



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report P-2014-001

May 20, 2014

Newfoundland and Labrador English School District (Formerly Eastern School District)

Summary: The Complainant submitted a privacy complaint alleging that Eastern School District (now Newfoundland and Labrador English School District) had inappropriately collected and disclosed her personal information and had failed to adequately protect her personal information. The Complainant also expressed concerns about how her personal information was being protected and used by ESD. The complaint stems from the manner in which ESD handled several harassment complaints that were filed with ESD by the Complainant. The Commissioner found that that ESD failed to comply with sections 33(2), 34, 36, 38, 39 and 40 of the *ATIPPA*, and made several recommendations as to how to avoid these breaches in the future.

Statutes Cited: *Access to Information and Protection of Privacy Act*, SNL 2002, c. A1.1, as amended, sections 32, 33, 34, 36, 38, 39 and 40. *Schools Act 1997*, SNL 1997 c. S-12.2, as amended, section 76.

Authorities Cited: British Columbia OIPC Orders F10-31, F07-10 and 00-51.

I BACKGROUND AND ISSUES

- [1] On October 1, 2012, this Office received a Privacy Complaint from the Complainant alleging that Eastern School District (now Newfoundland and Labrador English School District) (“ESD”) had inappropriately collected and disclosed her personal information and had not adequately protected her personal information. The Complainant also expressed concerns about how her personal information was being stored and used by ESD. In her complaint, the Complainant described in detail the circumstances that led to her complaint and listed various instances where she felt her personal information had been improperly collected, used and disclosed. The Complainant is a teacher who has been employed by ESD for a number of years.
- [2] This matter stems from the manner in which ESD handled several harassment complaints that were filed with ESD by the Complainant. Two complaints were dismissed and prior to ESD investigating the remaining two harassment complaints filed by the Complainant, it decided to hire an outside agency to “assess the professional relationships” in the Complainant’s workplace, and to place the Complainant’s harassment complaints on hold pending the outcome of this assessment. After a meeting with an HR official from ESD on November 29, 2010 at the Complainant’s school, the Complainant agreed to participate in the “mediation” process that had been proposed in the meeting, but was adamant that this process not take the place of the process to be followed under ESD’s written policies and guidelines for dealing with harassment complaints. I use quotation marks to describe the process undertaken by this outside agency as there is some confusion and dispute as to what the role of this outside agency actually was. The outside agency was a “consulting and psychological services” firm, and the person who undertook the assessment was a registered psychologist (the “Consultant”).
- [3] After the outside agency concluded its process, a “Report on Professional Relations” was prepared, and a meeting was called on March 18, 2011 to share the results of the report. Present at the meeting were the Complainant and her union representative, the Assistant Director of Education (Human Resources), the Senior Education Officer (Human Resources), the Principal of the Complainant’s school (also the subject of an harassment complaint made by the Complainant), another teacher at the Complainant’s school (the subject of another harassment complaint by the

Complainant) and her union representative, the Consultant and an official “note taker”. One of the conclusions of the report was that the “psychological effects of living with this conflict in their workplace have taken a significant personal toll on both individuals” (referring to the Complainant and the other teacher). One of recommendations of the report was that the Complainant and another teacher “undergo psychological assessments, counselling and coaching to assist.... to move on with their lives...”

[4] The Complainant sent a letter dated March 21, 2011 to ESD in response to the Consultant’s report. Among other things, she indicated in that letter that she was already receiving counselling to help her deal the workplace issues she was experiencing and did not wish to engage in other counselling. In the end, due to a conflict of interest on the part of this psychologist, the Complainant did agree to see another psychologist, who was recommended by the Consultant. Prior to seeing this psychologist, the Complainant provided documents that show that she made it clear that she would not consent to a psychological assessment if the purpose of it was to determine if she was mentally stable, or to determine if her mental health was compromised. She would agree to attend the sessions with the psychologist if the purpose was to facilitate a resolution to the workplace conflict, and if she was to undergo a (true) psychological assessment, she wanted the findings to be disclosed to her first, and to remain confidential (not shared with ESD) unless and until she had reviewed the findings and consented to the release/disclosure to others. At a later meeting in March 2011, ESD communicated to the Complainant that the psychological assessment for which she was being referred would determine whether there had been any psychological effects from living with the workplace conflict and that the psychologist may recommend some things that ESD could do to provide support to the Complainant.

[5] It was eventually decided that the Complainant would be referred to a psychologist recommended to ESD by the Consultant. The Complainant insisted that she review and approve of the referral letter (and any subsequent correspondence) to be sent to this psychologist. This was agreed to by ESD and the Complainant did view the letter that was sent to the psychologist. The letter stated that a psychological assessment was required due to an “ongoing professional relationship conflict”, and the purpose was to determine the psychological effects of living with the conflict, and the potential personal toll on the Complainant. It was also to focus on the Complainant’s fitness for work and a potential plan for ongoing counselling and coaching to assist

with the professional workplace issues. However, in conjunction with this referral letter, a senior official at ESD made a telephone call to the psychologist and repeatedly expressed grave concern for the Complainant's "stability" and stated to the psychologist that the complainant was "paranoid", and that a psychological assessment was required immediately.

