

STUDENT RECORDS POLICY

The rights of individuals to access information held by a public body are defined by Manitoba's new access and privacy legislation, *The Freedom of Information and Protection of Privacy Act (FIPPA)*, and its companion statute, *The Personal Health Information Act (PHIA)*. This legislation applies to all school divisions and districts.

The purpose of *FIPPA* is to allow individuals to request access to their own records. This new legislation pertains to all school records that have been developed or already exist in a school division. The Act includes those records that are "in the custody or under the control of" public bodies, including any information received from other sources, including government agencies, individuals or organizations. This also includes any records that are stored in an off-site location.

Under *FIPPA*, a code of "fair information practices" provides for the collection, correction, use and disclosure of personal information and personal health information. With this new legislation, any information that is "written, photographed, recorded or stored in any manner, on any storage medium or by any means including by graphic, electronic or mechanical means" is under the jurisdiction of *FIPPA*. This does not include electronic software or any mechanism that produces records.

Creating Pupil Files:

Under The Public Schools Act (42.1), every Manitoba school division "shall establish written procedures respecting the collection, storage, retrieval, and use of information respecting pupils." It is the responsibility of the school to inform the student's parent or guardian or the student who has reached the age of majority (18 years of age) that a student file will be developed for them. This usually occurs at the time of the student's enrolment.

When collecting personal information, the school division must explain the *purpose* of the collection, as well as the *authority* under which it is collected. The title, address and telephone number of a staff member who can answer any questions about the collection should be provided.

The Public Schools Act (42.2) defines a "pupil file" as a "record or a collection of records respecting a pupil's attendance, academic achievement and other related matters in the possession or control of a school board."

Under *FIPPA*, the collection of personal information must be "directly related to or necessary for an existing program or activity of the local public body." This is related to the clause in *FIPPA* that authorizes the collection of information for a "purpose consistent with that for which it was collected." This ensures that the school board collects only the personal information related to the student's educational progress.

Content:

A student record contains all the information collected by the school division on the student's educational progress. Within each student record, there can be up to three sections included in the student's file: (*Manitoba Pupil File Guidelines, 2000*).

1. Cumulative file (student information);
2. Pupil support data;
3. Young offender information (if necessary)

1. Student Information:

This section contains both personal information and personal health information. Under *FIPPA*, personal information is defined as "any recorded information about an identifiable individual." Information normally included in the student's file includes:

- the student's name, gender and date of birth;
- Manitoba Education & Training number (MET#);
- any relevant health information, i.e. allergies, asthma, medications, etc., and optional PHIN (personal health identification number.);
- any Individualized Health Plan or any other health care plan applicable to this student;
- name, address and phone number of the student's parent/legal guardian;
- citizenship status;
- school division/district of the student if the student is not a resident of the attending school;
- any enrollment at other schools;
- attendance records;
- a summary of the student's academic progress, including the results of the standardized examinations conducted on behalf of the Province of Manitoba;
- information on any student misconduct, including suspension or expulsion;
- notes of any referrals to social service agencies, counseling, etc.;
- copy of any separation agreement or court order regarding child custody;
- notes of any awards, prizes, etc.;
- home/school communication.

Under *PHIA*, personal health information that is collected about the student would be placed in the student's cumulative file. This information would fall under the jurisdiction of *PHIA*, which defines personal health information as "recorded information about an identifiable individual relating to that person's health or health care history, the provision of health care to the individual or payment for health care provided to that individual." Any personal health information in the cumulative file would pertain to the requirements outlined by *PHIA* (section 18 & 19). (Exhibit 1: Letter of Confidentiality).

Under *FIPPA* (section 41), a requirement exists that a school division should protect this personal information by using “reasonable security arrangements” for personal information. This ensures the files are protected by unauthorized access, use, disclosure or destruction. A cross-reference listing that identifies the location of any or all other information about a student should be marked in this file.

2. *Pupil Support File:*

This section is developed for some students and can include:

- documentation from school clinicians and special education staff;
- any communication with outside service agencies;
- health information, including medical, psychological or behavioural; and
- any correspondence, notes or meetings/discussions between/among other school Clinicians or external agency reports, including hospitals;
- results from any specialized diagnostic tests.

This information can be stored in more than one location. The information in the pupil support file should be kept separate from the cumulative and young offender files. Sometimes, a student’s information can be in a school counselor’s office or with other school staff. Regardless of where these files are stored, the information in these files are covered by *FIPPA*’s and *PHIA*’s access provisions.

3. *Young Offender File:*

This file is developed for a student on an “as needed” basis. This information is usually transferred from the courts, or a youth worker into the student file, and can include:

- the offence the student undertook;
- identification of any individual or group that could be at risk from this student’s previous behaviour;
- information that ensures a student who is on bail or probation complies with the conditions of their release, under the conditions of the court;
- recommendations of the court;
- prior record, if any.

Access & Transfer Precautions:

Under *The Young Offenders Act*, a young offender file must be kept separate from the student’s cumulative and pupil support files. This ensures that only certain designated individuals can access this information.

