



## PINE CREEK SCHOOL DIVISION

IT'S ALL ABOUT  
INFORMATION  
AND  
HOW WE DEAL WITH IT

August 2013

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## Levels of SENSITIVITY of INFORMATION

A rule of thumb . . . . .

- Records of a general or common nature = **DISCREET INFORMATION**
- Records containing personal information = **PRIVILEGED INFORMATION**
- Records containing personal health information = **CONFIDENTIAL INFORMATION**
- Records relating to a Young Offender = **CLASSIFIED INFORMATION**

The Pine Creek School Division expects all of its employees to be aware of legal requirements in regards to recorded INFORMATION.

In addition, it requires all to show good judgment, discretion and respect for individuals in the way they deal with all types of INFORMATION at their disposal.

Information about students is PRIVILEGED and CONFIDENTIAL.

## Preamble

~~The past 35 years or so have seen~~ There has been a tremendous increase in both the amount and ease of information acquired, manipulated and communicated by governments and other public bodies.

At the same time the need to recognize and protect the rights of the individual in regards to information that governments and public bodies have in their possession has emerged, primarily through the passing of provincial legislation. Specific requirements result from it.

~~Forthcoming.~~ The federal legislation has placed similar obligations regarding information on private organizations and businesses with the implementation of *The Personal Information Protection and Electronic Documents Act*.

As an employee of the Pine Creek School Division.

## 1. PURPOSES OF THIS PAMPHLET

The purposes of this pamphlet are as follows:

- a) To provide you, as a member of the **Pine Creek School Division**, with basic and concise knowledge about legislation and related guidelines which deal with different aspects of INFORMATION.
- b) To clearly identify the requirements placed on School Divisions as a result of the legislation.
- c) To specify what the **Pine Creek School Division** does to satisfy those requirements.
- d) To supply sufficient references to allow you to delve more deeply into the areas identified, if you so need or wish.
- e) To provide you with sufficient orientation, as a prerequisite to your signing **Pine Creek School Division's Pledge of Confidentiality**, as mandated by *The Personal Health Information Act*.

## 2. TWO BASIC HUMAN RIGHTS

- (a) There have been increasing demands on governments and local governments to be more accountable to their citizens, and to have better informed people, by making INFORMATION available. The right to access INFORMATION held by governments and public bodies, including INFORMATION about oneself, with some exceptions, is now recognized.
- (b) There has concurrently developed an increasing insistence on the need to protect personal and personal health INFORMATION. The right to privacy for one's own INFORMATION held by our governments and public bodies is also now recognized.

The above rights may appear to be somewhat opposed notions – the one providing access and the other protecting privacy by restricting access. The legislation, however, specifies what INFORMATION must, may and may not be collected, used, maintained and disclosed and under what circumstances. It thereby attempts to respect both the access to and the privacy of INFORMATION.

## 3. A FEW IMPORTANT DEFINITIONS

A basic understanding of the following terms is necessary to comprehend the recent INFORMATION legislation and guidelines.

**Head**

The person(s) designated as Head of a public body, usually the Chair or the Whole Board. (FIPPA, 80)

**Access and Privacy Officer**

The staff member of the public body (usually the Superintendent) to whom the Head delegates powers and duties. (FIPPA, 81) [MR.64/98(1)]

**Access and Privacy Coordinator**

The staff member of the public body (usually the Secretary-Treasurer) to whom responsibilities for the day-to-day administration of the Act (FIPPA) is given. [M.R. 64/98 (2)] This person is usually also responsible to act as **Records Manager/Security Officer**, in charge of developing and overseeing procedures for dealing with the public body records.

