

A Guide to Privacy and Access to Information in Ontario Schools



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

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INTRODUCTION

Ontario schools collect, use and disclose a large amount of personal information about students. Understanding how to provide appropriate access to this information and protect personal privacy is not always straightforward, especially in a complex legal environment and era of technological change.

This guide provides answers to common questions about privacy and access to information in the school system. The goal is to provide Ontario's school board officials and education professionals with an understanding of their rights and obligations in relation to the privacy of, and access to, students' personal information.

ROLE OF THE IPC

The Information and Privacy Commissioner (IPC) is appointed by and reports to the Legislative Assembly of Ontario, and is independent of the government of the day. The IPC upholds and promotes open government and the protection of personal privacy.

The mandate of the IPC is set out in Ontario's privacy and access to information laws. The IPC oversees these acts and serves both the government and public through:

- resolving appeals when there is a refusal to grant access to information
- investigating privacy complaints related to personal information
- ensuring compliance with the laws
- reviewing privacy policies and information practices
- conducting research on access and privacy issues and commenting on proposed government legislation and programs
- educating the public, media and other stakeholders about Ontario's access to information and privacy laws and issues affecting access and privacy

ONTARIO'S ACCESS AND PRIVACY LEGISLATION

WHAT LEGISLATION APPLIES TO THE PRIVACY OF, AND ACCESS TO, STUDENTS' PERSONAL INFORMATION?

The Municipal Freedom of Information and Protection of Privacy Act (MFIPPA):

MFIPPA sets out the rules that school boards and other municipal institutions must follow regarding the collection, use, retention and disclosure of personal information.¹ *MFIPPA* also establishes a right for individuals to access and request corrections to their personal information, as well as to access general records held by school boards.

While the focus of this guide is on access to and privacy of **students'** personal information, it is important to note that the rights and obligations set out in *MFIPPA* apply to **any** individual's personal information. For example, where a school collects, uses or discloses information about a student's parents, it must protect the privacy of this information.

The Education Act:

The *Education Act* is the main law under which schools and school boards operate. It governs how education is delivered to students in Ontario's publicly funded school system.² The *Education Act* contains a number of sections relevant to access and privacy, including rules about access to and the collection, use and disclosure of information contained in the Ontario Student Record (OSR).

Other legislation:

MFIPPA and the *Education Act* are the two main laws that guide access to information and privacy in Ontario's public and separate schools. This guide also references other pieces of legislation, such as the *Personal Health Information Protection Act (PHIPA)*, the *Child, Youth and Family Services Act*, and the *Occupational Health and Safety Act*. These laws also permit or require school boards to disclose limited personal information about students in certain situations. *PHIPA* sets out the rules for collection, use and disclosure of health information, and may apply when students receive health care in school, such as from a school psychologist or speech-language pathologist (See **Collection, use and disclosure of health information**, page 27).

WHAT IS PERSONAL INFORMATION?

Personal information held by school boards is subject to *MFIPPA*'s access and privacy provisions. *MFIPPA* defines personal information as **recorded information about an identifiable individual**.³ It includes information such as name, address, and phone number. Other examples include:

- school photos and videos
- health information
- student records

A record may contain personal information even if it does not include a name. For example, if a teacher posts students' grades or test scores in a way that the identity of the students could be determined, even without their names, this could be a disclosure of personal information.

Personal information can be recorded in **any** format. In a school board setting, this may include:

- paper records, such as report cards, class lists, or printed special education records, including individual education plans, safety plans, or behaviour plans
- electronic records, such as electronic student attendance records
- photographs, including yearbook images
- video footage, including from surveillance cameras located in schools, or from video collected for professional development

COLLECTING PERSONAL INFORMATION

MFIPPA protects privacy by setting rules for the collection, use and disclosure of personal information. In this guide, we consider these three topics in turn, beginning with the rules for how school boards collect personal information.

WHAT TYPES OF PERSONAL INFORMATION DO SCHOOL BOARDS COLLECT?

School boards collect personal information that falls into one of two main categories:

- information that forms part of the Ontario Student Record (OSR)
- information that does not form part of the OSR

The Ontario Student Record (OSR)

The OSR is an ongoing record of a student's progress through the school system in Ontario. All public and separate school boards are required to create an OSR for each student. Other schools, including private and First Nations schools, may choose to create OSRs.⁴ Any school that establishes OSRs for its students must do so in accordance with the Ministry of Education's "Ontario Student Record (OSR) Guideline, 2000" (the OSR Guideline).

The OSR Guideline identifies the types of records that are to be contained in a student's OSR, such as:

- an OSR folder containing information such as:
 - biographical data
 - schools attended
 - names of parents
 - special health information
- student report cards
- an Ontario Student Transcript, where applicable
- a documentation file with additional information, such as custody orders or special education records
- an office index card with basic information such as student name, contact information and enrollment dates⁵
- other information identified by the principal as "conducive to the improvement of the instruction of the student"

School boards must keep student records confidential.⁶ They may only be disclosed in specific situations described in the *Education Act* or *MFIPPA*. An OSR follows a student when he or she transfers to another elementary or secondary school in Ontario (see **What happens to the OSR when a student changes schools?**, page 15).

Other information collected by school boards:

School boards may also collect other types of personal information which are not part of the OSR such as:

- permission slips to attend field trips
- class lists
- records of marks for tests and assignments
- photographs of students with their names
- honour roll status
- some types of progressive discipline records

There may be some overlap between the nature of the information kept as part of the OSR and outside of it. For example, daily attendance records are generally not filed in the OSR, but a summary of attendance is included in report cards, which form part of the OSR. This guide highlights the distinction between OSR and non-OSR records to explain the different legal rules that apply specifically to the OSR.

ARE SCHOOL BOARDS LIMITED IN THE AMOUNT OR KIND OF PERSONAL INFORMATION THEY MAY COLLECT?

Yes. A school board may not collect personal information unless the collection is:

- expressly authorized by law, or
- necessary to the proper administration of a lawfully authorized activity⁷

This applies to all collections of personal information. It includes information that is not recorded, such as information collected orally, perhaps through an interview with the student or parents.⁸

Consent is absent from this list because under *MFIPPA*, consent is not a source of authority for the collection of personal information. This means that, even with consent from a student or their parents, school boards can only collect personal information if one of the above two situations applies.

Expressly authorized by law

The *Education Act* requires principals to collect information for inclusion in a record about the student.⁹ The information must be collected in accordance with the regulations and guidelines made under the *Education Act*.

Generally, the OSR Guideline permits the collection of information for purposes of educating students. Therefore, a collection of personal information for other purposes would not be authorized under the *Education Act*.

Other laws, such as the *Anti-Racism Act*, may expressly authorize a school board to collect personal information for other purposes.¹⁰

Necessary to the proper administration of a lawfully authorized activity

Even if a collection of personal information is not expressly authorized under the *Education Act* or other laws, it may be permitted if it is necessary to properly administer a lawfully authorized activity.

In order to satisfy this condition, the collection must be **necessary**—which means more than merely helpful—to the administration of an **authorized activity**.

For example, under the *Education Act*, school boards are responsible for promoting student achievement and well-being.¹¹ If a board wants to collect personal information for the purpose of promoting student well-being through a student survey about bullying, the collection of personal information through the survey must be **necessary** to achieve this goal. Justification must be provided for all personal information that is collected.¹²

In IPC privacy report **MC13-60**, a person living next to a school complained to the IPC after the school installed a number of internal and external security cameras. The complainant was concerned the cameras were recording his personal information.

The IPC noted that the operation of a school is lawfully authorized under the *Education Act*, and this includes responsibility for the safety and security of students and property.

Given the theft and vandalism which had been occurring on school property, the IPC found that video surveillance inside school property was **necessary** for the proper administration of this lawfully authorized activity. However, the security cameras recording *outside* of the school property were **not** found to be **necessary** for this purpose.

