


**EMERGING TRENDS IN
EDUCATION LAW 2017**
The F-Word: FOIP and its
Application to Student
Records and Employee
Information



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- 1) Overview of FOIP Act
- 2) Access to Information
- 3) Privacy
- 4) Student Records
- 5) Employee Information

Overview



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Freedom of Information and Protection of Privacy Act



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Legislative Background


Objectives of FOIP Act	Allow right of access subject to exceptions
	Collection, use and disclosure of personal information
	Right of access to personal information
	Request correction of personal information
	Independent review

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Legislative Background

Two parts to the FOIP Act


1. Freedom of Information
2. Protection of Privacy and Use of Personal Information

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Legislative Background

Key Terms

1. "Records"
2. "Custody or Under Control"
3. "Local public body"
4. "Educational body"

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Access to Information



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Access to Information

- **THE GENERAL RULE**
 - ...*The applicant has a right of access to all or any part of a record subject to a specific exception or exclusion of the FOIP Act...*
- How does this rule apply to school records?

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Access to Information

- General information, student records, employee information
- Where Board possesses or controls information (e.g. cloud servers, GoogleApps)
- Exceptions to disclosure (ss.16 to 29)
- Student Record Regulation, Alta Reg 225/2006

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Privacy




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Privacy

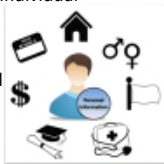
What does this mean for school boards?


- Collection, use and disclosure of personal information
- Security of personal information
- Right of access to personal information
- Request correction of personal information

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Privacy


- Information about an identifiable individual, including:
 - Name and contact information
 - Race, nationality, sex, marital status
 - Identifying number or symbol assigned to individual
 - Biometric information
 - Education, work and health history
 - Anyone else’s opinion about the individual
- List not exhaustive



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Student Records



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Student Records


FOIP Act provides for when:

- You can collect personal information of students (s.33)
- You can use personal information of students (s.39)
- You can disclose personal information of students (s.40)

How does this apply to educational Apps?

How does this apply to video, photographs and social media?

How does this apply to sharing with agencies or other government agencies?

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Access to Student Records

– Student record

- Sask Investigation Report LA-2013-003 (Horizon School Division – disclosure to other school board)
- Sask Investigation Report 109-2017 (Englefeld – gov’t agencies)
- Disclosure to Justice Canada – *Youth Criminal Justice Act*

– Counselling records

- BC Order 115-1996 (School District of Cranbrook – minors)
- AB Order 2012-21 (High Prairie School Division – minors)

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Access to Student Records

– Suspensions and Incident reports

- Sask Review Report 044-2017 (Horizon School Division – disciplinary investigation)
- AB Order F2015-36 (Peace River School Division – bullying complaint)

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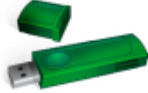
Security of Student Records


– Privacy Complaint

- AB Order F2016-26 (Edmonton Public School – disclosure of legal name vs chosen name)
- AB Order F2017-38 (Mount Royal University – special needs)

– Breach of Privacy

- When, not if
- Cyber breach & Ransom Ware (UofC)
- Data Loss (AB 2013-IR-01 (Bow Valley College – refurbished computers)
- Security Breach – security cameras (Nfld.) & grades (UofRegina)



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Employee Information



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Employee Information

FOIP Act provides for when:

- You can collect personal information of employees (s.33)
- You can use personal information of employees (s.39)
- You can disclose personal information of employees (s.40)

Collecting and Using Employee Information

- Sask Investigative Report LA 2013-002 (Saskatoon School Div. No.13
 - employee photos
- BC Order F13-04 (University of British Columbia – Vehicle GSP)

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Access to Employee Information

– Complaints against faculty/teachers

- AB Order F2013-36 (Calgary Roman Catholic – own information)
- AB Order F2013-34 (University of Alberta – complainant info)
- AB Order F2012-13 (University of Calgary – sexual harassment complaint)
- BC Order F14-10 (University of British Columbia – allegations of sexual assault)

– Solicitor-Client Privilege

- *Alberta (Information and Privacy Commissioner) v. University of Calgary*, [2016] 2 SCR 555

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QUESTIONS?

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