

Procedure Title	Student Information - Access and Privacy		
Date of Issue	November 7, 2001	Related Policy	
Revision Dates	April 6, 2005	Related Forms	AF 6810
Review Date		Originator	System Administrative Team
References			
Municipal Freedom of Information and Protection of Privacy Act; Education Act; OSR Guidelines			

Procedure:

Rationale:

Various pieces of legislation must be taken into account when decisions are made about access and privacy issues. The purpose of this procedure is to outline how the Municipal Freedom of Information and Protection of Privacy Act (the *Act*) protects privacy and how access is provided to a student's personal information.

Records that fall within the custody and control of the school board, include student personal information records (personal information is any recorded information about an identifiable individual). Within the scope of the *Act* there are general rules that school boards must follow regarding the collection, retention, use, and disclosure of personal information. *The Education Act*, and the *Education Quality Improvement Act* are other pieces of legislation that provide rules for the collection, use and dissemination of student personal information

Procedure:

Types of Personal Information Collected

Student records collected by schools fall into two categories:

1. records that form part of the Ontario Student Record (OSR)
2. records that **do not** form part of the OSR

The OSR is a record of the student's education progress and the Ministry of Education's Ontario Student Record (OSR) Guideline 2000 sets out the types of records that are to be contained in the OSR. Depending on requirements, additional types of records may be included in the OSR's. Records are retained only if the information is considered to be conducive to the improvement of the instruction of the student.

Some of the types of personal information included in the OSR are the OSR folder, report cards, transcripts of marks for secondary school courses, a documentation file, which may contain information such as health and psychological assessments, and an office index card.

Non-OSR records include all other types of personal information that school's may collect, for example permission slips for students to attend field trips, class lists, records of marks for weekly tests, yearbook photographs of students with their names, and honour rolls.

Confidentiality

OSR's must be kept confidential. They may only be disclosed in accordance with the provisions of the Education Act Section 266 (2) **Pupil records privileged** and 266 (10) **Secrecy of contents** (see Appendix A). Additional circumstances are set out in Section 32 of the *Municipal Freedom of Information and Protection of Privacy Act*. It is also allowable for the school board and the Ministry to exchange OSR information for education purposes.

Collection of Personal Information

The *Municipal Freedom of Information and Protection of Privacy Act* limits the amount and kind of personal information that may be collected. Under section 28(2) of the Act the collection of personal information must be:

1. expressly authorized by statute (i.e. specified in legislation such as the *Education Act*)
2. used for the purposes of law enforcement
3. necessary to the proper administration of a lawfully authorized activity

Direct Collection

If a board possesses the legal authority to collect the personal information, and the information is collected directly from the adult student or parents of a non-adult student, permission from the parents or adult student to collect the information is not required. However, a notice of the collection must be provided to the parent or adult student. The notice provides the legal authority for the collection, the purpose or purposes for which the personal information is intended to be used; and the title, business address, and business telephone number of an officer or employee who can answer questions about the collection. This notice of collection is usually printed at the bottom of forms used by the board to collect personal information.

Indirect Collection

An indirect collection would be when information is collected from a source other than the student or the student's parents. As with a direct collection the board must possess the legal authority to collect the personal information which is usually done by having the student or parents sign a consent form authorizing the collection.

Disclosure of Student Personal Information

Disclosure of student personal information is not allowed unless one of the 12 circumstances set out in the disclosure provisions (section 32 of the *Municipal Freedom of Information and Protection of Privacy Act*) applies (see Appendix B). An example would be if the information was being disclosed for the purpose for which it was obtained or for a consistent purpose which means a purpose that the student or parents would reasonably expect. Another example would be where the disclosure of personal information was to an officer or employee of the institution where the disclosure may be necessary and proper in the discharge of the board's functions: for example, to a teacher or administrative staff member who needs the record in the performance of his or her duties.

Disclosure is also allowed under the *Act* if the disclosure is to a law enforcement agency in Canada to aid an investigation. However, section 266(2)(b) of the *Education Act* states that OSRs are not admissible in evidence in a trial, except under certain circumstances, without the written consent of the parent. In this situation the school should contact the Supervisory Officer as it may be necessary to obtain legal advice.

Release of Student Marks

It is considered a violation of a student's personal privacy if a teacher shares each student's name and mark with the entire classroom or if the marks were posted in a public place for other persons to view. A student's specific mark is their personal information and may not be disclosed unless consent has been received to do so. It is also considered a violation of a student's personal information to have another individual other than the teacher or student teacher mark the student's test papers or reports. This excludes peer evaluation. Peer evaluation is an effective assessment strategy to provide students with feedback to improve their work.

