purpose of the Bill 33 consultation.

Union representatives may not use the student personal information they receive as part of the Bill 33 consultation meeting for any purpose other than to represent the teacher during the Bill 33 consultation. Principals and teachers have been advised to make every attempt in the Bill 33 consultation meetings not to identify students by name.

Under the *Personal Information and Protection of Privacy Act (PIPA)*, the local union and/or the BCTF is not authorized to collect student personal information. Any student personal information received by the union representatives as part of the Bill 33 consultation meetings may not be collected, used or disclosed for any purpose other than to represent the teacher during the Bill 33 consultation.

Finally, the BCTF, local unions and union representatives may not use any student personal information recorded by the teacher on the Class Size and/or Composition Consultation Form Report to Local Union Office or similar form(s) for any purpose other than to determine whether the Bill 33 consultation occurred in accordance with Bill 33 and/or for the purpose of internal grievance administration with respect to Bill 33.

Template Letter from the District to the Union Staff Representatives at the Commencement of the Bill 33 Consultation Meeting

You may attend this meeting for the sole purpose of providing union representation to the teacher during the Bill 33 consultation with his/her principal.

Union representatives are not entitled, either under the *School Act* or the Dorsey awards, to receive a copy of the information provided to the teacher by the principal for the purpose of the Bill 33 consultation.

Union representatives may not use the student personal information they receive as part of the consultation meeting for any purpose other than to represent the teacher during the Bill 33 consultation. Principals and teachers have been advised to make every attempt in the Bill 33 consultation meetings not to identify students by name.

Under the *Personal Information and Protection of Privacy Act (PIPA)*, the BCTF is not authorized to collect student personal information. Any student personal information union representatives receive as part of the Bill 33 consultation meetings may not be collected, used or disclosed for any purpose other than to represent the teacher during the Bill 33 consultation.

Finally, the BCTF, local unions and union representatives may not use any student personal information recorded by the teacher on the Class Size and/or Composition Consultation Form Report to Local Union Office or similar form(s) for any purpose other than to determine whether consultation occurred in accordance with Bill 33 and/or for the purpose of internal grievance administration with respect to Bill 33.

Questions

If you have any questions, please contact your BCPSEA labour relations liaison.

Attachments:

- @issue No. 2009-20, June 22, 2009: Office of the Information and Privacy Commissioner (OIPC): Investigator's Recommendations Regarding BCTF Collection of Student Support Information
- OIPC letter: June 19, 2009