



Information and Privacy
Commissioner/Ontario

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

PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. MC06-63

Toronto District School Board



Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

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PRIVACY COMPLAINT NO. **MC06-63**

INVESTIGATOR: **Mark Ratner**

INSTITUTION: **Toronto District School Board**

SUMMARY OF COMPLAINT:

The Office of the Information and Privacy Commissioner/Ontario (IPC) was contacted by several parents of students attending schools within the Toronto District School Board (TDSB), who raised concerns regarding a TDSB research initiative called the “Student Census”. The parents who contacted the IPC also directed the IPC’s attention to reports in the media dealing with the Student Census and provided the IPC with a copy of the questionnaire that was administered to students as part of the Student Census. In sum, the parents were concerned that the student personal information collected through the Census constituted a violation of privacy.

As a result, the IPC initiated an investigation to determine whether the implementation of the Student Census by the TDSB was in accordance with the provisions of the *Municipal Freedom of Information and Protection of Privacy Act* (the Act).

Based upon information provided by the parents, the IPC learned that the Student Census was comprised of a questionnaire that was administered to all students in grades 7-12 attending TDSB schools. Separate questions were provided to students in grades 7/8 and in grades 9-12. The questionnaire asked that students respond to a wide variety of questions including:

- questions relating to languages spoken;
- country of birth;
- racial identity;
- whether the student had been assessed as having a disability;
- whether the student felt safe in the school environment; and
- whether the student felt that he or she had been disadvantaged in school as a result of his or her ethnic background.

In addition to these questions, the questionnaire that was provided to students in grades 9-12 also requested that students identify their sexual orientation.

After reviewing copies of the questionnaire, the IPC contacted the TDSB so that it could provide its position on the issues raised in the complaint.

The TDSB met with the IPC and provided background information on the purposes underlying the implementation of the Student Census. The TDSB stated that the Student Census was part of a research initiative that was undertaken in order to provide data that may eventually lead to future program planning and resource allocation decisions. One of the documents provided to the IPC by the TDSB was a form letter that was originally provided to parents of students, which stated:

We are very excited by this important research project. The information from this Census will help us to improve our schools for the benefit of all our students. We will be better able to provide resources to schools and communities where they are most needed. We will have the information we need to create stronger partnerships with government and other groups to support children and youth in our schools and in our communities.

The Census is confidential. There will be no student names on the survey when they are returned by the student. The Census is voluntary. If you do not want your child to complete the Census, please complete the section below and return it to the school office.

The letter included a section that could be filled out by parents and returned to the school indicating that the parent did not want their child to participate in the Census. Where these forms were completed by parents, students did not complete the Census questionnaire.

In materials provided to the IPC, the TDSB indicated that its intention is to link data obtained from the Census with "existing Board data such as Report Card Data, EQAO (Education Quality and Accountability Office) results, as well as attendance, credit accumulation and graduation rates so that student success can be tracked over time."

In order to allow it to track students over time, the TDSB noted that while students' responses to the questionnaires would be kept **confidential**, they will not be treated as **anonymous**. The TDSB stated that once collected, the data would be stored and maintained in a database accessible only to the designated TDSB research staff.

DISCUSSION:

The following issues were identified as arising from the investigation:

Is the information "personal information" as defined in section 2(1) of the Act?

The information at issue in this privacy complaint is the information that is collected by the TDSB through the Student Census. As described above, the questionnaire asks students to respond to questions that provide information regarding:

- their country of birth;
- their racial identity;
- their disabilities (if any);
- their sexual orientation (asked only of students in grade 9-12); and
- additional information relating to the student.

In addition, each questionnaire contains the name and student number of the student completing the questionnaire. (The questionnaire form instructs students to “black out” their name after answering the questions, but the student number will remain). The student number is required so that the survey may be used by the TDSB to link with other information.

Section 2(1) of the *Act* states, in part:

“personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any **identifying number**, symbol or other particular assigned to the individual,

...

Previously, the IPC has held that information would be considered to be “personal information” where there is a reasonable expectation that the individual in question can be identified by the information in the record [see Order P-230]. In this case, although students have been instructed to “black out” their names where they appear on the questionnaires, the student numbers remain. I therefore conclude that the presence of the student numbers on the questionnaires provides sufficient information to allow for the identification of the students to whom they relate and to make the information in question “personal information” as defined under the *Act*.