**Information Manager**

The person or group that processes maintains or destroys personal health information for a trustee. [PHIA, 1 (1)]

**Trustee**

A health professional, health care facility, public body or health services agency that collects or maintains personal health information. [PHIA, 1 (1)]

**Record**

A record of information in any form and includes information that is written, photographed, recorded or stored in any manner, on any storage medium or by any means, including by graphic, electronic or mechanical means. (FIPPA, 1)

**Personal Information**

It means recorded information about an identifiable individual including: name, address, telephone number, e-mail address, age, sex, sexual orientation, ancestry, race, colour, nationality, ethnic origin, religion or creed, personal health information, blood type, fingerprints, hereditary characteristics, political beliefs, education, employment or occupation, educational history, source of income, financial circumstances, criminal history, personal views held, the views of others expressed about him/her, any identifying numbers or symbols, etc. (FIPPA, 1)

**Personal Health Information**

It means recorded information about an identifiable individual that relates to; health, health care history, genetic information, provision of health care, payments for health care, **PHIN** number and other identifying health information. [PHIA, 1 (1)]

**A Public Body:** includes a local public body.

**A Local Public Body:** includes an educational body.

**An Educational Body:** includes a school division.

When those terms are used, they therefore include school divisions.

**Third Party**

A person or group of persons or an organization other than:

- a) The applicant who seeks to access information and
- b) The public body applied to.

#### 4. OVERVIEW OF SIGNIFICANT DOCUMENTS THAT DEAL WITH INFORMATION

##### **(a) Freedom of Information and Protection of Privacy Act (FIPPA) (2000)**

What *FIPPA* states

- Purposes of *FIPPA*: To allow any person a right of access to records in general, and to records containing personal information about himself or herself in the custody or under the control of public bodies, and to request corrections to such records. *FIPPA* also intends to control that manner in which personal information is collected, used or disclosed.
- Applicants must apply on the prescribed form as per Regulation 64/98. There is a duty to assist. There are time limits.
- There are 4 mandatory exceptions to disclosure, where the Head (or delegate) must refuse disclosure. Example: it would constitute an unreasonable invasion of a third party's privacy. (Sections 17-20)
- There are 12 discretionary exceptions to disclosure, where disclosure may be refused. Example: disclosure may reasonably be expected to harm or threaten the security of any property or system. (Sections 21-32)
- If Head (or delegate) thinks there might be an unreasonable invasion of the privacy of a third party, he/she will give notice to the third party, who can respond in writing. Head will decide on disclosure in 21 days (or less with third party response). Either the applicant or the third party may complain to the Ombudsman.
- Information about an individual may be collected if it is necessary. Only as much information as needed should be collected, preferably directly from the individual. There are some exceptions, for example, where indirect collection is consented to, for the purpose of managing or administering personnel. When information is collected directly, the individual must be informed of the purpose, the legal authority to collect and the name and telephone number of a person who can answer questions about the collection. (Disclaimer)
- A person can request a correction to information.
- Public bodies must have a policy regarding the retention of personal information.
- The use and disclosure of personal information is limited to the minimum amount necessary and only for employees who need to know and for purposes (or related to) for which it was collected.
- The Ombudsman has powers and duties. (Investigate, report, etc.)
- Complaints about access or privacy may be made to the Ombudsman. The Ombudsman may initiate a complaint.
- An appeal to the courts may be made.
- Public bodies may charge set fees for providing information.
- There is protection from liability for acting in good faith.
- Typical offences: disclose in contravention; make a false statement to the Ombudsman; destroy or erase information to evade a request for access. Maximum penalty: \$50,000.00.
- Accompanying Regulation 64/98 deals with fees, forms for complaints, applications for access, etc.

##### **(b) Guidelines for the Retention/Disposition of School Division Records (2000)**

This is a second edition of the Guidelines first issued in 1993. It reflects "important social, legislative and technological changes which necessitated a review. . . ." (p.1). the document:

- ties responsibilities to the *PSA, FIPPA, PHIA AND YOA*. It establishes retention periods for various records.
- provides for the controlled destruction of records (if not archived).

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- emphasizes the need to have policies and procedures in place.

**(c) Manitoba Pupil File Guidelines (2000)**

The Guidelines were issued “to assist school boards in carrying out their duties and responsibilities respecting student information.” (p.1). The document:

- ties those responsibilities to the *PSA, FIPPA, PHIA AND YOA*. It specifies what elements should be included in the school division’s written policies and procedures. (p.4)
- identifies the Principal’s responsibilities in this regard. (p.6)
- defines the components of the pupil file. (p.10)
- discusses access and privacy issues in specific relation to legislation.