[6] When the Complainant attended her initial meeting with the psychologist, and the psychologist explained what exactly was involved in a true psychological assessment, it was apparent to the psychologist that the Complainant's understanding of the psychological assessment she was to undergo was completely different from the psychologist's understanding of what was required based on the telephone call she had received from ESD, and the psychologist's notes from that initial meeting indicate that it did not appear that the Complainant had "negotiated [with ESD] a psych assessment."

[7] In May 2011, a subsequent letter from ESD was sent to the psychologist stating that a full psychological assessment was required but that ESD would only require a written opinion with respect to the Complainant's fitness to work and recommendations with respect to counselling/coaching supports. The Complainant had concerns that this letter was too broadly worded, and wanted it clearly understood that the assessment for which she was being referred would only examine the psychological effects of the workplace conflict and not an assessment of her broader mental state. The Complainant's understanding that the assessment for which she was being referred was limited in scope as to the effects of the workplace conflict was communicated to ESD in a letter sent to ESD by the Complainant's union representative in June 2011. In the end, a true psychological assessment was never conducted, but the Complainant did attend sessions with the psychologist, and as the sessions progressed, five reports were sent back to ESD by the psychologist.

[8] The Complainant's allegations with respect to the improper handling of her personal information are best explained by reference to each section of the *ATIPPA* the Complainant believes ESD has violated. With respect to section 33 (how personal information is to be collected) the complainant says that the nature of the assessment that was undertaken by the outside agency was not clearly explained to her and thus, her personal information was collected improperly, as the purpose for the collection was not adequately explained to her, as per section 33(2)(a) of the

ATIPPA. She also states that the information collected was used to make written findings about her that were beyond her understanding of the scope of what the Consultant was engaged to do.

[9] Also related to the issue of collection of personal information, the Complainant states that the purpose of the psychological assessment for which she was referred was also not adequately explained to her, as the purpose that was explained to her and as outlined in the letter sent to the psychologist by ESD (which the Complainant saw) and the information conveyed to the psychologist by telephone were substantially different. Thus, the Complainant alleges this is another breach of section 33(2)(a) of the *ATIPPA*.

[10] With respect to section 34 (accuracy of personal information), she takes issue with ESD relying on the “Report on Professional Relations” to inform its process going forward, as she feels it was inaccurate and incomplete yet was still used to make decisions that directly affected her. The Complainant states that ESD did not make every reasonable effort to ensure the accuracy and completeness of her personal information which was used to make decisions that directly affected her. The Applicant points to factual errors in the “Report on Professional Relations” (such as the number of a particular type of teachers at the school and when a particular program started at that school), and further alleges that ESD did nothing to address issues with respect to completeness of the report the Complainant brought to ESD’s attention, such as the Consultant apparently falling asleep during her interview with the Complainant, the Consultant’s decision not to interview people the Complainant felt were relevant (the Consultant did confer with ESD about potential interview subjects), and also to not review documentation the Complainant felt was relevant. The Complainant has provided documentation that shows she expressed these concerns to ESD on different occasions over a period of several months. The Complainant also states that she was not informed that this assessment would focus on one particular department within the school, but that the others who were interviewed were informed of this fact.

[11] With respect to section 39 (disclosure of personal information), the Complainant makes the following complaints:

- With respect to the March 18th, 2011 meeting referred to above (wherein the findings of the “Report on Professional Relations” were communicated), the Complainant feels that there

was an improper disclosure of her personal information, given the attendees at the meeting, and feels that the meeting could have been structured differently so that her personal information was disclosed to as few people as possible (in keeping with section 39(2) of the *ATIPPA*);

- ESD disclosed the fact that she was already receiving psychological counselling services to the psychologist she was being referred to as a result of the initial assessment of the workplace relations (this disclosure did not include that the reason for the counselling was to deal with the ongoing workplace issues);
- ESD disclosed the fact that she was already receiving psychological counselling services to the Principal of her school (and the subject of her harassment complaint) when a letter to the Complainant was copied to the Principal on April 4, 2011;
- ESD disclosed to the Principal of her school the name of the psychologist she was being referred to as a result of the initial assessment of the workplace relations, as well as the referral letter that was being sent to this psychologist in a letter to the psychologist on April 11, 2011 that was copied to the Principal;
- ESD disclosed to the Principal of her school the fact that her counselling was continuing in a letter dated September 6, 2011;
- The Complainant wonders what information ESD disclosed to the Principal of another school (where the Complainant was due to start work) about the Complainant's situation, as when the Complainant contacted the Principal to ask for her course allocation for the upcoming year, this Principal inquired whether she would be on leave.

[12] With respect to section 36 (protection of personal information), the Complainant also has concerns about how her personal information is being protected by ESD as there have been retirements resulting in changes to the personnel within ESD who have dealt with the Complainant in the past, and she would like to know what arrangements are in place to protect her personal information. In her complaint, the Complainant mentions several documents specifically – a letter and meeting notes that ESD was apparently unable to access, and another letter containing her personal information that the Complainant believes was written to provide clarification to “anyone else who may come across” it, as the party to whom the letter was written would not need this clarification.