DOES A SCHOOL BOARD NEED CONSENT TO COLLECT PERSONAL INFORMATION ABOUT A STUDENT?

If a school board has the legal authority to collect personal information, and it is collecting the information directly from the student, or their parents or guardians, then the school board does not require consent.

Even though consent is not **required** for a direct collection of information to be authorized, a school board may still decide to get consent. For example, a school board may design a student survey that it believes is necessary to meet its obligations under the *Education Act* to promote student achievement and well-being. It may decide to make this survey consent-based by clearly indicating the survey is voluntary and providing information on how to opt out and withhold consent.¹³

WHEN CAN A SCHOOL BOARD COLLECT PERSONAL INFORMATION INDIRECTLY?

A collection of personal information from a source other than the student—or the student’s parent or guardian—is called an **indirect** collection. As with direct collection, the school board must have the legal authority to collect it.

Indirect collections of personal information are permitted in some cases.¹⁴ The most common situation is where the individual **consents** to the indirect collection (for example, where a parent consents to a school board obtaining a report directly from a psychologist who will be assessing the learning abilities of their elementary-age child).

If a school board wishes to indirectly collect a student’s personal information without consent, then one of the other conditions set out in *MFIPPA*¹⁵ must apply—for example, where another law, such as the *Education Act*, authorizes the indirect collection.

For more information, see **Consent to collect, use and disclose personal information** on page 14.

DOES A SCHOOL BOARD NEED TO GIVE NOTICE THAT IT IS COLLECTING PERSONAL INFORMATION?

Yes. With very limited exceptions, a school board must provide a notice of collection and inform the individual of:

- the legal authority for the collection (for example, a particular section of the *Education Act*)
- the purpose(s) for which the personal information is intended to be used and
- contact information for a school board officer or employee who can answer questions about the collection¹⁶

Collection of personal information from a source other than the student—or the student’s parent or guardian—is called an **indirect** collection.

School boards can provide a notice of collection by printing it on the form that is used to collect the information, including it in student handbooks, or posting it on the school board's public website.

In IPC privacy report **MC06-63**, the IPC found that a school board did not provide adequate notice regarding the collection of personal information through a "student census." The board provided parents and students with information about the census and its purposes, and invited them to contact the child's school with any questions. However, the board did not provide contact information for a specific officer or employee who could answer questions about the census, and did not describe the legal authority for the collection.

There are a few limited situations where a school board is not required to provide a notice of collection;¹⁷ for example, if the information will determine eligibility for an award or honour. In this case, the school board must make a statement available to the public, on its website or elsewhere, describing the purpose of the collection and why notice has not been given.

In general, school boards should make their information practices as transparent as possible. If a board posts a collection notice on its website, for example, it should consider linking it to a general description of the board's information practices and any associated policies and procedures.

WHAT ARE THE RULES FOR COLLECTING, USING, DISCLOSING AND REQUIRING THE PRODUCTION OF ONTARIO EDUCATION NUMBERS?

The Ontario Education Number (OEN) is a unique identification number assigned to each student or potential student of prescribed institutions, including school boards, schools under the jurisdiction of a school board or the Ministry of Education, and all private schools in Ontario. In some cases, this also includes First Nation education authorities.¹⁸

Institutions that are prescribed under the *Education Act* are permitted to collect—directly or indirectly—and use and disclose personal information for the purposes of assigning an OEN to a student.¹⁹ A student's OEN will follow the student through their elementary and secondary (and, in some cases, post-secondary) education. OENs may be collected, used, disclosed or produced for purposes of:

- providing educational services
- education administration, funding, planning or research
- providing financial assistance to students²⁰

Using and Disclosing Personal Information

Prescribed institutions are required to use an individual's OEN in:

- records compiled and maintained in accordance with the *Education Act*
- applications for enrolment in an educational program
- student assessments, tests and evaluations²¹

No one is permitted to use, disclose or require the production of another person's OEN, except as provided by the *Education Act*,²² and to do so is an offence under that act.²³

USING AND DISCLOSING PERSONAL INFORMATION

WHEN CAN A SCHOOL BOARD USE A STUDENT'S PERSONAL INFORMATION?

School boards are not permitted to *use* a student's personal information unless certain conditions apply.²⁴ Under *MFIPPA*, school boards may only use personal information:

- for the purpose for which it was collected, or for a **consistent purpose**
 - a consistent purpose is one which the parent or student would **reasonably expect**, such as using the information for the improvement of instruction of the student
- with consent
- for a purpose for which the information may be disclosed to the school board under *MFIPPA*. For example, if another institution disclosed information to the school board in a situation affecting an individual's safety, the school board may use the information for this purpose²⁵

In IPC privacy report **MI16-3**, the IPC considered a teacher's use of information regarding the identity of students who had Individual Education Plans, to solicit investment business through the sale of Registered Disability Savings Plans.

The information was originally collected by the school board for the purpose of educating students. The IPC found that the teacher's use of the information to solicit investment business was not consistent with the purpose of educating students, and did not comply with *MFIPPA*.

The *Education Act* states that the OSR is available only for the information and use of supervisory officers and for principals, teachers and designated early childhood educators of the school, to improve the instruction and other education of the student. The act sets out a few additional circumstances in which principals and others may use the OSR, which include:

- to respond to requests from students and parents to correct or remove information from the OSR²⁶ (see **Correction of personal information**, page 21)
- to enable students and parents to examine the student's OSR (see **Access to information**, page 17)
- for disciplinary proceedings²⁷
- to prepare reports required by the *Education Act*, or, on request by a student's parents (or an adult student), a report related to an application for education or employment²⁸

WHEN CAN A SCHOOL BOARD DISCLOSE A STUDENT'S PERSONAL INFORMATION?

Under the *Education Act*, supervisory officers, principals, teachers and designated early childhood educators may disclose information in the OSR to improve the instruction and other education of the student. With limited exceptions, the OSR may not be disclosed to any other person without the written permission of the student's parent, guardian or the adult student (age 18 years or over). The exceptions include:

- disclosures required by the Ministry of Education or school board²⁹
- disclosures of certain limited information about students to a medical officer of health³⁰ (see **Collection, use and disclosure of health information**, page 27)
- access by the student to his or her own records, and by his or her parent or guardian where the student is under 18 years of age³¹ (see **Access to information**, page 17)

The *Education Act* also states that the OSR is not admissible at a trial without the consent of the parent or adult student.³² However, it is important to note that *MFIPPA* prevails over the confidentiality provisions in the *Education Act*, including those related to OSRs.³³ This means that school boards may disclose a student's personal information, including the OSR, if *MFIPPA* permits it. *MFIPPA* does not impose limitations on information otherwise available to a party to litigation and does not affect the power of a court or tribunal to compel the production of a document.³⁴

School boards also have discretion to disclose a student's personal information, including from the OSR, in some situations,³⁵ including:

- with consent
- for the purpose for which the information was obtained or for a **consistent purpose**
- to an officer, employee, consultant or agent of the institution who needs the information in the performance of their duties
- for the purpose of complying with law
- in compelling circumstances affecting health or safety
- to a law enforcement agency in order to aid in an investigation (see **Disclosure to police**, page 25)
- where the student or his or her parents request access

For more information, see:

- **Consent to collect, use, and disclose personal information**, page 14
- **Access to information**, page 17

Yearbooks often contain personal information collected for different purposes, such as class and individual photographs. Most people within the school community *expect* that these photos, along with the student's name, will be published in the yearbook. Where an individual can reasonably expect a disclosure, this is considered to be a disclosure for a **consistent purpose**, which is permitted under *MFIPPA*.

However, for personal information that an individual would not reasonably expect to be published in the yearbook—such as an autobiographical essay for a class assignment—the school would need to get consent before including it in the yearbook.

WHEN IS DISCLOSURE OF A STUDENT'S PERSONAL INFORMATION MANDATORY?

