

Data Request: BC Teachers' Federation Membership System

The BC Teachers' Federation (BCTF) is in the process of implementing a new web-based BCTF Membership system that will be accessible by employees and members of the BCTF. In order to launch the new membership system, the BCTF is asking districts for data about its members, and is asking that the data be provided in a specified electronic format (i.e., in a particular form of Excel spreadsheet). These requests may be made even though districts may not keep the requested data in that format and compliance with the requests would require the districts to create records, or to convert records from one format to another.

The BCTF has indicated it may have its members complete and sign forms authorizing the BCTF to collect personal information about the member from the member's district and authorizing the district to disclose the personal information to the BCTF.

In a meeting with district representatives, some districts expressed concern at the significant amount of administrative time and resources that may be needed to respond to these requests. They also expressed concern that providing the information in the format requested may require administrative software programs to be modified and may require the modification of reports to delete information that should not be disclosed to the BCTF.

The purpose of this communication is to inform districts of the scope of their obligations to provide employee personal information to the BCTF, to review whether districts are obliged to provide information in the specific format requested by the union, and to address whether Districts are obliged to create records for the union in response to a request by it.

Discussion

As the information that will be requested by the BCTF and local teachers' association is personal information about school district employees, a district has an obligation to protect the privacy of those employees' personal information in compliance with the requirements of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

The FIPPA expressly limits when a public body can collect, use, and disclose personal information. A district may only disclose personal information in its custody or under its control if it is permitted to do so by the FIPPA. A person who discloses personal information without the authority to do so commits an offence.

The FIPPA permits disclosure in certain circumstances. For example, a district can disclose an individual's personal information if the individual has identified the information and consented in writing to its disclosure, or if the disclosure is authorized or required by law. There are other bases upon which disclosure may be permitted, so a careful review of the circumstances is necessary every time a district is considering providing the union with personal information about its employees or others.

The individual has consented to the disclosure

If a BCTF member has completed and signed an appropriate consent form, a district may disclose the information identified on the form to the BCTF. However, unless otherwise provided for in a collective agreement or required by law, a district is not obliged to provide information to the BCTF, particularly if it does not have the information compiled in a format that can readily be disclosed (i.e., the district would have to create a document). The provisions of the FIPPA that allow for disclosure by a public body when an individual consents are permissive, not mandatory.¹ Whether a district chooses to provide the information may depend on the administrative ease of, and cost associated with, doing so.

The disclosure is authorized or required by law

Generally speaking, a union has only a very limited right to access personal information of its members from an employer absent written consent. For example, a union may be able to obtain employees' names and home addresses from the employer without permission of the employee. The Labour Relations Board has determined that section 6(1) of the *Labour Relations Code* may require employers to release this information to their unions.² Such a release of information would, therefore, be authorized by section 33.1(1) (c) of FIPPA. A union may also be entitled to information about its members' wages and benefits for the purpose of collective bargaining.³ However, other employee personal information is still considered confidential.

The disclosure is authorized or required by a collective agreement

A collective agreement may include a provision for access to employee information. However, the FIPPA expressly limits when a public body can collect, use, and disclose personal information, regardless of what is provided for in the collective agreement.

In *Canadian Office and Professional Employees' Union, Local 378 v. Coast Mountain Bus Co.*, [2005] BCCA 604, the Court addressed the disclosure of information to a union (the information was information obtained during the post and fill process). It held that FIPPA could permit the disclosure of some personal information, provided that:

- The information is disclosed for the purpose for which it was obtained or compiled; or
- The information is disclosed for a use consistent with that purpose. (A consistent purpose is one which is both reasonably and directly connected with that purpose, and is necessary for performing the statutory duties of, or operating a program of, the public body disclosing the information.)

Although the FIPPA could permit some disclosure of personal information to the union, there are strict limits on what can be disclosed. The Court held that, in order to protect the employees' privacy rights as required by the FIPPA, an employer is obliged not to disclose more information than the union requires to perform its statutory duty, regardless of the right of access set out in the collective agreement. Therefore, where a collective agreement requires disclosure, in order to comply with section 33.2(a) of the FIPPA only personal information necessary to meet the union's purpose should be disclosed.

¹ Section 33.1(1)(b) provides that a public body **may** disclose personal information if the individual the information is about has identified the information and consented, in the prescribed manner, to its disclosure inside or outside Canada. Section 33.2(h) provides that a public body **may** disclose personal information inside Canada to a representative of the bargaining agent, **who has been authorized in writing by the employee whom the information is about**, to make an inquiry.