II THE SCHOOL DISTRICT'S POSITION

[13] ESD states that there were no formal terms of engagement with the outside consulting firm that conducted the workplace assessment, nor is it aware of any informal terms of engagement. Further ESD has no specific policies or guidelines that govern the engagement of outside agencies conducting assessments in the course of workplace investigations. However, ESD did state that the Consultant was engaged jointly by ESD and the NLTA to conduct an “in-depth review of professional relationships at the school and provide a written report on the matter to both parties.” The expectation (as referenced in the Consultant’s report) was that this review would result in recommendations from the Consultant as to how professional relations among a group of teachers at the Complainant’s school could be improved. ESD believes that the Complainant was informed of this, but the nature and extent of the personal information that would be collected was not specifically outlined to the Complainant, as this was left up to the Consultant.

[14] ESD advises that it has no specific policies or guidelines regarding the engagement of outside agencies to conduct assessments in the course of workplace investigations/complaints. Such engagement is considered on a case by case basis, and the type of agency engaged may vary depending on the particular issues raised by the workplace investigation. ESD further states that there are also no policies or guidelines that govern the collection use and disclosure of personal information during the course of a workplace investigation, however it is aware of its obligations and responsibilities as set out in the *ATIPPA*.

[15] ESD has informed this Office that the information collected during the workplace investigation is no longer being used, but it is being retained in accordance with the Newfoundland and Labrador Teachers Association Provincial Collective Agreement due to ongoing legal issues.

[16] With respect to the Complainant’s issues regarding the accuracy and completeness of the information collected by the Consultant during the course of her review, ESD states that:

The external consultant was a registered psychologist who had her own professional and ethical standards to meet and maintain. Hiring a qualified external consultant was a reasonable effort by ESDNL to seek out relevant information in an accurate and complete fashion. ESDNL had a reasonable expectation that the approach that she took to the review and the manner in which she sought out and considered information would be appropriate to the circumstances, given her skills,

education and training. Her mandate, as referenced in the report by the consultant, was to "make recommendations as to how professional relations among a group of teachers at the school might be improved." An external consultant was engaged in order to ensure an objective and unbiased review of the situation. In this regard, the consultant had autonomy to determine who to interview, what information would be considered, and what would form the basis of her report.

[17] ESD further states that while any party to an investigation can bring forward issues and concerns and provide information, it is ultimately up to the consultant/investigator to decide what information is relevant, and who should be interviewed, as each “side” in a dispute may have very different perspectives regarding these issues, and allowing either side to determine these matters might have a detrimental impact on the objectivity and impartiality of any resulting report. ESD states that it was aware of the Complainant’s concerns, and that a letter sent to the Complainant in December 2010 acknowledging her “frustrations with the process” and expressing ESD’s hope that the process they had undertaken would solve the issue that had been raised so that all parties could move forward shows that her concerns were acknowledged and considered. ESD believes that the:

...information considered by the consultant was satisfactory to the process, and that there was a fair and reasonable attempt to consider all sides and concerns of the dispute and to ensure that the information obtained was accurate. All actions were taken with a view to resolving the identified problems and assisting all parties to work together in a collegial and professional manner. The ESDNL made the reasonable efforts required by s. 34 of the Act.

[18] With respect to the March 18 disclosure meeting, ESD states that as the ESD staff members who led the investigation have now retired, they are not in a position to comment on the decision making process that led to the format of the disclosure meeting. ESD states that all efforts were put forward on a good faith basis to resolve a complex and sensitive situation that was affecting the entire teaching staff at the school where the Complainant worked.

[19] However, ESD does say that in accordance with the *Schools Act* (no particular section was quoted by ESD), personal health information contained in the Consultant’s report was used for the purpose of the workplace assessment and employment related activities, and the individuals present at the meeting were people who were involved in the investigation process and others who had to deal with the results of the investigation from an employment perspective. ESD submits that the presence of one of the attendees of the meeting whom the Complainant specifically referenced in her complaint was necessary due to the nature of the investigation and his position and duties at the

school. However, overall, ESD acknowledges that the disclosure meeting could have been structured differently and that they have learned from this situation and will keep these lessons in mind for the future.

[20] As noted above, in conjunction with a referral letter that was sent to the psychologist to whom the Complainant was referred, a senior official at ESD called the psychologist to express her concerns about the Complainant's mental state. It is ESD's view that this telephone call does not constitute a breach of privacy. ESD states that this individual was very concerned about the Complainant's health and safety and wanted to ensure that the psychological assessment was conducted as soon as possible. ESD states that given the scenario faced by the individual, it was more appropriate for her to call the psychologist than to bring these concerns to the Complainant directly, and that the ESD official had a duty to try to get the assessment done as quickly as possible and pass her concerns along to the psychologist. The psychologist (as the expert) would, with the Complainant, determine the type and extent of the assessment and if there was any potential for self harm. ESD states the official viewed the matter as a serious issue and acted out of care and concern for the Complainant.