Some laws make it **mandatory** for school boards to disclose students' personal information in certain situations. In these cases, *MFIPPA* would not stand in the way of the disclosure – it permits disclosure for the purpose of complying with another act.³⁶

The following are examples of situations where it is mandatory to disclose students' personal information, and where consent is not required:

- **Disclosure to medical officers of health:** The *Education Act* requires principals to give the name, address and telephone number of any student (and their parent), and the student's birth date, when it is requested by the local medical officer of health.³⁷
- **Notifying parents of harm to students:** The *Education Act* also requires school board employees to report to the principal if they become aware that a student may have engaged in an activity that could result in their suspension or expulsion.³⁸ If the principal believes that a student has been harmed as a result of this activity, they have a duty to notify that student's parent or guardian, and the parent or guardian of any other student who engaged in the activity. However, there are limits on the nature and extent of personal information that can be shared.³⁹
- **Disclosure to eligibility review officers:** These officers may investigate eligibility for payments under several acts, including the *Ontario Disability Support Program Act*, the *Ontario Works Act* and the *Family Benefits Act*. Eligibility review officers may make a written demand for the production of records. If the officer makes such a demand, the school board or principal must comply.⁴⁰
- **Duty to report a child in need of protection:** Under the *Child, Youth and Family Services Act*, any person, including professionals who work with children, must immediately report to a children's aid society if they have reasonable grounds to suspect that a child is in need of protection (see **Disclosure to a children's aid society**, page 24).
- **Occupational health and safety:** Under the *Occupational Health and Safety Act*, school boards and other employers must advise a worker of any danger to their health or safety that they are aware of. This includes providing workers (for example, teachers or educational assistants) with personal information if it relates to a risk of workplace violence (for example, by a student or parent with a history of violent behaviour).⁴¹ There are limits:
 - Information should only be shared with workers who are **expected to encounter** the person in their work and where the risk of violence is likely to expose them to **physical injury**. This means, for example, that it would not be permissible to share personal information about the potentially violent person with all staff, but sharing with just those staff who have contact with the person would be allowed.
 - Employers are prohibited from disclosing more personal information than is **reasonably necessary** to protect the worker from physical injury.⁴²

While consent would not be required for these disclosures, school boards should provide general information to the school community about the requirements for disclosure, for example, on a website, in a school newsletter, or in a student handbook.

WHAT INFORMATION MAY BE DISCLOSED IN AN EMERGENCY?

Ontario's access and privacy laws do not stand in the way of the disclosure of vital information in urgent situations. In emergency and other limited circumstances, school boards can—and, in some cases, must—disclose information that would normally be protected by *MFIPPA*.

When compelling circumstances pose a threat to the health or safety of an individual, a school board may disclose personal information, and consent is not required.⁴³ *MFIPPA* requires that the individual whose information was disclosed be notified of the disclosure.

School boards should consider all the circumstances before determining whether personal information will be disclosed, including whether the disclosure is necessary to address the threat to health or safety.

An eighteen-year-old student opens up to her teacher about plans to seriously harm herself, but instructs the teacher not to tell anyone else. The teacher consults with the principal and school psychologist. After carefully considering the situation—including the level of risk and degree of urgency—and weighing various options for responding, they decide to immediately disclose the information to the student's parents.

This type of disclosure is permitted under *MFIPPA*, which allows for disclosure without consent in compelling circumstances affecting the health or safety of an individual.

A school board must disclose records to the public or affected individuals if there are reasonable and probable grounds to believe that it is in the public interest to do so, and the record reveals a grave environmental, health or safety hazard to the public.⁴⁴ This requirement could apply, for example, where a bomb threat or armed individual posed an active threat to students and teachers. Before disclosure in such cases, notice should be given to the individual whose information is to be disclosed only if it is feasible to do so.⁴⁵ In these types of situations, privacy should never be seen as a barrier to protecting safety.

Consent to Collect, Use and Disclose Personal Information

WHAT INFORMATION MAY BE DISCLOSED IN COMPASSIONATE CIRCUMSTANCES?

When there is a need to notify a close relative, friend or spouse about a student who is injured, ill or deceased, school boards may disclose personal information without consent in order to facilitate or enable contact.⁴⁶ For example, if a young student is ill and the student's parent cannot be reached, the school may decide it needs to disclose this information to someone at the parent's workplace to help make contact with the parent. The information disclosed by the school should be limited to only that which will "facilitate contact"—in this case, it means that the school could disclose to the parent's workplace that the child was ill and needs to be picked up, but should not disclose the nature of the illness or other details.

CONSENT TO COLLECT, USE AND DISCLOSE PERSONAL INFORMATION

AT WHAT AGE CAN A STUDENT PROVIDE CONSENT? WHEN CAN PARENTS CONSENT ON BEHALF OF STUDENTS?

The rules surrounding the age at which a person can provide consent are different under *MFIPPA* and the *Education Act*.

Under *MFIPPA*, an individual having lawful custody (for example, a parent or guardian) of a child under **16** years of age may provide consent on the child's behalf.⁴⁷ The child may also provide consent. Once a student turns 16, their parent or guardian may no longer consent on their behalf.

Under the *Education Act*, the parent or guardian of a student under **18** may provide written consent for the use or disclosure of information from the child's OSR.⁴⁸ Once a student is 18 or older, the student alone may provide the consent.

Where school boards are required to seek consent for the use or disclosure of personal information, they should make sure that the person consenting **understands** what information the school board is seeking consent to use or disclose, and the purposes for the use or disclosure.⁴⁹

MUST CONSENT BE IN WRITING?

Under the *Education Act*, where consent is required to use or disclose records in the OSR, the consent must be in writing.⁵⁰

Under *MFIPPA*, consent to use or disclose information not part of the OSR does not need to be in writing. As a best practice, school boards should seek written consent or document oral consent so that there is a written record of it.

SAFEGUARDING AND RETAINING INFORMATION

Safeguarding and Retaining Information

HOW LONG ARE SCHOOL BOARDS REQUIRED TO KEEP STUDENT RECORDS?

The OSR Guideline establishes the minimum retention schedules for OSRs. The main parts of an OSR must be retained for **55 years** from the date the student leaves school. Other records in the OSR including report cards and the documentation file must be retained for **five years** after the student leaves school.

It is a good practice for school boards to develop retention schedules for records that are not in the OSR. In doing so, school boards must be aware of the rules set out in *MFIPPA*, which requires personal information be retained for at least **one year** after use, or for a period set out in a bylaw or school board resolution, whichever is shorter.⁵¹ This requirement does not apply if the student, or their parent or guardian, in the case of a student under age 16, consents to an earlier disposal of the information, or if the information is credit or debit card payment data. This minimum retention period allows individuals to exercise their right to access and correct their records.

WHEN CAN RECORDS BE DESTROYED OR REMOVED FROM THE OSR?

Principals can remove information from the OSR folder if it is no longer “conducive to the improvement of the instruction of the student.”⁵² The information can either be given to the parents or to the student, if aged 18 or older, or destroyed.

Similarly, a parent, guardian or student aged 18 or older, may request that personal records be removed from the OSR, if the information is not “conducive to the improvement of the instruction of the student.”⁵³ If the principal refuses to do so, the student, parent or guardian who made the request may require the principal to refer the matter to a supervisory officer of the school board and ultimately, the parent may request a hearing before a person designated by the Ministry of Education.

Personal information will also be removed from the OSR and destroyed at the end of the retention period.

In all cases where personal information is destroyed, it must be done securely, in a way that ensures the complete destruction of the record.⁵⁴ This applies not only to personal information in the OSR, but to any type of personal information held by the school board.

WHAT HAPPENS TO THE OSR WHEN A STUDENT CHANGES SCHOOLS?

Under the OSR Guideline, if a student changes schools, all parts of the OSR, except the office index card, will be transferred to another Ontario-based school.⁵⁵

When a student transfers to a school outside of Ontario, a copy of the OSR may be sent to that school on request by its principal, and with the necessary consent of the parent, guardian or student. The original OSR must be retained by the Ontario school.