It is recommended that the school principal or designate as the “custodian” of a young offender file. A list of other authorized persons who can access this file should be noted. Usually only a principal can access these files.

The Young Offender file must be destroyed if a student transfers to a school in another school division. The courts are charged with the responsibility to provide any information on this student to the new school and school division. The school should communicate to the authorities that the student is transferring to another school.

Access & Privacy Issues:

All information on a student that is recorded in a student's file is in the "custody" of the school division. All personal information and personal health information falls under the jurisdiction of *FIPPA* and *PHIA*. As well, all information in a Young Offender file comes under *The Young Offenders Act (YOA)*.

The Manitoba Pupil File Guidelines (2000) establish that "regardless of the source of the information, the school division is responsible for ensuring compliance with all access to information and protection of privacy requirements which apply to the information in pupil files." These *Acts* describe the procedures to follow for the release of this information to persons both within and outside of the school division.

The Application Process:

Under *FIPPA*, anyone can request access to information that is held by a public body, such as a school division. A request to a school division under *FIPPA* is referred to the school division staff member that has been identified as the School Division/District Access and Privacy Coordinator/Officer. This could be the Superintendent, Secretary-Treasurer, or other designate.

FIPPA requires *each* school division to designate by resolution or by-law a person or group of people, to be responsible to carry out the provisions of access identified by the *Act*. This person can delegate any of the responsibilities related to the access provisions of the *Act*, to an Access and Privacy Officer. The Access and privacy Coordinator is responsible for receiving applications and the administration of the *Act*.

Once a request is received, the school division has an obligation to respond to this request in writing. The school division **must** disclose the information, unless all or part falls under the mandatory or discretionary exceptions established in the *Act*. Under *FIPPA*, a school division discloses personal information "any time it releases, shares or sells the information to any person or entity outside the local public body."

There are sixteen exceptions outlined in the *Act*. It is important to refer to the *Act* to provide further explanations on each exception to disclosure. It is the responsibility of the school division to provide reasons why the information or record requested cannot be disclosed.

FIPPA has three *mandatory* exceptions to the disclosure of information applicable to school divisions: (Sections 17-20, 25(2), 272):

- Privacy of a Third Party (Section 17);
- Business Interests of Third Parties; and
- Information provided in confidence by another government to a local public body (Section 20).

The mandatory exception – “Privacy of a Third Party” requires a school division to refuse access to any personal information, including health information that would infringe upon the privacy of a third party. This would also include personal health information. If disclosure or use of this information would expose the third party to any physical or emotional harm, or if the personal information was obtained in confidence, then this information **cannot** be shared.

A third party can consent to the release or use of this information, in which case this exception will be waived. Another mandatory exception – “Information provided in confidence by another government to a local public body”, forbids the disclosure of information obtained from the RCMP, police, or other related agencies that are provided in confidence to the student’s school or school division.

Under *FIPPA*, there are also twelve *discretionary* exceptions (Sections 21-32):

- Information affecting intergovernmental relations;
- Local public body confidences (Section 22);
- Advice to a local public body;
- Individual health or safety or public Safety (Section 24);
- Law enforcement matters (Section 25);
- Security of property;
- Solicitor-client privilege;
- Economic and other interests of a local public body;
- Testing Procedures, Tests and Audits;
- Confidential Evaluations;
- Preservation of Heritage Resources and Life Forms; and
- Information that is or will be available to the Public.

Of these, several discretionary exceptions are likely to apply to a school division’s records, including the “Local Public body Confidences,” “Individual Health or Safety or Public Safety,” and “Law Enforcement Matters.” Under *FIPPA*, the term, “law enforcement” refers to any action taken for the purpose of enforcing federal and provincial statutes and regulations. This includes policing, investigations or inspections, and proceedings that may result in a penalty or sanction.

Other Exceptions to FIPPA

Some records included under the jurisdictions of other Acts or statutes including those from *The Child and Family Services Act*, *The Young Offenders Act*, *The Mental Health Act*, and *The Personal Health Information Act*, are exempt from *FIPPA* requirements.

Administration of a Request under FIPPA:

Under *FIPPA*, a request for access to information must be filled within 30 days. There are some exceptions to this time limit. The Act outlines four major reasons for a delay to an information related request:

1. when the application does not provide enough detail;
2. when the public body must consult with a third party;
3. when the search involves a large number of records or information; and
4. if a third party complains to the Ombudsman.

There are no specific fees for a request for information under *FIPPA*. However, the school division can assess a fee to compensate for any associated costs to obtain the information. Some of these costs could include the search and preparation time, computer or data processing, copying, delivery, etc. The local public body also has the discretion to waive any fees.

FIPPA (Section 9) requires the public to assist the applicant to a reasonable extent. This important concept refers to providing support to the applicant to review the information disclosed.

School Division Staff Access:

The release of personal information or personal health information from a pupil support file must only be used for educational matters related to a student. This information can be shared among school division staff. Under *FIPPA* (section 3), the use of personal information is defined as “access to and use of personal information within the local public body.”