[21] ESD states that the psychologist to whom the Complainant was referred was informed about the Complainant's ongoing counselling to place the engagement of her services in the appropriate context, and that the information was provided to the psychologist in her professional capacity.

[22] Regarding the Complainant's concern that ESD breached section 33 of the *ATIPPA* when the scope of the psychological assessment as conveyed in the referral letter to the psychologist was seemingly much different than what was conveyed in the telephone call made to the psychologist, ESD states that the referral letter sent to the psychologist, which was reviewed by the Complainant, set out ESD's expectations in relation to the assessment and outlined the extent of the information that ESD sought. ESD states that the scope of a "true psychological assessment" is outside the expertise of ESD, and that the term "assessment" could have different meanings depending on an individual's work and training background.

[23] ESD states that the several instances of disclosure of the Complainant's personal information to the Principal of her school (who was also the subject of a harassment complaint by the

Complainant) as the recommendations of the workplace assessment were invoked was done in the context of his role as Principal and was in line with his presence at the disclosure meeting of March 18, 2011. Further, with respect to one letter in particular which the Complainant specifically mentions in her Complaint, once the Complainant notified ESD that she no longer wanted to have the Principal copied on any correspondence, ESD immediately ceased this practice. A request was made to the Principal that the letter be returned to ESD and that the details of the letter were confidential and not to be shared with anyone. ESD also states that no copies were made or retained by the Principal.

[24] With respect to the disclosure of personal information to the Principal of the school where the Complainant was supposed to be transferred, ESD explains that the school administrator is the manager of the school and the direct supervisor of a teacher. The principal of a school is responsible for approving leave for an individual employee and to “code it properly” (presumably for Human resources and payroll purposes). ESD states that the principal of each school is responsible for arranging for substitute teachers if any teacher is unavailable to fulfill his or her duties. ESD has the right to request documentation pertaining to medical issues when an employee is on sick leave. This is usually accomplished through the principal, who is the “first point of contact” for information with respect to teacher leaves and returns, replacements, etc. Therefore, the school principal must have access to necessary employee information to fulfill these duties. School administrators are expected to handle information they receive in this manner in a confidential and professional manner.

[25] For staffing purposes, the principal of the school to which the Complainant was to be transferred was advised that the Complainant would be on paid sick leave for an indefinite period of time. She was not advised of any additional information with respect to the investigation or its outcomes. She was provided with the minimum amount of information necessary in order to be able to adequately provide for staffing levels.

[26] Regarding the protection of the Complainant’s personal information, ESD informs this Office that the Complainant’s personal information, is kept in two separate files – a “personal” file and an “investigation file”. Guidance with respect to the content of an individual’s personal file, as well as the duration of retention of personal information in these files is found in this collective agreement

as well. ESD advises that the only people who have access to these files are ESD staff members who are required to perform tasks related to the workplace investigation, the Complainant's employment or both. ESD makes the following comments with respect to the collection use and disclosure of information at the organizational level:

...information exchanged between ESD staff members is limited to the amount of information that is necessary for the completion of a task. Staff members have dedicated space on the computer system for saving electronic documents and have dedicated cabinet space for storing paper files. When an individual retires or is replaced, that individual's files, both electronic and paper, are made available to the individual who is assuming the role....

Electronic files containing personal information are secured through restricted access. The Individual "P drive" is a mapping to an internal Windows 2008 file server (industry standard) which links to an individual network account. In this way, only individuals with the credentials of a network account linked to the "P drive" have access and only when he/she is on ESD's internal network.

Paper files containing personal information are stored securely in a locked office at the ESD's district office. Within the locked office, an individual is assigned to control access to the files. In order to obtain access to a file, an individual has to make the request for the file, sign it out and then sign it back in. Access to the file is restricted further in the sense that only certain ESD staff members are able to view the records: CEO/Director of Education; Assistant Director of Education (HR division); Administrative Assistant to Assistant Director of Education (HR division); Senior Education Officer (HR division); Clerk IV (Education Staff); and two Personnel Clerks (Education Staff).

- [27] Regarding the specific documents referenced by the Complainant, ESD states that both the letter and the notes are contained in the Investigation file, and that the situation in which it appeared that ESD could not access these documents was a meeting where the existence of the documents was brought up, but because these documents were not included in the materials brought to the meeting they could not be accessed at that particular time. The other letter referenced by the Complainant was sent to the Complainant's union representative and copied to her personal file. It remains in her personal file and is accessible only to those who need to access the letter to complete tasks related to the Complainant's employment.