HOW DO SCHOOL BOARDS SAFEGUARD RECORDS?

The principal must ensure that the materials in the OSR are securely collected and stored in accordance with the OSR Guideline and school board policies.

School boards are required to define, document and put in place reasonable measures to protect records from inadvertent destruction or damage.⁵⁶ This means they must record, in a policy or other document, the steps taken to protect the records. They are also required to take **reasonable steps** to prevent unauthorized access to their records, and ensure that only those individuals who need a record for the performance of their duties have access to it.⁵⁷ The requirement to prevent unauthorized access applies throughout the life cycle of a given record, from collection, through all of its uses, up to and including its eventual disposal.

School boards are ultimately responsible for the safety and security of their students' personal information and for ensuring that adequate administrative, physical and technical measures to protect personal information are put in place, which may include the following:

| Administrative Safeguards | Technical Safeguards to Protect Electronic Data | Physical Safeguards |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> • privacy and security policies and procedures • privacy and security training • confidentiality agreements • privacy impact assessments | <ul style="list-style-type: none"> • strong authentication and access controls • logging, auditing and monitoring • strong passwords and encryption • maintaining up to date software by applying the latest security patches • firewalls, hardened servers, intrusion detection and prevention, anti-virus, anti-spam, and/or anti-spyware software • protection against malicious and mobile code • threat risk assessments | <ul style="list-style-type: none"> • controlled access to locations where personal information is stored • locked cabinets • access cards and keys • identification, screening and supervision of visitors |

When determining what safeguards should be put in place, consider the nature of the records, including:

- the sensitivity and amount of information in the record
- the number and nature of people with access to the information
- any threats and risks associated with the manner in which the information is kept

A school board administrator hears that some teachers are using their personal Facebook accounts to share photographs from their classrooms, including posting pictures of students and their artwork.

The administrator responds by updating the board's policies covering disclosure of personal information on social media and the requirements to get consent before posting online. She also sets up ongoing training for teachers, and updates the confidentiality agreements that teachers must sign.

Access to Information

ACCESS TO INFORMATION

DO STUDENTS AND THEIR PARENTS HAVE A RIGHT TO ACCESS STUDENTS' RECORDS?

Yes. Students and their parents have a right to access the student's personal information from their schools and school boards. This right is provided for in both *MFIPPA* and the *Education Act*. These two pieces of legislation operate independently, have different rights and responsibilities, and may also lead to different results.

Right to access information under *MFIPPA*

MFIPPA's dual purpose is to protect privacy and provide a right of access to information held by school boards and other public institutions. To this end, *MFIPPA* provides individuals, such as students and parents, with a right to access records of their own personal information. This includes both the OSR and non-OSR records.

A child under 16 can access his or her own records. A parent or other person who has lawful custody of the child can also access records on the child's behalf.⁵⁸

There are some exceptions where a school board may refuse to grant an individual access to a record of their personal information. One exception

MFIPPA provides individuals, such as students and parents, with a right to access records of their own **personal information**.

is where granting access to information would be an unjustified invasion of another individual's personal privacy, or where it could be expected to seriously threaten the safety or health of an individual.⁵⁹ The school board would still have to disclose any other personal information requested by the individual that did not fall under these exceptions.⁶⁰

When a school board grants access to a record under *MFIPPA*, it must provide the individual with a copy of the record, unless it would not be feasible to reproduce it due to the length or nature of the record. In this case, the individual must be given an opportunity to examine the record.⁶¹

Right to access information under the *Education Act*

The *Education Act* gives every student the right to examine their OSR.⁶² Until a student turns 18, parents or guardians also have a right to examine the student's OSR.⁶³ The *Education Act* does not specify whether students, parents or guardians have a right to receive a copy of the OSR.

HOW DO STUDENTS AND PARENTS ACCESS PERSONAL INFORMATION?

If a student, or their parent or guardian, wants to access the student's personal information, they might choose to ask for the information informally, by asking the child's teacher for a particular record, for example. If an informal request does not work, or the records are numerous and lengthy, they may choose to make a formal access request. The request can be made under the *Education Act* or *MFIPPA*, or both.

Requesting access under the *Education Act*

Most students and parents request information directly from the school, either through an informal request or under the *Education Act*:

- The parent, guardian, or student, can make a request to the principal of the school to examine the student's OSR. For example, they could request an appointment to view the OSR at the school office.
- The request may be made either in writing or verbally.
- There is no cost associated with examining the OSR.
- The *Education Act* does not establish timelines or an appeal process for access requests.

Requesting access under *MFIPPA*

Students and parents may also make a formal request to the school board under *MFIPPA* by:

- sending the request in writing to the attention of the school board's freedom of information coordinator. Under *MFIPPA*, access requests must be made to the school board, not to the school.

- clearly identifying the records that are being requested, and specifying that the request is being made under *MFIPPA*.⁶⁴ The IPC offers an optional form that can be used for this purpose.
- paying a \$5 fee.⁶⁵

The school board must issue a decision letter within **30 days**. The decision will either grant access to the records, extend the response time by a specified length of time, or deny access to all or part of the records. If a reply is not sent within 30 days, the requester may appeal to the IPC.

The school board may decide that additional fees are required for supplementary documents such as photocopies and printouts. The amount to be charged for each component of the fee is set out in a regulation under *MFIPPA*.⁶⁶ For fees over \$25, the school board must issue a fee estimate to the requester.⁶⁷

If access is refused, the school board must provide specific details related to the refusal and information on how to seek a review of the decision by the IPC.⁶⁸

Under both *MFIPPA* and the *Education Act*, students and their parents also have a right to request a correction of the student's record if they believe it is inaccurate (see **Correction of Personal Information**, page 21).

DO INDIVIDUALS HAVE A RIGHT TO ACCESS GENERAL RECORDS FROM A SCHOOL BOARD?

Yes. In addition to the right of individuals to access their own personal information, *MFIPPA* gives the public a right to access general records held by a school board, which could include things like policies, guides, emails, meeting minutes, and procurement records.

Labour relations and employment-related matters are excluded from *MFIPPA*.⁶⁹ For example, if a parent requested access to a report about employment-related discussions between a teacher and the board, the board may choose to deny access by claiming this exclusion applies. The parent has the right to appeal the school board's decision to the IPC. While these types of records are excluded from the scope of *MFIPPA*, the school board has discretion to disclose them outside of *MFIPPA*.

Even for records covered by *MFIPPA*, there are exceptions to the types of information that can be accessed. For example, if a record contains **someone else's personal information**, such as a teacher or another student, in many cases *MFIPPA* requires that this information be redacted or removed from the record before access is granted.⁷⁰

The process for making a request for access to general records from a school board under *MFIPPA* is the same as for making a request for

personal information (see **How do students and parents access personal information?**, page 18).

DO STUDENTS NEED TO REACH A CERTAIN AGE BEFORE THEY CAN EXERCISE THEIR ACCESS RIGHTS?

No. A child of any age has the right to exercise his or her access rights under *MFIPPA*. This includes requesting access to general records held by the school or school board and/or to his or her personal information. Similarly, a child of any age has the right under the *Education Act* to examine his or her OSR.

HOW DOES A CHILD'S AGE AFFECT THE PARENT'S RIGHT OF ACCESS TO PERSONAL INFORMATION?

Until a child turns 18, their parents or guardians have a right under the *Education Act* to examine the child's OSR, without the child's consent.⁷¹ Where a student of 16 or 17 has withdrawn from parental control, this right would likely not apply.

Until a child turns 16, anyone having lawful custody of the child has a right under *MFIPPA* to access the child's record of personal information on behalf of the child, without the child's consent being required.⁷²

DO NON-CUSTODIAL PARENTS HAVE A RIGHT TO ACCESS A CHILD'S SCHOOL RECORDS?

