

**NUNAVUT
INFORMATION AND PRIVACY COMMISSIONER**

Review Recommendation 15-091

July 21, 2015

Review File: 14-191-5

BACKGROUND

This matter came to my attention as a result of a complaint from an individual in one of Nunavut's larger communities. The complaint was about the unauthorized use or disclosure of his child's information by school authorities. The Complainant had attempted to address his concerns directly with the school but he did not receive a satisfactory response. He therefore asked my office to do a review.

The basis of the Complainant's concerns was the use of information in the child's kindergarten registration form by a teacher for a purpose unrelated to the child's attendance in kindergarten. As I understand the statement provided by the Complainant, a teacher at the school was planning to hold a preschool program at the school during the summer. The program was separate from the school's programs and curriculum. It was, however, to be run by a teacher at the school who for the summer was on contract with the regional educational authority for the purpose of running the summer preschool program. The teacher planned to use the kindergarten registration forms which the school had received for children starting kindergarten in the fall as the registration form for the summer preschool program. She did not obtain the consent of the parents of these children for this secondary use of the information in the forms. It appears that this program had been run for a number of years and the kindergarten registration forms had been used in this fashion in past years.

The Complainant formally requested an explanation from school authorities but did not receive a satisfactory response

THE DEPARTMENT'S SUBMISSIONS

The Department of Education responded to my request for an explanation on behalf of the school. According to the department, each spring the school holds an orientation session for parents for children who will be entering kindergarten in the following school year. At that meeting, the kindergarten teacher and another employee of the school provide parents with information about the preschool summer program. According to school officials, parents attending the meeting were asked for consent to use the information in their child's kindergarten registration form for the purpose of contacting them about participation in the preschool summer program. They indicate that this is a process that has been used at the school for several years. None of the information in the kindergarten registration form was ever released to or accessed by anyone except the kindergarten teacher (who also ran the summer program) and the school secretary, both of whom had access to the information as a function of their respective jobs.

At the meeting in 2014, a parent attending the orientation meeting objected to the information from the kindergarten registration form being used to contact parents for the summer school program. As a result, no student record information was used for contacting parents for the summer program in 2014 and, in fact, it appears that the program was cancelled altogether because of the objection to the use of the information at the orientation meeting.

The department advises that, with the exception of 2014-2015 school year, school records have been accessed to contact parents "who consented and expressed interest in the summer preschool program" for the previous three years. That consent was always implied by the fact that no one raised any objections during the spring orientation sessions.

DISCUSSION

The *Access to Information and Protection of Privacy Act*, section 43, dictates how personal information in the hands of a government agency can be used. Specifically, it

can be used:

- a) for the purpose for which the information was collected or compiled, or for a use consistent with that purpose;
- b) if the individual the information is about has identified the information and consented, in the prescribed manner, to the use; or
- c) if the disclosure of the information is authorized pursuant to Division C of Part II of the Act.

Division C of Part II of the Act does not expand the circumstances in which personal information can be disclosed insofar as it relates to the situation at hand. The Complainant's concerns about the use of his child's personal information without consent were well founded. Information provided to the school should not be used or disclosed to any third party except for the purpose it was collected - in this case to register the child for kindergarten.

Furthermore, I would suggest that the lack of objection to a suggested use of information does not constitute consent to the use. The more sensitive the information, the more formal the consent should be. While the Act refers to consent "in the prescribed manner" no prescribed form has been developed. This makes it difficult to judge whether or not the form of consent is sufficient. In this case, the personal information is not overly sensitive - the names and contact information for each child's parents. I would suggest, however, that there must be some way to confirm consent has been given. A failure to object, however, will not normally suffice.

It should be noted that in this particular case, the public body did not use or disclose the information as suggested because of the objections raised, presumably by the Complainant. For the 2014 summer program, no information gathered by the school was used for any secondary purposes. Rather than risk a privacy breach, it is my understanding that the school cancelled the program for 2014 entirely once they received the objection.

The entire program, however, does not have to fail because one parent does not consent to the use of his child's personal information for the purposes proposed. The solution is quite simple. It would require only the addition of one more blank to be filled in on the kindergarten registration form:

Do you consent to the use of the information in this form for the purpose of contacting you concerning summer preschool programs? Yes or No

For those who check of the "yes", consent is clear. For those who mark "no" it is clear that there is no consent. For those who do not check off the box at all, the kindergarten teacher or the school secretary could call the parent to ask the question with a notation made on the form indicating the answer given and the date given would likely be sufficient to indicate consent in this case.

The alternative approach would be to create a consent form to be handed out at the orientation session in the spring with the same general question. The problem with this solution is that not all parents will attend these meetings and for those who do not attend, you would have to seek separate clear consent to the use of the parent's contact information for use by any organization other than for school purposes. While equally as effective for obtaining valid consent, it is a less efficient way to get that consent.

CONCLUSIONS AND RECOMMENDATIONS

The Complainant's concerns in this case were well founded. Information collected for the purpose of a kindergarten registration is not to be used for another, secondary purpose unless that use is authorized either by legislation or by consent of the person to whom the information relates. The use of this information in previous years was not compliant with the ATIPP Act.

However, this is a problem easily addressed. I recommend that the kindergarten registration form be amended to add the question noted above (or some similar

question). This way, those running the program will have a clear direction as to whether this particular parent consents or does not consent to this use of their personal information and their's child's personal information for this purpose.

Elaine Keenan Bengts
Nunavut Information and Privacy Commissioner