IV DISCUSSION

- [28] The information at issue is clearly personal information. Personal information is defined in the *ATIPPA* as follows:

2. (o) *"personal information" means recorded information about an identifiable individual, including*
- (i) *the individual's name, address or telephone number,*
 - (ii) *the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations,*
 - (iii) *the individual's age, sex, sexual orientation, marital status or family status,*
 - (iv) *an identifying number, symbol or other particular assigned to the individual,*
 - (v) *the individual's fingerprints, blood type or inheritable characteristics,*
 - (vi) *information about the individual's health care status or history, including a physical or mental disability,*
 - (vii) *information about the individual's educational, financial, criminal or employment status or history,*
 - (viii) *the opinions of a person about the individual, and*
 - (ix) *the individual's personal views or opinions, except where they are about someone else;*

[29] The collection of personal information features prominently in this case. The *ATIPPA* governs the purposes for which a public body may collect personal information. Section 32 states as follows:

32. *No personal information may be collected by or for a public body unless*
- (a) *the collection of that information is expressly authorized by or under an Act;*
 - (b) *that information is collected for the purposes of law enforcement; or*
 - (c) *that information relates directly to and is necessary for an operating program or activity of the public body.*

[30] In this situation, the collection was not being done under the power granted to school boards in the *Schools Act* in section 76(1)(f), which states as follows:

76. (1) *A board may*
- (f) *by notice, in writing, require an employee or other person to undergo a physical examination by a medical practitioner appointed or approved by the board or a psychological examination by 2 medical practitioners or 2 psychologists registered under the Psychologists Act and to submit a*

certificate acceptable to the board signed by the medical practitioners or psychologists setting out the conclusions regarding the physical or mental health of that employee or person;

The collection of personal information in this case was done for the purpose of dealing with the Complainant's harassment complaints and the situation that had developed in the school.

[31] In Order F07-10 from the British Columbia Commissioner's Office, it was stated that the collection of personal information by public bodies

...be reviewed in a searching manner and it is appropriate to hold them to a fairly rigorous standard of necessity while respecting the language of FIPPA. It is certainly not enough that personal information would be nice to have or because it could perhaps be of use some time in the future. Nor is it enough that it would be merely convenient to have the information.

[32] However, the order went on to state that personal information will not only be considered "necessary"

... where it would be impossible to operate a program or carry on an activity without the personal information. There may be cases where personal information is "necessary" even where it is not indispensable in this sense. The assessment of whether personal information is "necessary" will be conducted in a searching and rigorous way. In assessing whether personal information is "necessary", one considers the sensitivity of the personal information, the particular purpose for the collection and the amount of personal information collected, assessed in light of the purpose for collection. In addition, FIPPA's privacy protection objective is also relevant in assessing necessity, noting that this statutory objective is consistent with the internationally recognized principle of limited collection.

[33] I am satisfied that a collection of personal information was necessary in this situation in order to investigate the complaints and address the issues that were brought to light, in keeping with ESD's Respectful Working and Learning Environments Policy, and thus would fall under section 32(c) of the *ATIPPA*. However, it remains to be seen whether all information collected or attempted to be collected was covered by section 32. This will be dealt with in more detail below.

[34] Moving on to section 33 of the *ATIPPA*, it states as follows:

33. (1) A public body shall collect personal information directly from the individual the information is about unless

(a) another method of collection is authorized by

- (i) *that individual, or*
 - (ii) *an Act or regulation;*
- (b) *the information may be disclosed to the public body under sections 39 to 42;*
- (c) *the information is collected for the purpose of*
- (i) *determining suitability for an honour or award including an honorary degree, scholarship, prize or bursary,*
 - (ii) *an existing or anticipated proceeding before a court or a judicial or quasi-judicial tribunal,*
 - (iii) *collecting a debt or fine or making a payment, or*
 - (iv) *law enforcement; or*
- (d) *collection of the information is in the interest of the individual and time or circumstances do not permit collection directly from the individual.*
- (2) *A public body shall tell an individual from whom it collects personal information*
- (a) *the purpose for collecting it;*
 - (b) *the legal authority for collecting it; and*
 - (c) *the title, business address and business telephone number of an officer or employee of the public body who can answer the individual's questions about the collection.*
- (3) *Subsection (2) does not apply where*
- (a) *the information is about law enforcement or anything referred to in section 22 (1) or (2); or*
 - (b) *in the opinion of the head of the public body, complying with it would*
 - (i) *result in the collection of inaccurate information, or*
 - (ii) *defeat the purpose or prejudice the use for which the information is collected.*

In this case, the information was collected directly from the Complainant, through interviews with the Consultant and her various communications with ESD. However, section 33(2)(a) states that the individual must be informed of the purpose of the collections. The Complainant has provided me with evidence that shows that the purpose of the collection was not adequately explained to her. The Consultant who conducted the workplace assessment was described to her as a “well trained lady”

with a “background in psychology”, with “expertise and training specifically as it relates to mediation and investigation...” who was independent and impartial who would be able to get to the bottom of the ongoing issues within certain workplace relationships. In fact, the Complainant even referred to the Consultant as a “mediator” and the workplace review as a “mediation process” in an email to an ESD official. To the best of my knowledge, this misunderstanding was not corrected by the ESD official. The Complainant was not aware that the Consultant was also a psychologist until she attended at her office for a scheduled interview and asked about a certificate that she saw in her office. It is unclear whether the Consultant was acting as an investigator, mediator or psychologist or maybe all three.