Yes. Non-custodial parents have a right to access their child's school records under both the *Education Act* and *MFIPPA*, provided they have **access rights** to the child.

Under the *Education Act* a parent or guardian of a child under the age of 18 is entitled to examine the OSR. This applies to custodial parents and non-custodial parents with access rights.⁷³

Under *MFIPPA*, a non-custodial parent does not have the right to access personal information on behalf of their child in the way that a custodial parent does.⁷⁴ However, the act allows for disclosure where an Ontario or Canadian law expressly authorizes it. The provincial *Children's Law Reform Act*⁷⁵ and the federal *Divorce Act*⁷⁶ both indicate that a non-custodial parent **who has access to a child** has the right to make inquiries and to be given information concerning the child's health, education and welfare. The IPC has decided that these provisions allow non-custodial parents with access to their child to request and receive the child's education-related personal information under *MFIPPA*.⁷⁷ This applies to information in the OSR as well as information that is not in the OSR.

CORRECTION OF PERSONAL INFORMATION

ARE SCHOOL BOARDS REQUIRED TO ENSURE THAT RECORDS ARE ACCURATE?

Schools boards must take **reasonable steps** to ensure the personal information in their records is not used unless it is accurate and up to date.⁷⁸

Under the OSR Guideline, school boards must develop policies for determining the relevance of the materials in the OSR. They must also regularly review the OSR and remove any material that is no longer conducive to the improvement of the instruction of the student.⁷⁹ Additionally, there are some sections of the OSR that are specifically required to be kept up to date, such as information related to special health conditions. Entries in this part of the OSR must be dated and kept current.⁸⁰

CAN STUDENTS AND PARENTS REQUEST CORRECTION OF INACCURATE RECORDS?

Yes. If students or parents believe that personal information in a student's records is inaccurate, they have a right to request correction under both *MFIPPA* and the *Education Act*.

Under the *Education Act*, the parent or guardian of a student may make a request to the principal to correct the personal information contained in their child's OSR where they believe the information is inaccurate. Where the student is 18 or older, they may make this request directly.⁸¹

Only matters of fact, not opinion, may be corrected. If the principal refuses to correct the record, the requester may be referred to a supervisory officer of the school board. Ultimately, the student, parent or guardian may request a hearing before a designate of the Ministry of Education.

MFIPPA gives individuals the right to request correction of their personal information records.⁸² Individuals of any age may make the request, and parents or guardians of children under 16 can request on the child's behalf.⁸³ If the school board denies the request, the individual can appeal to the IPC.⁸⁴ The IPC may order the school board to correct the information or attach a statement of disagreement to the information. Only matters of fact, not opinion, may be corrected.

WHAT IS THE PROCESS FOR REQUESTING A CORRECTION?

If a student, their parent or guardian believes that information in a record is factually inaccurate and wants to request a correction, the first step should be to determine whether to make a request under *MFIPPA* or the *Education Act*. Either or both routes may be used, as follows:

Correction of Personal Information

If students or parents believe that personal information in a student's records is inaccurate, they have a right to request correction under both *MFIPPA* and the *Education Act*.

| <i>Education Act</i> | <i>MFIPPA</i> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>A student, or their parent or guardian if the student is under 18, can request a correction of the OSR if they believe information in the record was inaccurately recorded or is not “conducive to the improvement of the instruction of the student.”</p> <p>The requester may ask the principal to correct the alleged inaccuracy or remove it from the OSR.</p> | <p>A student, or their parent or guardian if the student is under 16, can request correction of a record of the student’s personal information in the OSR or non-OSR records if they believe it contains an error or omission.</p> <p>This right only applies if the individual has first been given access to the record under <i>MFIPPA</i>.</p> |
| <p>The request must be made in writing to the principal, referencing the <i>Education Act</i>.</p> | <p>The request must be made in writing to the Freedom of Information Coordinator at the school board, referencing <i>MFIPPA</i>.</p> |
| <p>No fee is required.</p> | <p>A \$5 fee is required.</p> |
| <p>The requester should identify the inaccurate or omitted information and the desired correction. If appropriate, supporting documentation should be included.</p> | <p>The requester should identify the inaccurate or omitted information and the desired correction. The IPC has a form that may be used for this purpose. Any supporting documentation should be included.</p> |
| <p>No timelines for correction requests are established by the <i>Education Act</i> or OSR Guideline.</p> | <p>A school board should respond in writing to the request for correction within 30 days of receiving it.</p> |
| <p>If the principal complies, the materials will be corrected or removed from the OSR and destroyed or returned to the student. No record of the request will be retained in the OSR.⁸⁵</p> | <p>If the school board complies, the information will be corrected or removed from the record, and the requester will be notified. The requester can have the school board notify anyone they have shared the information with in the preceding year.⁸⁶</p> |
| <p>If the principal refuses to comply with the request, the student, their parent or guardian may, in writing, require the principal to refer the request to a supervisory officer.⁸⁷ The supervisory officer will either require the principal to comply with the request or submit the request to a designate of the Ministry of Education for a hearing.⁸⁸</p> | <p>If the school board refuses to comply, the requester may have a statement of disagreement attached to the information believed to be inaccurate or incomplete.⁸⁹</p> |
| <p>At the hearing, the ministry (or designate) will decide the matter. The decision is then final.⁹⁰</p> | <p>The requester may appeal the school board’s decision (or a lack of response) to the IPC.⁹¹</p> |

SPECIAL TOPICS

Special Topics

SCHOOL PHOTOGRAPHS

Photographs are often taken of students, in many cases by professional photographers, at the school's request. Any photograph of one or more identifiable individual(s) is considered to be **personal information**.

Schools are permitted to collect personal information, including photographs, where it is necessary to the proper administration of a lawfully authorized activity.⁹² The collection of student photographs is considered necessary to the operation of a school (a lawfully authorized activity under the *Education Act*) because, for example, photographs enable staff to identify students.

Are schools required to give notice when photographs are taken?

Yes. A school must give notice if photographs of its students are taken by employees or anyone else working for the school, which may include contractors hired by the school and volunteers.⁹³ The school can provide notice in a variety of ways, including on the school's website, by email, regular mail, or in the student handbook (see **Does a school board need to give notice that it is collecting personal information?**, page 7).

What are the school's responsibilities if it uses a professional photographer to take photographs?

If a school board uses a professional photographer, the board is still ultimately responsible for the security and confidentiality of its students' personal information.⁹⁴ Any service agreements with vendors must align with the provisions of *MFIPPA*. Their contracts should clearly describe the administrative, physical and technical safeguards to protect personal information (see **How do school boards safeguard records?**, page 16).

In IPC privacy reports **MC16-4** and **MC16-5**, the IPC found that schools are permitted to disclose limited personal information of students to a professional photographer for administrative purposes.

The IPC also concluded that disclosure for limited marketing-related purposes was permitted because it could be **reasonably expected** that a student's personal information would be disclosed to the photographer for the purpose of offering parents the opportunity to purchase their children's school photographs. However, parents/guardians should be given the choice to opt out of receiving marketing materials.

What about photographs taken by people who are not employed by the school?

Individuals not employed by the school may not be subject to *MFIPPA*. However, given that schools and school boards control who has access to school property, they are ultimately responsible for the safety and security of their students and the security and confidentiality of the students' personal information, including their image.

In some instances, parents and students take photographs at sporting events, school concerts and other functions, and these photos appear in the school newsletter or in photo displays. On occasion, the media or researchers may request permission to photograph within the school setting. In these situations, the school board must notify students and their parents or guardians and get their consent.

Schools should develop a policy regarding photography of students on school property or at school events by non-school employees. The policy should be developed in consultation with parents and guardians and communicated to them and to teachers. These policies should apply to all images, including photographs, web postings, film and video recordings.