Student Access:

Currently, both provincial Acts have clauses relating to students gaining access to their student files. Manitoba's *Public Schools Act* does not allow students to access their pupil files until they reach the age of majority. The PSA (subsection 42.3(2)) establishes several conditions when a school division may refuse access to all or part of a pupil file. Under *FIPPA*, any individual can request access to personal information to his/her file. This also refers to any personal health information about that student, under *PHIA*. In both situations, if the student is under the age of 18, it will be determined if the student understands the nature and consequences of this request. However, under the *YOA*, a

school division **cannot** disclose any information in the young offender component of the student's file.

Access by Parents or Adult Students:

In Manitoba, both *Acts* have clauses that pertain to parent(s)/guardian(s) obtaining a pupil file. Under *The Public Schools Act*, (Section 42.3(1)(a)) parent(s)/guardian(s) can request access to their child's file until that child reaches the age of majority. At that time, the student's consent must be acquired before that pupil file can be released to the parent(s)/guardian(s). (Sections 42(3) & 58.9(2)). Specifically under *PHIA*, a parent/guardian may "request access to personal health information in his/her child's pupil file if the minor does not have the capacity to make health care decisions." (Clause 60(c)).

Third Party Requests:

For purposes of this policy, a 3rd party is "a person, group of persons or an organization other than the person that the information is about and other than the school division or district maintaining the record." (*Manitoba Pupil File Guidelines, 2000.*) Under *The Education Administration Act* (Manitoba Reg. 468/88 (Part II, 15)), school staff may receive requests for access to a pupil file for current or former students from post-secondary institutions or potential employers. This information could include a student's attendance or academic achievement report. A verbal or written authorization would be required from the student or parent/guardians of a minor. For verbal approval, a note should be detailed and attached to the pupil file. This applies to all requests regarding the release of information to a third party.

Under *The Public Schools Act (Section 269)*, access to records can also be gained from "every school attendance officer appointed under the authority of this Act; (he/she) has the right of access to the records of every school board, every private school and every municipal council for the purpose of procuring the names, ages and address of all children and all such other information as may be required for the carrying out of the provisions of this Act."

FIPPA & Privacy Issues:

All third party requests require approval by the School Division Access and Privacy Coordinator. These requests could also be from a variety of sources, including law enforcement, justice officials, or government agencies. *FIPPA* requires the third party to verify their request by a legal authority, i.e. court order, government request, etc.

There can be no appeal to a court about the collection, use or disclosure of personal information by a public body under *FIPPA*.

Refusal to Access the Pupil File

According to FIPPA, and also the PSA (42.3(2)), parent, pupil or third party requests can be denied in whole or in part if the release of the file would result in any or all of the following conditions:

- Detrimental to the education of the student;
- Cause physical or emotional harm to the student or another person;
- Invasion of the privacy of a third party; or
- Interfere with a legal or police investigation.

FIPPA and *PHIA* provide for an appeal of an access decision by the local public body to the Provincial Ombudsman's Office. If the person is not satisfied with the Ombudsman's decision, the applicant can make an appeal to the Court of Queen's Bench.

Application to change or correct personal information in the pupil file

Under the *PSA*, students, or parent(s)/guardian(s) have the right to request changes(s), of any information in a file. Under *FIPPA* and *PHIA*, individuals have the right to request corrections to a record. A request to change information requires supporting documentation.

The school division has 30 days under *FIPPA* to respond to the request for change(s) to the record. If the school division does not endorse the changes(s), this request for change or correction(s) can be attached to the pupil file for future reference (*PSA*, 42.5)/*FIPPA*. Individuals can also appeal to the Ombudsman regarding the school division's refusal to change a record.

Transfer of the Pupil File

Under *The Education Administration Act* (Manitoba Reg., 468/88 & 29(3)), the school principal is responsible for transferring the pupil file if the student transfers to a different school or another school division. This transfer of personal information and health information should conform to the standards regarding the release of information supporting the student's educational progress. The transfer of the pupil file must also be conducted in the best means available to ensure both security and confidentiality.

Retention & Destruction of the Pupil file

The *PSA* requires all school division to establish a written policy concerning the retention and destruction of personal information and personal health information. Both *FIPPA* (clause 3(b)) and *PHIA* (section 17), encourage a policy, by-law or resolution be written "to ensure the transfer, storage or destruction or records be conducted to ensure the privacy of the individual is maintained." Both Acts (*FIPPA* & *PHIA*) encourage that a school division establish procedures that record the method of destruction and the person responsible for supervising the destruction of records.

The pupil support file is to be maintained for a minimum period of ten years after the student no longer attends the school. After the ten-year period, pupil files can be destroyed according to the school division records procedures policy. Sometimes, non-active pupil files are stored at an off-site location. It is essential to ensure the security and confidentiality of these pupil files. (Exhibit 2: Records Retention and Disposition Schedule for Manitoba School Divisions/Districts Student Records: *Guidelines on the Retention and Disposition of School/District Records* (June 2000).

The exceptions are the Senior 1 to Senior 4 student grades. Schools are required to retain and provide grade transcripts for up to thirty years. This ensures all future students the right to obtain their grade transcripts if required.