I am therefore satisfied that the questionnaires contain “personal information” as defined under section 2(1) of the *Act*.

Was the collection of the “personal information” in accordance with section 28(2) of the Act?

Where personal information is collected by an institution, the institution must demonstrate that the collection is in accordance with section 28(2) of the *Act*, which states:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity.

Section 28(2) limits permissible collections of personal information to the three circumstances set out above. In this instance, the circumstance that would most likely apply is that which permits the collection of personal information that is “necessary to the proper administration of a lawfully authorized activity.”

In order to demonstrate that a given collection of personal information is necessary to the proper administration of a lawfully-authorized activity, the institution must demonstrate first, that the activity in question is **lawfully-authorized**; and second, that the collection of the personal information is **necessary** to that lawfully authorized activity.

The TDSB has stated that its goals in implementing the Student Census are to achieve (a) effective educational program planning, (b) appropriate resource allocation, (c) advocacy for resources, and (d) funding from external partners to support students.

In support of the position that the activity in question (pursuit of these goals) is lawfully authorized, the TDSB has made reference to various provisions of the *Education Act*. Section 170(1) of the *Education Act* sets out the responsibilities of school boards and states, in part:

Every board shall,

...

6. provide instruction and adequate accommodation during each school year for the pupils who have a right to attend a school under the jurisdiction of the board;

...

- 7.2 in accordance with any guidelines issued under paragraph 26.2 of subsection 8 (1), develop and implement a plan to provide for co-instructional activities for pupils enrolled in secondary schools operated by the board, in respect of each school year;

Section 171(1) establishes the powers for school boards and states, in part:

A board may,

...

8. provide instruction in courses of study that are prescribed or approved by the Minister, developed from curriculum guidelines issued by the Minister or approved by the board where the Minister permits the board to approve courses of study;

...

36. authorize such school activities as pertain to the welfare of the pupils and exercise jurisdiction in respect thereof

Having reviewed these *Education Act* provisions, I am satisfied that the activities in question as described by the TDSB (including educational planning, resource allocation, providing instruction, and school activities) are lawfully authorized.

The next step is to determine whether the collection of student personal information through the Student Census is necessary to these lawfully-authorized activities. The TDSB must establish that the collection is not merely helpful, but that it is necessary to properly administer the lawfully authorized activity.

With respect to this issue, the TDSB has stated:

In summary, the census form provides the TDSB with information on student composition (e.g. racial, ethnic, and family background, gender, age, language, country of origin and sexual orientation) and links it with a variety of information on the student perception of his or her experience in the schools (*i.e.*, quality of education, treatment in schools, fairness of the application of school rules). The aggregate information obtained from the census permits the Board to develop programming in a more targeted fashion and to ensure resources are more knowledgeably allocated. In addition, particular problems with respect to specific student groups may be identified and highlighted in support of advocacy for resources from external partners.

While this identifies the specific purposes for collecting the census data, all of these purposes relate back to the more general goal of improving overall student achievement and reducing the number of students who fail to graduate from the Board.

In supplementary materials provided to the IPC, the TDSB noted the existence of an “achievement gap” among TDSB students. While 45 per cent of students who graduate each year receive “Ontario Scholar” status, a full 20-25 per cent of students do not graduate on time.

The TDSB stated that the data obtained from the Student Census, once combined with other achievement data, is necessary in identifying and addressing factors that contribute to this “achievement gap,” and to achieving the TDSB’s overall educational goals, and is therefore in accordance with section 28(2) of the *Act*.

Having considered the TDSB’s position as set out above, I am satisfied that the collection of information from students about their experiences and demographic composition is necessary to the TDSB’s goals of improving student achievement and closing the achievement gap. As the TDSB’s duties and powers to provide instruction and promote the welfare of students are set out in the *Education Act*, I am satisfied that the collection of student personal information through the Census is “necessary to the proper administration of a lawfully authorized activity,” and is therefore in accordance with section 28(2) of the *Act*.

Has the TDSB provided students and parents with Notice of Collection in accordance with section 29(2) of the Act?