DISCLOSURE TO A CHILDREN'S AID SOCIETY

If any person—including a teacher or principal—has reasonable grounds to suspect that a child under the age of 16 is in need of protection, they are required to immediately report the suspicion and the information on which it is based to a children's aid society. This requirement, referred to as the "duty to report," is contained in Ontario's *Child, Youth and Family Services Act (CYFSA)*.⁹⁵

The *CYFSA* states that a child may be in need of protection if the child has suffered or there is a risk that the child is likely to suffer physical harm, sexual abuse or exploitation, or emotional harm, or has been subject to inadequate care or a pattern of neglect.⁹⁶ A person does not need to be certain that a child is in need of protection—the duty to report is triggered if there are **reasonable grounds to suspect** the need for protection.⁹⁷ Ontario's children's aid societies (societies) are required to investigate allegations or evidence that a child may be in need of protection.⁹⁸

The duty to report applies despite the provisions of any other act including *MFIPPA* and the *Education Act*⁹⁹ and applies even if the information is confidential or privileged. No legal action for reporting the information to a society can be taken against the person unless they act maliciously or without reasonable grounds to suspect that a child is in need of protection.¹⁰⁰

A person with a duty to report must make the report *directly* to the society, and must not rely on another person to make the report on their behalf.¹⁰¹ For example, if a teacher suspects a child is being abused based on a

conversation with that child, the teacher should contact the society directly, rather than rely on another teacher or the principal to do so on their behalf. The duty to report is also *ongoing*, meaning that even if the teacher has already made a report to the society about the child, the teacher must make another report if there is additional information to suspect the child is in need of protection.¹⁰²

While the duty to report applies to any person, professionals who work with children, including teachers, early childhood educators and principals who believe a child may be in need of protection may be guilty of an offence if they neglect to report it. A director, officer or employee of a corporation who authorizes or permits the commission of the offence may also be guilty under the *CYFSA*.¹⁰³

Outside of the duty to report, a person may also choose to report information to the society review team, which is a team each society establishes to recommend how a child can be protected.¹⁰⁴ Despite the provisions of any other act, a person may disclose information to this team even if the information is confidential or privileged. No legal action for disclosing the information can be taken against the person unless they acted maliciously or without reasonable grounds to suspect that a child is in need of protection.¹⁰⁵

A principal is contacted by a children's aid society. The society is reviewing the case of a young student who may be suffering abuse. The society's review team asks questions concerning the student's attendance and well-being. Can the principal disclose information to the society, even though the principal is not certain of whether the student is in need of protection?

Yes. Under the *CYFSA*, the principal can disclose information to a society review team if the information is reasonably required for that team to conduct its review. The principal's discretion to disclose applies despite the provisions of *MFIPPA* or any other act, and even if the information is confidential or privileged.

A person with a duty to report must make the report *directly* to the children's aid society, and must not rely on another person to make the report on their behalf.

DISCLOSURE TO POLICE

Under *MFIPPA*, school boards may disclose personal information to a law enforcement agency in Canada, such as a police service, in certain situations.¹⁰⁶

Generally, school boards should disclose personal information to a law enforcement agency only when required by law, such as in response to a court order, rather than a simple request.

However, they have discretion to disclose personal information to law enforcement agencies:

- to aid a law enforcement investigation
- for health or safety reasons

MFIPPA does not permit ongoing or informal arrangements for the automatic disclosure of personal information to law enforcement agencies.¹⁰⁷ In all cases, school boards should make their own assessment of the circumstances before deciding whether to disclose personal information to a law enforcement agency. If uncertain, the board should seek legal advice.

When legally required

In some situations, a school board may be required by law to disclose personal information to a law enforcement agency, such as on receipt of a court order (e.g., a search warrant or production order).¹⁰⁸ The institution must comply with the court order unless it successfully challenges it in court.

To aid a law enforcement investigation

A school board has the discretion to disclose personal information to a law enforcement agency in Canada, without a court order, to aid a law enforcement investigation.¹⁰⁹

After receiving a request from law enforcement, the board must ensure that the request is for **specific information** made in the context of a **specific law enforcement investigation**. The institution should not disclose without a court order if this condition is not met.

A school board may also choose to disclose personal information to a law enforcement agency on its own initiative to aid an investigation, where the board has a reasonable basis to believe an offence has occurred. It should disclose only the information that appears to be relevant and necessary for a potential investigation. For example, if an assault is captured on a school's video surveillance system, the board may disclose the video capturing the event.

For health or safety reasons

A school board may also disclose personal information to law enforcement in "compelling circumstances affecting the health or safety of an individual" (see **What information may be disclosed in an emergency**, page 13), either on its own initiative, or in response to a request from a law enforcement agency.¹¹⁰ For example, if a student is lost or missing from a school trip, a board may exercise its discretion to disclose personal information to the police after considering the relevant factors, including any compelling concerns about the student's health or safety.

Managing law enforcement requests

School boards should:

- develop and publish clear **policies** addressing how decisions about disclosure to law enforcement agencies are made and documented
 - such policies and procedures could be developed in conjunction with local police/school board protocols
 - the Ministry of Education requires each school board to have such a protocol in place, and requires that it address information sharing and disclosure
- document all disclosure requests by requiring law enforcement agencies to complete a **request form** before information is released
- make reasonable efforts to **notify** individuals in writing that their information was disclosed due to circumstances affecting their health or safety
 - in all other cases, such as where disclosure is made in response to a court order, the board should consider notifying the individual of the disclosure **after** consulting with the law enforcement agency to determine whether the notice would interfere with an investigation or otherwise cause significant harm
- annually publish **statistics** about disclosure to law enforcement

COLLECTION, USE AND DISCLOSURE OF HEALTH INFORMATION

Special rules apply to the collection, use and disclosure of students' health information when they receive health care in school. Health care includes any health-related examination, assessment, service or procedure provided to students to:

- diagnose, treat or maintain their physical or mental wellbeing
- prevent disease or injury, or
- promote health

Examples include providing care to a student who is not feeling well, examining a student's injury, and assessing a student for a condition such as a speech disorder.

The rules governing the collection, use and disclosure of students' personal health information are outlined in the *Personal Health Information Protection Act (PHIPA)* and apply to health information custodians and those working on their behalf. Custodians are only allowed to collect, use or disclose a student's personal health information if:

- they have the student’s consent (or the consent of a substitute decision-maker such as a parent), and it is necessary for a lawful purpose, or
- it is permitted or required by *PHIPA*

Custodians must take **reasonable steps** to keep health information secure. If personal health information is stolen, lost, or used or disclosed **without authority**, the custodian must notify the student or their substitute decision-maker, and in some cases must also notify the IPC.

What is personal health information?

A student’s personal health information includes any identifying information about the student that relates to:

- the student’s physical or mental health, including their family health history
- providing health care to the student, including the identification of a health care provider
- payments, or eligibility for health care, or eligibility for coverage for health care
- the student’s health number
- the identity of the student’s substitute decision-maker

Personal health information can be in either oral or written form and includes any other information about the student contained in a health record.¹¹¹

Who is a health information custodian?

A health information custodian is a certain person or organization that is involved in delivering health care and includes:

- health care practitioners such as physicians, nurses, psychologists, speech-language pathologists, dental hygienists and social workers providing health care
- a person who operates a group practice of health care practitioners
- a community health or mental health centre, program or service whose primary purpose is the provision of health care¹¹²

In some situations, a school board may be the custodian of students’ health records, such as where it is operating a group practice of practitioners. In other circumstances, a health care practitioner employed by the board may be the custodian. While different arrangements are possible, the school board must provide clarity about who is the custodian responsible for student health records.

For more information on custodians working for employers (including school boards) who are not custodians, please see the IPC's fact sheet: ***Health Information Custodians Working for Non-Health Information Custodians***.

Who can consent to the collection, use and disclosure of health information?

Students can consent to the collection, use and disclosure of their personal health information if they can understand the information that is relevant to deciding whether to consent, and the possible consequences of that decision.