Disclosure of Student Work

Students often participate in contests within the school and their work is subsequently displayed within the school. This practice is authorized under section 32 of the *Municipal Freedom of Information and Protection of Privacy Act*, which allows disclosure for a consistent purpose. It is considered that there is a reasonable expectation of the individuals concerned that work submitted would be disclosed. However, it is a prudent practice to inform parents that such disclosure may take place during the school year. This may be accomplished by ensuring that a copy of Form AF 6810 "Student Identification Consent and Web Site Consent Form" has been referred to the parents. This form provides parents with the opportunity to object to their child being identified while participating in a variety of school events.

Use of Student Personal Information

Boards are not allowed to use a student's personal information unless one of three circumstances apply.

1. Personal information may be used if the student or parent has consented.
2. The information is to be used for the purpose for which it was obtained or for a consistent purpose (one that the student or parents would reasonably expect).
3. The information may be used if disclosed to the board under the disclosure provisions of the Act or the provincial *Freedom of Information and Protection of Privacy Act*, for example, where information is disclosed to the board to aid in a law enforcement investigation.

At What Age Can Students Exercise Their Privacy and Access Rights

The provisions of the *Municipal Freedom of Information and Protection of Privacy Act* apply if the records in question are non-OSR records. Students who are 16 and older may exercise their own privacy and access rights under the Act. A 16 year old can therefore sign a consent agreeing to the disclosure of his or her personal information or make a freedom of information request for records held by government organizations. Students also have a right of access to their own OSR under the Education Act, there is no age limit placed on this right.

If a student is under 16 years of age, his or her rights and powers under the Act may be exercised by the person who has lawful custody of the student. Therefore, a parent with lawful custody of the student could sign a consent for disclosure of the student's personal information, or make an FOI request for records under the Act on behalf of the student. **In addition, under the Education Act, parents also have a right of access to their child's OSR if the child is under 18.**

Right of Access for a Non-custodial Parent

According to the *Education Act* a parent or guardian has a right of access to the child's OSR if the child is under the age of 18. The *Education Act* does not specify that the parent must be the custodial parent. Under the *Children's Law Reform Act* and the *Divorce Act*, the legal right of a non-custodial parent to have access to a child includes the right to make inquiries and to be given information concerning the child's health, education and welfare. Therefore, a non-custodial parent who has a right of access to the child could receive access to the child's OSR under the *Education Act*.

Section 32(e) of the *Municipal Freedom of Information and Protection of Privacy Act* permits the disclosure of personal information for the purpose of complying with an act of the Legislature, such as the Education Act. Since the *Education Act* grants parents rights of access to their child's OSR until the child is 18 years of age, a disclosure of the child's OSR information to the parent would be permissible.

Retention of Personal Information about Students

The regulations made under the Act specify that personal information that has been used by an institution must be retained for the shorter of one year after use, or the period set out in the approved retention schedules as approved by the board, unless the individual to whom the information relates consents to its earlier disposal. The *Act* does not specify a maximum retention period for the retention of personal information. The retention of student OSR information is set out in the OSR Guidelines. The main parts of the OSR (the folder, secondary school transcripts, and office index card) are retained for 55 years from the date the student retires from school. Other records such as report cards, are retained only for five years after the student retires from school.

Appendix A

Education Act:

S.266 (2) Pupil records privileged. - A record is privileged for the information and use of supervisory officers and the principal and teachers of the school for the improvement of instruction of the pupil, and such record,

- (a) subject to subsections (2.1), (3) and (5), is not available to any other person; and
- (b) except for the purposes of subsection (5), is not admissible in evidence for any purpose in any trial, inquest, inquiry, examination, hearing or other proceeding, except to prove the establishment, maintenance, retention or transfer of the record,

without the written permission of the parent or guardian of the pupil or, where the pupil is an adult, the written permission of the pupil.

S.266 (10) Secrecy re contents - Except as permitted under this section, every person shall preserve secrecy in respect of the content of a record that comes to the person's knowledge in the course of his or her duties or employment, and no such person shall communicate any such knowledge to any other person except,

- (a) as may be required in the performance of his or her duties; or
- (b) with the written consent of the parent or guardian of the pupil where the pupil is a minor; or
- (c) with the written consent of the pupil where the pupil is an adult.

Appendix B

Municipal Freedom of Information and Protection of Privacy Act

S.32 Where disclosure permitted - An institution shall not disclose personal information in its custody or under its control except,

- (a) in accordance with Part I;
- (b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;
- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;
- (d) if the disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and if the disclosure is necessary and proper in the discharge of the institution's functions;
- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or a treaty;
- (f) if disclosure is by a law enforcement institution,
- (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
- (ii) to another law enforcement agency in Canada;
- (g) if disclosure is to an institution or law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (h) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification is mailed to the last known address of the individual to whom the information relates;
- (i) in compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased;
- (j) to the Minister;
- (k) to the Information and Privacy Commissioner;
- (l) to the Government of Canada or the Government of Ontario in order to facilitate the auditing of shared cost programs