Institutions engaged in the collection of personal information are required to provide the subjects of the collection with a Notice of Collection. The *Act*’s notice requirements are set out in section 29(2), which states:

If personal information is collected on behalf of an institution, the head shall inform the individual to whom the information relates of,

- (a) the legal authority for the collection;
- (b) the principal purpose or purposes for which the personal information is intended to be used; and
- (c) the title, business address and business telephone number of an officer or employee of the institution who can answer the individual’s questions about the collection.

The TDSB stated that it provided notice in two documents that were provided to parents and students. I have reviewed both documents, copies of which were provided to me by the TDSB.

The first letter, which has been referenced under “Summary of Complaint” above, contains a general explanation of the type of information that was collected through the Student Census as well as an explanation of its general purpose. In the text of the letter, parents are instructed to contact the child’s school with any questions about the Census. The letter states that student participation in the Census is voluntary, and that parents have the option of having their children not participate by completing the “opt-out” portion of the letter.

The second document is a pamphlet addressed to students, which provides basic information about the Student Census. Among other things, the pamphlet states that “the TDSB will use the findings to help all students enjoy school more and achieve better results”. The pamphlet provides the telephone number and e-mail address of the TDSB’s Student and Community Equity Office where students could direct queries about the Census.

Based on these materials, the TDSB has taken the position that it has provided parents and students with the principal purpose or purposes of the collection of personal information, as well as the contact information of a person available to answer questions regarding the collection. The TDSB concedes that the notices in the two documents do not include a statement with its legal authority for the collection of personal information.

Having reviewed the materials provided by the TDSB, I agree that the materials provided to parents and students clearly express the principal purpose of the collection of student information.

With respect to contact information, I note that the letter addressed to parents directs them to contact their child’s school and the brochure for the students directs them to contact the Student and Community Equity Office at a given telephone number and e-mail address.

The notice requirement in section 29(2)(c) is clear in requiring institutions to provide “the title, business address and business telephone number of an officer or employee of the institution who can answer the individual’s questions about the collection.” In both documents, the title of the contact person (an officer or employee of the institution) was not provided.

Further, I note that the notices do not contain a statement expressing the legal authority for the TDSB’s collection of the Student Census data.

Accordingly, I conclude that the current Notice of Collection does not satisfy **all** of the requirements set out in section 29(2) of the *Act*. In future, the TDSB should ensure that all Notices of Collection for research initiatives explicitly express the legal authority for the collection of personal information, and set out the title of an officer or employee who can answer questions about the collection, together with the remainder of section 29(2) Notice requirements.

Is the intended use of the “personal information” in accordance with section 31 of the *Act*?

As stated above, the TDSB indicated that it intends to use the data collected through the Student Census to link with other TDSB data (such as Report Card Data, EQAO results, as well as attendance, credit accumulation and graduation rates) currently in its custody. The purpose of this linking is to determine the degree to which factors identified through the Census may contribute to student achievement, so that the TDSB may address, and attempt to narrow, the “achievement gap”.

The TDSB has clarified that while it does intend on linking Student Census data with achievement data in the future, no specific linking project has been formalized to date. The

TDSB has stated that it therefore cannot take a position on whether such linkages would constitute a use of personal information that is in accordance with the provisions of the *Act*.

As the linking of identifiable information collected through the Student Census with other TDSB data currently on file has potentially serious privacy implications, I would recommend that the TDSB contact our office prior to engaging in such linking.

OTHER MATTERS

In this Privacy Complaint Report, I have concluded that the TDSB's collection of student information through the Student Census does not constitute a violation of the collection provisions of section 28(2) of the *Act*. I have reached this conclusion because I am satisfied that in the course of providing effective educational programs to students, the TDSB is entitled to collect identifying information **about** its students so that it can ensure that programs are developed in accordance with identified student needs and that resources are appropriately allocated.