² *P. Sun's Enterprises (Vancouver) Ltd. (Hotel Grand Pacific)*, BCLRB Decision No. B301/2003; *Hudson's Bay*, BCLRB Decision No. B226/2004; *Re Cranbrook (City)*, BCLRB Decision No. B34/2006.

³ *Hudson's Bay*, *ibid.*

Where a collective agreement provides access to certain information and the union's purpose for accessing the information is for a purpose consistent with the employer's initial purpose for obtaining the information, limited disclosure of third party personal information is permitted. However, as stated above, disclosure is not unlimited. A district must ensure that it discloses only the minimum amount of employee personal information for the union to perform its stated purpose — personal identifiers and information not related to the initial purpose should be blocked out.

Collective agreement provisions

Article A.4.5 of the Provincial Collective Agreement (PCA) between the BCTF and the BC Public School Employers' Association (BCPSEA) states:

The employer shall provide to the BCTF and the local at the time of remittance an account of the fees and levies, including a list of employees and amounts paid.

This provision is mandatory. It stipulates what information the BCTF is entitled to receive — namely, an account of fees and levies with the names of employees and the amounts paid. The information is being disclosed to the BCTF for a purpose consistent with the reasons for which it was collected (i.e., to verify the fees and levies collected by the district) and the disclosure is arguably necessary for the district to carry out its statutory duty to comply with its collective agreement (i.e., to deduct and remit dues and levies in accordance with Article A.4). Therefore, districts can disclose this information to the BCTF. Further, there is case law to support the notion that salary indemnity plan dues are part of union dues.⁴

The provisions of each local agreement will need to be assessed individually. If you require assistance in determining your obligations, please contact your BCPSEA labour relations liaison.

Does a district have to create a document if one does not already exist or provide the information requested in a particular format?

Unless otherwise provided for in a collective agreement, a district is not obliged to create a document where one does not already exist or provide information to the BCTF and local association in the format requested by it. Whether the district creates a document or provides information in a particular format depends on the administrative ease of doing so. Where little additional administrative effort or cost is involved, a district may decide to create a document or provide the information in the format requested by the BCTF.

There is no provision in the PCA which would obligate a district to create a document or provide information about its employees to the BCTF in a particular format. Please review your local agreement to determine whether any such local obligations exist. If you require assistance in determining your obligations, please contact your BCPSEA labour relations liaison.

⁴ Paul Wytenbroek, BCIRC Decision No. C151/91 (reconsideration of No. C22/90).

Conclusion

Districts need to examine their practices and obligations in respect of the requests for information being made by the BCTF and local associations.

Requests for information by the BCTF and local associations should be considered on a case by case basis, taking into account the specific terms of the applicable collective agreement, as well as the district's obligation to protect employees' personal information. The analysis should proceed in the following way:

1. Once a request for information is received, the district should consider the terms of the specific collective agreement provision under which the request is made. A clear understanding of what the clause provides is essential. Some specific points to consider include:
 - a. Does the clause purport to make disclosure mandatory (i.e., does it use language like "shall provide" or "must provide"), or does it provide for the exercise of discretion (i.e., does it use language like "may" or "reasonable")?
 - b. Is the information requested captured by the clause (i.e., does the clause only apply to "publicly available information" or to "non-confidential" information)?
 - c. Does the clause apply to "information" or does it apply to "documents" or does it apply to both?
 - d. Does the clause require the district to create a document, if one does not already exist? Does it require the district to provide the information in a particular format?
2. Assess whether the BCTF's purpose for accessing the information is consistent with the employer's initial purpose for obtaining information.
3. If a district provides the requested information to the BCTF and local association, it must ensure that it discloses only the minimum amount of employee personal information for the union to perform its stated purpose — personal identifiers and information not related to the initial purpose should be blocked out.

A final note of caution

Particular kinds of information may give rise to a heightened degree of concern over disclosure. Concern has been raised in particular over the disclosure of Social Insurance Numbers (SINs). The Information and Privacy Commissioner has stated SINs are only required for the purposes of federal programs such as income taxation and employment insurance.⁵ Therefore, organizations should not collect SINs for identification purposes.

⁵ *The Board of Education of School District No. 75 (Mission)*, [2007] B.C.I.P.C.D. No. 15.