**(d) Guide to Manitoba’s FIPPA & Handbook for Educational Bodies (2000)**

The Guide reiterates in layman’s terms the information contained in *FIPPA*; thereby making it easier to understand.

- Relevant sections of the Act are referenced.
- The Handbook was designed to assist educational bodies to better understand and administer *FIPPA*. It is especially helpful by providing sample forms and letters for use in different access and disclosure situations.

**(e) Personal Health Information Act (PHIA) (2000)**

What *PHIA* states

- Purposes of *PHIA*: to recognize the personal and sensitive nature of health information. To provide the right to access and request correction of one’s personal health information maintained by a trustee. To control the collection, use and disclosure of personal health information.
- An individual has a right to examine and receive a copy of personal health information maintained by a trustee. Request is usually in writing. There is an obligation to assist and to respond quickly. The request may be transferred and the applicant is to be so informed. The identity of the applicant is to be verified. A fee may be charged.
- Access may be refused in some situations, for example, if access could endanger the health of the individual or others or if it could identify a third party who gave information in confidence.
- Corrections can be requested by the individual.
- Collection of information could be necessary, only as much as needed, and should be sought directly from the individual. There are some exceptions: if consent has been given or time and circumstances do not allow direct collection.
- When collected directly, the purpose of the collection and the name of the officer of the trustee who can answer questions about the collection must be provided. (Disclaimer)
- The trustee must have a written policy regarding the retention and destruction of personal health information.
- Security safeguards are emphasized: administrative, physical and technical.
- Disclosure must be limited to the minimum amount necessary to employees who need to know the information to carry out the purpose for which the information was collected; unless consent has been given or for a directly related purpose or to prevent harm.

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- Disclosure is possible without the individual's consent in some cases, for example, to contact a relative in case of illness or in accordance with usual medical practice or for research purposes (with certain conditions).
- The powers and duties of the Ombudsman are similar to those outlined in *FIPPA*.
- Complaints about access and privacy are made to the Ombudsman.
- The rights of an individual may be exercised by another person, for example, a parent/guardian if the minor does not have the capacity to make health care decisions.
- No actions lie against a trustee or person who reasonably believed that use or disclosure was authorized under *PHIA*.
- Offences include: false statements, misleading the Ombudsman, obstructing an investigation, destroying or erasing personal health information to evade requests for access.
- Fine: \$50,000.00/day on summary conviction.
- Accompanying Regulation 245/97 deals with obligations of trustees: a written policy and procedures for the security of information, including access restrictions, protection against hazards, safeguards for electronic form, orientation for employees, a pledge of confidentiality and an audit every two years.

#### **(f) *PHIA – A Brief Summary for Public Bodies (2001)***

Using the question-answer format, this document deals with *PHIA* information and references the appropriate sections of the Act. It deals with access, but especially emphasizes the protection of privacy obligations of trustees under the collection, use, disclosure, security, retention and destruction of personal health information.

#### **(g) *Public Schools Act (PSA) & Education Administration Act***

The following sections of the *Public Schools Act* deal with aspects of personal and/or personal health information:

- 42.1 – Storage of information – pupil files
- 42.2 – Definition of "pupil file"
- 42.3 – 42.6 – Access and disclosure issues
- 58.6 (c) – Access to pupil files – parents/guardians
- 58.9 (2) (b) – Access to pupil file – pupil
- 92.1 – Access to personnel records by a Teacher

The *Education Administration Act*, under M.R. 468/88 deals with required procedures for pupil files.

#### **(h) *Young Offenders Act (YOA) (1984)***

The *Young Offenders Act* has its own set of rules regarding information. Basically, Section 38 prohibits the publication of the identity of a Young Offender – and prevails over provincial legislation. For this reason, the Manitoba Pupil File Guidelines outline specific rules to follow regarding access to, retention, disclosure and destruction of records relating to Young Offenders.