[35] ESD has stated that there were no formal or informal terms of engagement with the Consultant, so it is unclear exactly what the Consultant was asked to do. As stated in her report, the purpose of the report was to “make recommendations as to how professional relations among a group of teachers at [name of school] may be improved.” ESD and the NLTA agreed that five people would be interviewed. It is not clear if the Complainant was aware of exactly who was being interviewed, but she was aware that the Consultant’s interviews would be limited in scope and that all facts and relevant witnesses (in the Complainant’s opinion) may not be available to the Consultant.

[36] What occurred was clearly not a mediation, and there were some findings about the Complainant’s mental state in the Consultant’s report (albeit in relation to the workplace issues). Given the lack of clarity surrounding the role of the Consultant and the obvious misunderstanding by the Complainant, it is my finding that ESD breached section 33(2)(a) as it did not adequately explain the purpose for which it was collecting her personal information. Further, it is also not apparent that the Complainant was told the legal authority for collecting the personal information. ESD, when it formally notified the Complainant of the manner in which it was dealing with her harassment complaints stated that an in-depth review of the professional relationships were a necessary part of their investigation. It does not state the authority under which this review would be conducted, which would presumably be section 32(c), meaning that collection must be done in accordance with section 33.

[37] Section 33 is also relevant to the collection of the Complainant’s personal information from the psychologist to whom she was referred. The Complainant was very concerned about the scope of

the assessment and it was agreed that she would be able to view the referral letter that was to be sent to the psychologist. Her understanding, which was communicated to her several times by ESD, was that the purpose of the psychological assessment was to determine whether the issues in the workplace had any ill effects on her and if so, what supports might be needed to assist her in dealing with these issues. However, the telephone call that was made to the psychologist clearly indicated a much broader scope of assessment. The ESD official questioned the state of the Complainant's mental health and whether she might be at risk of self-harm. The psychologist, based on this call, determined that a full psychological assessment was required, and that this was what the Complainant was coming in for. When she arrived for her first session with the psychologist, it was clear to the psychologist that the Complainant had not consented to a true "psychological assessment", and such an assessment was not completed. The Complainant did participate in counselling sessions with the psychologist, and the reports back to ESD from the psychologist indicated only that the Complainant had been negatively impacted by the workplace issues (and the prolonged process of dealing with them), and contained recommendations regarding continued counselling and return to work. Nothing in the assessment reports indicated that the Complainant was suffering mental illness or paranoia. Thus, personal information extraneous to the purpose as agreed to with the Complainant was not collected.

[38] While an obvious attempt to collect personal information in an unauthorized manner may be understandably disconcerting to the Complainant, the Act contemplates only *actual* collections, uses and disclosures of personal information, and I am bound by those limits. Nevertheless, in this situation, I do believe that although there was no actual collection of unnecessary information through the "psychological assessment" (because the psychologist did clearly explain what she had been asked to do and realized immediately that the Complainant had not consented to this), I believe that the Complainant was not adequately informed of the purpose of the collection vis-à-vis the psychological assessment, as per section 33(2)(a). The conflict between the referral letter and the phone call indicate that ESD's purpose was not clear.

[39] I agree with ESD that the term "assessment" could have different meanings depending on an individual's work and training background, but it is imperative that all parties in a situation such as this one be clear on what is required and expected. Otherwise, public bodies run the risk of breaching section 33(2)(a), because if they themselves are not clear what they are asking for they

cannot adequately explain to an individual the purpose for the collection. Further, by not being clear on what information they need, they run the risk of collecting more information than is necessary, contrary to section 32(c). ESD supposedly required the Complainant's personal information for the dual purposes of determining whether there were deleterious psychological effects from the workplace issues she was experiencing and if so, providing the necessary supports. All communication to the psychologist should have been limited to these issues.

[40] ESD further states that the official who made the call was acting out of concern for the Complainant, and that this official was concerned for the safety of the Complainant. I am not convinced by this position. There were other avenues that could have been pursued if the situation was deemed to be of grave seriousness, such as that outlined in the *Schools Act*.

[41] Section 34 of the *ATIPPA* states:

34. Where an individual's personal information will be used by a public body to make a decision that directly affects the individual, the public body shall make every reasonable effort to ensure that the information is accurate and complete.

The analogous provision in the British Columbia *Freedom of Information and Protection of Privacy Act* was considered in Order F10-31 (upheld on appeal in *British Columbia (Ministry of Children and Family Development) v. Harrison*, 2012 BCCA 277). In considering what is meant by "decision", the adjudicator stated as follows:

There is little question that FIPPA's purposes, as stated in s. 2 of the legislation, put strong emphasis on the protection of a citizen's personal information in the hands of government. Those purposes include a right of a person to correct personal information about herself or himself. The implication is that government's use of personal information can have profound consequences for individual citizens. This is, in part, the context in which I have to consider whether a public body has used personal information to make a "decision" that directly affects an individual.

The Ministry argues that "decisions" within the meaning of s. 28 ought to possess "formality and processes" and that the impact on the individual of those decisions be "obvious and clear".