If a student is younger than 16, a parent¹¹³ or other authorized person can consent on their behalf. This does not apply if the student has received treatment or counselling under the *CYFSA* on their own.¹¹⁴ The decision of a capable student prevails over a conflicting decision of a parent or other authorized person.¹¹⁵

If a student is incapable of consenting to the collection, use or disclosure of their personal health information, a substitute decision-maker can consent on their behalf.¹¹⁶

Can students request access to their health information?

Yes. Students or their substitute decision-makers, if applicable, can access the student's health records, with some exceptions. For example, students would not have the right to access a record if it is subject to a legal privilege or if a court order prohibits its disclosure.¹¹⁷

Custodians must respond to a request within **30 days**. This time limit can be extended by up to 30 additional days if the custodian gives written notice and an explanation for the extension.

Where the health care provider is employed by the school or acting on its behalf, the request must be made to the school board under *MFIPPA*.

Can a school board collect, use and disclose student health numbers?

Where a school board is not a custodian, it cannot collect, use or disclose a student's health number except for certain purposes, including providing health services funded by the Government of Ontario.¹¹⁸ A school board cannot require students to present a health card for other purposes, such as to identify students for registration. However, the school board can ask to keep a student's health number on file, on a voluntary basis, in case of a medical emergency. School boards should consider the privacy risks associated with collecting health numbers when developing their policies on this subject.

What about student immunization information?

Public health units in Ontario must keep up-to-date immunization records for every student in relation to nine designated diseases.¹¹⁹ If a student's record is incomplete, a health unit can send the school a written order to suspend the student. Physicians or nurses immunizing a child must provide the parent with a confirmation that the immunization was administered.

PRIVACY IN THE NETWORKED CLASSROOM AND THE USE OF ONLINE EDUCATIONAL SERVICES

Ontario teachers often use online educational tools and services in their classrooms, sometimes without the knowledge or approval of school administrators and school boards.

Online educational services involve computer software and web-based tools that students and their parents access via the internet and use as part of a school activity. Examples include online services that students use to:

- access class readings
- view their learning progression
- watch video demonstrations
- comment on class activities
- complete their homework

While these services may be innovative, readily accessible, and available at little or no cost, their use may pose privacy risks to students and their families.

Under *MFIPPA*, school boards are accountable for online educational services used in the classroom. They must ensure that these services do not improperly collect, use or disclose students' personal information. For example:

- **Improper Collection:** Some online educational services collect and retain students' personal information for their own non-educational purposes. They may also track and record students' online activities and interactions with others, and collect personal information from indirect sources.
- **Unauthorized Use:** Online educational services may evaluate students' behaviour and performance, and generate profiles to market learning tools or products directly to students and parents without their consent.
- **Unauthorized Disclosure:** Some online educational services sell students' personal information to third parties that market other

services and products directly to students and parents without their consent.

Best practices for the use of online educational services

Given the privacy risks, the IPC recommends that schools and school boards considering the use of online educational services take the following steps:

- 1. Develop and implement policies** to evaluate, approve and support the use of online educational services for use in the classroom. Consider carrying out a privacy impact assessment and working with other educational stakeholders. Take precautions before accepting “take-it-or-leave-it” terms and conditions. Provide educators with a list of online education services which are approved for use in the classroom.
- 2. Provide privacy and security training and ongoing support for teachers and staff.** Educators must be able to provide effective guidance and support to students and parents on the use of online educational services.
- 3. Notify students and parents** about the personal information that may be handled by the online services and the reasons for handling it. The notice should be timely, accessible, clear, and concise, and enable individuals to make informed decisions.
- 4. Allow for students or parents to opt out of online educational services** that collect, use, retain or disclose personal data. Provide other ways to deliver the same educational services.
- 5. Develop and implement a “Bring Your Own Device” policy** for students and parents who access online educational services with their personal electronic devices. The policy should clarify appropriate uses of the online services and any consequences of using a personal device—especially when installing software or mobile applications.
- 6. Set and enforce retention periods for accounts and different categories of personal data.** Only use the data that is collected for as long as needed. In particular, logs of interactions between students, parents and educators should be routinely purged.

To raise awareness of the risks of using some online educational services, the IPC developed a brochure and poster about online educational services that are available on the IPC website.¹²⁰

TEACHING STUDENTS ABOUT PRIVACY

While this guide focuses on the privacy obligations of schools and school boards, readers may be wondering about the role that students themselves

For more information on access and privacy in the school system, IPC appeals and complaints processes, and to read IPC decisions, visit www.ipc.on.ca, or contact us.

play in protecting their own privacy, and that of their peers, in an increasingly complex digital environment.

In learning to navigate the online world both safely and responsibly, students contend with issues that range from cyberbullying to child luring to identity theft. They need help in developing the skills to navigate around these threats, understanding who is processing their personal information for what purpose, and weighing the risks and benefits of sharing personal information online.

Educators have an important role to play in increasing digital privacy awareness among students. They also have an opportunity to introduce students to important public values like access to information and the protection of privacy.

The heads of all federal, provincial and territorial privacy protection authorities in Canada, including the IPC, have called for privacy education to become a greater priority by including it as a clear and concrete component in digital literacy curricula across the country. Federal, provincial and territorial privacy commissioners have also collaborated to develop lesson plans to support education about digital privacy.¹²¹

The IPC has created resource guides for teachers that may assist them in meeting existing Ministry of Education curriculum expectations.¹²²

ENDNOTES

- 1 Provincial and demonstration schools operated by the Ministry of Education, and the ministry itself, are governed by the provincial equivalent of *MFIPPA*, the *Freedom of Information and Protection of Privacy Act (FIPPA)*. These two acts are very similar in terms of the rights and obligations they create. While references in this guide are to *MFIPPA*, in all cases similar provisions are found in *FIPPA*.
- 2 Private schools are not subject to either *MFIPPA* or *FIPPA*. Some private schools are covered by a federal privacy law called the *Personal Information Protection and Electronic Documents Act (PIPEDA)*, which governs how private sector organizations collect, use and disclose personal information in the course of commercial activity. More information is available from the federal Office of the Privacy Commissioner of Canada (www.priv.gc.ca), which has oversight over *PIPEDA*.
- 3 *MFIPPA*, s. 2(1).
- 4 Ontario Student Record (OSR) Guideline, 2000, s. 1.
- 5 The office index card, while a component of the OSR, is not filed in the OSR folder and is not transferred with the OSR when the student moves on to a new school.
- 6 *Education Act*, ss. 266(2) and 266(10); *MFIPPA*, s. 32. OSRs may only be disclosed in specific situations described in section 266 of the *Education Act* or section 32 of *MFIPPA*.
- 7 *MFIPPA*, s. 28(2)
- 8 *MFIPPA*, s. 28(1)
- 9 *Education Act*, s. 265(1)(d)
- 10 The *Anti-Racism Act, 2017* allows certain public sector organizations to collect and use personal information for the purpose of eliminating systemic racism and advancing equity, in compliance with that act and its accompanying data standards.
- 11 *Education Act*, s. 169.1(1)(a)
- 12 See *Cash Converters Canada Inc. v. Oshawa (City)*, 2007 ONCA 502, and IPC Privacy Report **MC07-68**
- 13 For example, see IPC Privacy Report **MI10-5**
- 14 *MFIPPA*, s. 29(1)
- 15 *MFIPPA*, s. 29(1)
- 16 *MFIPPA*, s. 29(2)
- 17 *MFIPPA*, s. 29(3), Regulation 823 under *MFIPPA*, s. 4
- 18 Regulation 440/01 under the *Education Act*
- 19 *Education Act*, s. 266.2(2)
- 20 *Education Act*, s. 266.3
- 21 Regulation 440/01 under the *Education Act*, s. 4
- 22 *Education Act*, s. 266.3(1)
- 23 *Education Act*, s. 266.4(1-3)
- 24 *MFIPPA*, s. 31
- 25 *MFIPPA*, ss. 31(c) and 32(h)
- 26 *Education Act*, ss. 266(4) - 266(5.3)
- 27 *Education Act*, s. 266(13)
- 28 *Education Act*, s. 266(6)
- 29 *Education Act*, s. 266(7)
- 30 *Education Act*, s. 266(2.1)
- 31 *Education Act*, s. 266(3)