Having reached this conclusion, it is important to note that there were several shortcomings in the way that the TDSB administered the Student Census. For instance, the TDSB should have used anonymized identifiers, rather than student numbers to identify students. In some cases, these shortcomings led to concerns on the part of parents, which were communicated to the IPC. These concerns are summarized as follows:

- Concerns regarding a lack of communication with parents about the objectives and methodology of the Student Census including:
 - Confusion as to whether the Census was intended to be **confidential** but not **anonymous**, and the distinction between these terms,
 - A lack of information regarding the security measures in place to protect student information.
 - Background information that was intended for publication on the TDSB's website was not posted.
- Concerns regarding the appropriateness of certain questions appearing on the Student Census questionnaires (e.g. questions relating to ethnicity and sexual orientation).
- Concerns regarding the fact that although participation in the Census was intended to be voluntary, students were not directly given the opportunity to opt-out.
- Concerns regarding the fact that student numbers are collected and retained through Student Census questionnaires.
- Concerns related to the fact that through the Census, the TDSB has created a database of potentially sensitive student information.

These concerns were highlighted by the fact that the TDSB stated that it intended on administering an additional Student Census for elementary students in 2007.

The Canadian Institutes of Health Research, the Natural Sciences and Engineering Research Council of Canada, and the Social Sciences and Humanities Research Council of Canada have published the *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans*¹ (the *Policy Statement*), which establishes standards for ethical conduct for research involving human subjects.

A key component of the *Policy Statement* is the requirement that all proposals for research involving personal information be subject to review by a Research Ethics Board (REB). It is the duty of the REB to determine whether a given research proposal is ethical, and whether the information collected is proportionate to the value of the research. For instance, an REB would be well-positioned to advise on the appropriateness of given questions, such as questions pertaining to sexual orientation.

In my view, in future, the TDSB should consider seeking the approval of an REB for any future Census or research activity involving TDSB student information. Such an approval process could assist in the TDSB's determination of the necessity for a given research project, and would help in the protection of student privacy.

As an alternative to seeking REB approval for future research activities, the TDSB could elect to provide a research proposal to the IPC's Policy Department for review. Although such a review would not constitute a formal approval process, the IPC's Policy department would be able to advise on potential privacy issues that may be of concern.

As a third possible alternative, the TDSB may choose to retain the services of an independent expert (e.g., an academic researcher) with expertise in survey research methodology and privacy to review the research proposals.

Moving forward, I recommend that the TDSB create a Privacy Policy specifically addressing TDSB research initiatives that involve the collection of identifying information. Among other things, this Privacy Policy would include the following provisions:

- A provision that all collection, use and disclosure of student information for the purpose of research activities will be in accordance with the provisions of the *Act*.
- A plan for effectively disseminating detailed information regarding the purpose of the particular initiative to parents and students, including the electronic dissemination of information through the TDSB's website.
- The requirement that information provided to parents include the statutory Notice of Collection as required under section 29(2) of the *Act*.

¹ The *Policy Statement* is available online: <http://www.pre.ethics.gc.ca/english/policystatement/policystatement.cfm>.

- The use of anonymized identifier numbers, rather than student numbers wherever possible.
- Preparing a research proposal detailing the objectives and methodology of a particular research activity and submitting it to at least **one** of the following for review:
 - an REB;
 - the IPC's Policy Department; or
 - an independent expert with expertise in survey research methodology and privacy.

The proposal should be submitted prior to commencing the research activity. This type of a review process would only be necessary where research techniques do not duplicate research activities that had been previously submitted.

Finally, the TDSB should consult with the IPC to review the Privacy Policy before it is implemented.

CONCLUSION:

I have reached the following conclusions based on the results of my investigation:

- The information in question qualifies as "personal information" as defined in section 2(1) of the *Act*.
- The personal information was collected in accordance with section 28(2) of the *Act*.
- The Notice of Collection does not satisfy all of the requirements set out in section 29(2) of the *Act*.

RECOMMENDATIONS:

1. I recommend that the TDSB develop a comprehensive Privacy Policy that specifically addresses research initiatives involving TDSB students and containing the provisions set out above. A copy of this Privacy Policy should be provided to the IPC for review prior to its implementation.
2. I recommend that for future research activities, all Notices should accord with the Notice requirements set out in section 29(2) of the *Act*.
3. I recommend that the TDSB inform the IPC prior to proceeding with new research projects involving the linking of any data obtained through the Student Census.

By **July 18, 2008**, the TDSB should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendations.

Original signed by: _____

Mark Ratner
Investigator

January 17, 2008