...

The Ministry suggests that s. 28 only applies to "formal" decisions and not to "routine" decisions or actions of social workers. I do not agree. There is nothing in FIPPA that warrants drawing such a distinction. The only distinction made under FIPPA concerning "decisions" are those that "directly affect" individuals from those that do not.

A dictionary definition of the term “decision” makes clear decisions can be of both formal and less formal nature. For example a decision is: ...the act or process of deciding; determination, as of a question or doubt, by making a judgment; the act of or need for making up one's mind; something that is decided; resolution; a judgment, as one formally pronounced by a court.

...

It is not believable to suggest the group home management would disregard the social worker's decision to recommend that Mr. Harrison be removed from unsupervised access to clients of the group home. This recommendation had the direct impact of frustrating the purpose for which Mr. Harrison was hired. Mr. Harrison's employment was promptly terminated.

I find that the personal information was used in a decision that directly affected Mr. Harrison.

[42] Likewise, I find that the information collected by the Consultant was used to make decisions that directly affected the Complainant. As a result of the findings of the workplace assessment, she was referred for psychological counselling which was arranged for by ESD and ultimately granted leave from her position at the school to deal with the issues that had been identified in the report.

[43] The leading case in British Columbia with respect to “accuracy” and “completeness” is Order 00-51. In that Order, the British Columbia Commissioner reviewed some of the comments of other Information and Privacy Commissioners in Canada and then made his own findings as follows:

Commissioners in other jurisdictions have, however, addressed very similar statutory provisions. In Order 98-002, the Information and Privacy Commissioner for Alberta said the following (at paragraph 86):

Section 34 [which is essentially identical to s. 28] incorporates a fundamental principle of “fair information practices”, in that it requires that public bodies, who use personal information to make decisions about individuals, ensure that the personal information is accurate and complete. As stated in Ontario Investigation I95-031M, “The importance of this ‘data quality’ principle cannot be overstated; its absence can lead to serious consequences.”

The Concise Oxford Dictionary, Ninth Edition, defines “accurate” to mean, in part, “careful; precise; lacking errors”, and defines “complete” to mean, in part, “having all its parts; entire; finished”. Black's Law Dictionary defines “complete” to mean, in part, “including every item or element; without omissions or deficiencies; not lacking in any element or particular”. I accept those definitions for the purposes of interpreting s. 34(a).

After citing the definition of the word ‘reasonable’ from Black's Law Dictionary, the Commissioner went on to accept the interpretation of “every reasonable effort” accepted by my predecessor in Order No. 30-1995, at p. 7:

Every reasonable effort is an effort which a fair and rational person would expect to be done or would find acceptable. The use of ‘every’ indicates that a public body’s efforts are to be thorough and comprehensive and that it should explore all avenues in verifying the accuracy and completeness of the personal information.

Investigation Report I93-039P, issued by the then Assistant Information and Privacy Commissioner for Ontario, Ann Cavoukian (the current Commissioner), dealt with s. 40(2) of the Ontario legislation, which is similar to s. 28. She said the following, at p. 8, about the word ‘reasonable’ in s. 40(2):

Thus, for reasonable steps to have been taken would not have required a standard so high as to necessitate that every possible step be pursued to ensure accuracy.

(See also Investigation Report I95-031M and Investigation Report I95-110M.)

I agree that the importance of the data quality principle underpinning s. 28 cannot be overstated. A public body’s failure to comply with it can, for example, have serious financial consequences for an individual or infringe an individual’s right to life, liberty and security of the person. With a slight qualification, I agree that the standard to be applied under s. 28, in light of the facts of each case, is as set out by David Flaberty in Order No. 30-1995, as quoted above. The qualification is that, like my Ontario colleague, I consider that the accuracy and completeness obligations do not require a public body to explore literally “all avenues in verifying the accuracy and completeness of the personal information”. It is not necessary for “all avenues”, no matter how unlikely or obscure, to be pursued. Section 28 requires thorough and comprehensive efforts to comply, but not the pursuit of avenues of inquiry (or the undertaking of other efforts) that a reasonable person would consider plainly fruitless.

[44] Later, again in Order F10-31, the adjudicator from British Columbia stated:

In its initial submission, the Ministry correctly states that the Freedom of Information and Protection of Privacy Policy and Procedure Manual published by the sponsoring Ministry of Citizens’ Services does not define the terms “accuracy” and “completeness”. Neither does FIPPA. The Ministry states that the term “accuracy” cannot be read as “true” or “proven” but rather should be read as “careful, precise, lacking errors—in other words, recorded carefully, precisely and without errors”. If this were not the case, the Ministry argues, then social workers would be prohibited from deciding to investigate a child protection report unless the investigator was “already satisfied as to the veracity of the report”, which would frustrate the “very nature and purpose of child protection work”.

The Ministry’s reasoning does not persuade me because it ignores what is plain and obvious: the terms “accurate and complete” in s. 28 directly relate to the veracity of the individual’s personal information, not to the preciseness of the transcription.