- 32 *Education Act*, s. 266(2)(b)
- 33 *MFIPPA* s. 53(1); IPC privacy report **MC11-73**.
- 34 *MFIPPA* ss. 51(1)-(2)
- 35 Set out in *MFIPPA*, s. 32
- 36 *MFIPPA*, s. 32(e)
- 37 *Education Act*, s. 266(2.1))
- 38 *Education Act*, s. 300.2
- 39 Section 300.3(5) of the *Education Act* provides that when notifying the parent or guardian of the harmed student, the principal must not disclose the name or any other identifying or personal information about the student who engaged in the harmful activity, except in so far as is necessary to explain the nature of the activity that resulted in harm to the student, the nature of the harm, the steps taken to protect the student's safety, and the supports that will be provided to the student in response to the harm. Section 300.3(7) provides similar limits on disclosing information about the student who was harmed.
- 40 O. Reg. 134/98 under the *Ontario Works Act*, s. 65(5)
- 41 *Occupational Health and Safety Act*, ss. 25(2)(a), 27(2)(a) and 32.0.5
- 42 *Occupational Health and Safety Act*, s. 32.0.5(4)
- 43 *MFIPPA*, s. 32(h)
- 44 *MFIPPA*, s. 5(1)
- 45 *MFIPPA*, s. 5(2)
- 46 *MFIPPA*, s. 32(i)
- 47 *MFIPPA*, s. 54(c)
- 48 *Education Act*, s. 266 (2) and (10). Where a 16 or 17 year old child has withdrawn from parental control, the parent's rights or entitlements under the *Education Act*, such as the right to provide consent on the student's behalf, likely would not apply. In such instances the school board may want to consider seeking legal advice.
- 49 *MFIPPA*, s. 32(b)
- 50 *Education Act*, ss. 266(2) and s. 266(10)
- 51 Regulation 823 under *MFIPPA*, s. 5
- 52 OSR Guideline, 2000, Section 9. This determination must be made in accordance with school board policy.
- 53 *Education Act*, s. 266(4)(b)
- 54 OSR Guideline, 2000, Section 8
- 55 OSR Guideline, 2000, Section 6. This transfer would be permissible under *MFIPPA* (s. 32(c)), which permits the disclosure of personal information for the purpose for which it was compiled, or for a consistent purpose.
- 56 Regulation 823 under *MFIPPA*, s. 3(3)
- 57 Regulation 823 under *MFIPPA*, s. 3(1-2)
- 58 *MFIPPA*, s. 54(c)
- 59 *MFIPPA*, s. 38 (a), s. 38 (b), s. 13
- 60 *MFIPPA*, s. 4(2)
- 61 *MFIPPA*, s. 23
- 62 *Education Act*, s. 266(3); OSR Guideline, 2000, Section 4.1
- 63 *Education Act*, s. 266(3); OSR Guideline, 2000, Section 4.2
- 64 *MFIPPA*, s. 17(1)
- 65 Regulation 823 under *MFIPPA*, s. 5.2

- 66 Regulation 823 under *MFIPPA*, s. 6 (general records) and s. 6.1 (personal information). School Boards looking for additional information can consult the IPC's guidance on fees, available at: www.ipc.on.ca/wp-content/uploads/2018/06/fees-fee_estimates-fee_waivers-e.pdf)
- 67 *MFIPPA*, s. 45(3)
- 68 *MFIPPA*, s. 22
- 69 *MFIPPA*, s. 52(3)
- 70 *MFIPPA*, s. 14
- 71 *Education Act*, s. 266(3)
- 72 *MFIPPA*, s. 54(c)
- 73 See IPC Order **MO-2853**
- 74 *MFIPPA*, s. 54(c) gives this right only to individuals who have *lawful custody* of the child under age 16.
- 75 *Children's Law Reform Act*, s. 20(5)
- 76 *Divorce Act*, s. 16(5)
- 77 See IPC Orders **M-787**, **P-1246** and **MO-3026**
- 78 *MFIPPA*, s. 30(2). See *Cash Converters Canada Inc. v. Oshawa (City)*, 2007 ONCA 502, and IPC Privacy Report I95-110M.
- 79 OSR Guideline, 2000, Section 2
- 80 OSR Guideline, 2000, Section 3.1.5
- 81 *Education Act*, s. 266(4)
- 82 *MFIPPA*, s. 36(2)
- 83 *MFIPPA*, s. 54(c)
- 84 *MFIPPA*, s. 39
- 85 OSR Guideline, 2000, Section 9
- 86 *MFIPPA*, s. 36(2)(c)
- 87 *Education Act*, s. 266(5)
- 88 *Education Act*, s. 266(5.1)
- 89 *MFIPPA*, s. 36(2)(b)
- 90 *Education Act*, s. 266(5.2-5.3)
- 91 *MFIPPA*, s. 39
- 92 *MFIPPA*, s. 28(2)
- 93 *MFIPPA*, s. 29(2)
- 94 Regulation 823 under *MFIPPA*, s. 3
- 95 *CYFSA*, s. 125. Note that a person *may* report to a society about a 16 or 17 year old whom they suspect is in need of protection, although there is not a duty under the law to do so. If a person chooses to make a report about a 16 or 17 year old whom they suspect is in need of protection, they may do so despite the information being confidential or privileged.
- 96 *CYFSA*, s. 74(2), also see *CYFSA*, s. 125(1)
- 97 *CYFSA*, s. 125(1)
- 98 *CYFSA*, s. 35(1)(a)
- 99 *CYFSA*, s. 125(1)
- 100 *CYFSA*, s. 125(10)
- 101 *CYFSA*, s. 125(3)
- 102 *CYFSA*, s. 125(2)

- 103 *CYFSA*, s. 125(5-9). A person convicted of either offence is liable to a fine of up to \$5,000.
- 104 *CYFSA*, s. 129(4)
- 105 *CYFSA*, s. 129 (5-6)
- 106 *MFIPPA*, ss. 2(1) and 32(g)
- 107 See *Ontario Court of Appeal, R. v. Orlandis-Habsburgo*, 2017 ONCA 649
- 108 *MFIPPA*, s. 32(e)
- 109 *MFIPPA*, s. 32(g)
- 110 *MFIPPA*, s. 32(h)
- 111 *PHIPA*, s. 4
- 112 *PHIPA*, s. 3
- 113 This does not include a parent who has only a right of access to the child.
- 114 *PHIPA*, s. 23(1)
- 115 *PHIPA*, s. 23(3)
- 116 *PHIPA*, s. 26
- 117 *PHIPA*, s. 52(1)(a) and (b)
- 118 *PHIPA*, s. 34
- 119 The designated diseases are: diphtheria, measles, mumps, poliomyelitis, rubella, tetanus, meningococcal disease, pertussis, and varicella.
- 120 IPC's brochures and posters ("Online Educational Services: What Educators Need to Know") are available at www.ipc.on.ca/wp-content/uploads/2016/11/online-educational-services.pdf
- 121 Lesson plans are available at www.ipc.on.ca/new-lesson-plans-for-educators-privacy-rights-digital-literacy-and-online-safety/
- 122 Resource guides, tailored for grades five, ten, 11 and 12 are available at: www.ipc.on.ca/wp-content/uploads/Resources/Grade_11-12_Resource_Guide.pdf; www.ipc.on.ca/wp-content/uploads/Resources/Grade_10_web-e.pdf; and www.ipc.on.ca/wp-content/uploads/Resources/up-1grade_5.pdf

A Guide to Privacy and Access to Information in Ontario Schools



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Commissioner of Ontario

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