## **5. REQUIREMENTS, OBLIGATIONS PLACED ON SCHOOL DIVISIONS**

The foregoing pieces of legislation and accompanying guidelines have placed several requirements or obligations on Manitoba school divisions. The major ones are as follows:

**(a) FIPPA**

- School divisions must have a written policy for the retention of personal information. [40 (1)]
- Contents of such policy are specified. [40 (2)]
- Requirement to protect personal information. (41)
- Requirement to designate Head, Access and Privacy Officer and Access and Privacy Coordinator. (80,81) [M.R. 64/98, 1,2]

**(b) PHIA (2000)**

- A requirement to establish a written policy concerning the retention and destruction of personal health information and to comply with that policy in conformity with the regulations. [17(1) (2)]
- Ensure destruction of personal health information to protect privacy and keep a record of same. [17(3) (4)]
- Obligation to protect personal health information by adopting reasonable administrative, technical and physical safeguards that ensure the confidentiality, security, accuracy and integrity of the information. [18 (1) (2), 19]
- Requirements for written security policies and procedures, access restrictions, safeguards for electronic information, authorized access for employees, orientation and training for employees, pledge of confidentiality and audit of security safeguards. [M.R. 245/97 (2) – (8)]

**(c) PSA and Education Administration Act**

- Requirement to establish written procedures respecting pupil files (collection, storage, retrieval, use of information). (42.1, 42.2)
- Access to pupil files. (42.3 – 42.6) [58.6 (c)] [58.9(2) (b)]
- Requirement to make program information available. (58.2) [M.R. 468/88, 29 (1) (2)]
- Requirement to provide access to personnel files – Teachers. (92.1)
- Responsibility of Principal for pupil files. [M.R. 468/88, (28)]
- Requirement to keep a record of achievement of pupils, transcripts. [M.R. 468/88, (14) (15)]
- Responsibility to provide new school with pupil file in the case of a transfer. [M.R. 468/88, 29 (3)]

**(d) Manitoba Pupil File Guidelines (2000)**

- Requirement to inform parents/guardians/students of purpose, content and accessibility of the pupil file, at the time of enrolment. (p.3)
- Requirement for a policy specifying access by divisional personnel under the different pieces of legislation. (p.5)
- Requirement for policy respecting disclosure under the various pieces of legislation. (p.5)
- Records Management policies to include responsibilities of Principals in cooperation with the Access and Privacy Coordinator. (p.6)
- Requirement to provide the following, when collecting information directly: purpose, legal authority to collect and name of person to answer questions. Disclaimer (p.8)
- Requirement to have policies concerning the retention and destruction of personal and personal health information. (p.23)

**(e) Guidelines for the Retention and Disposition of School Division Records (2000)**

The guidelines reflect the requirements listed above and so will not be repeated here. There is however, one additional requirement to have a senior official of the School Division (usually the Secretary-Treasurer) act as Records Manager. (p.7)

**(f) *Young Offenders Act (YOA)***

As mentioned earlier, Young Offender records are required to be dealt with in accordance with the YOA, even if they are part of the pupil file or some other file. Access is very limited. Use is very restricted and disclosure is almost always prohibited.

**6. RESULTING PINE CREEK SCHOOL DIVISION MEASURES**

In order to deal effectively with the obligations mandated by the Province of Manitoba in regards to INFORMATION, **Pine Creek School Division** has by resolution:

- Designated the Board of Trustees as the Head;
- Named the Superintendent of Schools as Access and Privacy Officer;
- Appointed the Secretary-Treasurer as Access and Privacy Coordinator, under the *Freedom of Information and Protection of Privacy Act*.

In addition and in conformity with the requirements of the applicable legislation outlined above, the Board of Trustees has by resolution adopted the following policies and regulations:

- School Division Records Management
- Student Records (Pupil Files)
- Personnel Records
- Pledge of Confidentiality

**7. PLEDGE OF CONFIDENTIALITY**

It is a regulatory requirement that you, as a member of **Pine Creek School Division**, having received orientation and training dealing with the security of information policies and procedures of the Division, sign the Pledge of Confidentiality. Please return the completed form to the Division Office at your earliest convenience.