The Ministry’s act of investigating a child protection report is the process the Ministry follows to determine the accuracy of the information in the report.

The Ministry’s argument implies that s. 28 requires only that a public body ensure that information it uses in a decision is carefully transcribed and completely recorded, without any regard to its

veracity. Such an interpretation could have dramatic adverse consequences for individuals, where the use of inaccurate or incomplete information to make decisions could result in improper health care treatment, discrimination, loss of employment, loss of driving privileges, loss of child custody and/or financial loss.

I note that these dramatic consequences could be amplified in linked electronic networks, where disparate bits of unverified information about individuals are pulled from various databases to create a new picture or digital persona about someone, without that person even knowing the digital persona had been created or was being used in decisions about them.

This interpretation also makes no sense if one reads s. 28 in conjunction with s. 29 of FIPPA. The latter section gives individuals the right to request “correction” of their personal information. It further provides that someone who “believes there is an error or omission in their personal information” may request a correction of that information. The common definition of the word “error” includes “an act, assertion, or belief that unintentionally deviates from what is correct, right, or true; the condition of having incorrect or false knowledge; the act or an instance of deviating from an accepted code of behaviour; a mistake”.

...

What is the standard by which one can conclude a public body has made “every reasonable effort” to ensure that personal information is accurate and complete, before it makes a decision affecting someone, based on that information?

In this matter, the evidence is clear that the social worker made no effort, let alone every reasonable effort, to ensure the accuracy and completeness of the information she relied upon ... Yet she did not make a single inquiry of any one of the several Ministry employees who had had dealings with Mr. Harrison over the previous decade.

In determining that not every reasonable effort was made to ensure Mr. Harrison’s personal information was accurate and complete, I also take into account the Ministry’s failure to develop policies that could have guided the social worker belief that the matter had not been “properly” investigated...

What is “reasonable” with respect to s. 28 will be contextual, but the evidence in this case leads me to conclude that the standard of reasonability with respect to prior contact checks will generally be higher in the presence of any of the following factors:

- *The decision may have a serious impact on the individual’s health, safety, finances, employment or reputation;*
- *The personal information was not collected directly from the person concerned and the person concerned has not reviewed the information;*
- *The personal information is outdated or archived;*
- *The personal information is being used for purposes secondary to the original purpose for which it was originally collected;*
- *The personal information was supplied anonymously.*

[45] With respect to this issue, the Complainant states that the report completed by the Consultant is erroneous, in that it contains factual errors and also is incomplete, as the Consultant did not interview all relevant people or review all relevant material, and appeared to be falling asleep during her interview with the Complainant. These concerns were made known to ESD by the Complainant, prior to the Consultant's commencement of the workplace review and again later, after the report was prepared. The report is limited in scope and does not appear to fully address all of the Complainants' concerns, and there are small factual errors in the report (which may just be typos), however none of these relate to the Complainant's personal information in a significant way. Further, it is not within my jurisdiction to determine whether the findings were, in fact, accurate or complete. I must simply determine whether ESD made "every reasonable effort to ensure the information was accurate and complete." As set out on section 34, the accuracy and completeness must relate to the Complainant's personal information.

[46] There is no evidence before me that indicates that ESD addressed these issues with the Consultant, not even to mention them in passing. I realize that the Consultant, as a professional who is experienced in this type of work may be in the best position to determine who should be interviewed and what material should be reviewed, however, there is evidence before me that the Consultant did consult with ESD officials about some aspects of the process (such as potential interviewees). From the beginning, the Consultant's role was not clear and therefore the purpose of the collection of the Complainant's personal information is vague and unclear. This makes it difficult to determine whether every reasonable step was taken to ensure accuracy and completeness of the Complainant's personal information in this case, both at the outset and as events unfolded. In this case, a precursor or prerequisite to any assessment of whether reasonable efforts were taken to ensure accuracy and completeness of the Complainant's personal information would have been greater clarity at the beginning regarding the intended purpose of the entire process. An opportunity to clarify this purpose may have presented itself when the Complainant first expressed her concerns about how the process was unfolding, or when the Consultant spoke with ESD about potential interviewees. These opportunities were not acted upon by ESD. As a result, I cannot say with any confidence that ESD was in compliance with section 34.

[47] Section 36 of the *ATIPPA* states as follows:

36. The head of a public body shall protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal.

[48] I am satisfied that ESD has made reasonable security arrangements in that there is limited and controlled access to files containing personal information. ESD has also adequately explained why certain notes could not be located at a particular meeting referenced by the Complainant. With respect to the letter that the Complainant fears was written to clarify the information therein for “anyone else who might come across it”, in the absence of any evidence, I cannot infer such intention on the writer. As noted above, it appears that ESD has made reasonable security arrangements to protect against unauthorized disclosure of and limit access to personal information that is contained in files at ESD. However, given my findings with respect to section 39 (disclosure of personal information), I question whether ESD has taken appropriate steps to educate its employees about appropriate disclosures of personal information, specifically with respect to disclosing the minimum amount of information necessary to accomplish the purpose for which it was collected. This will be discussed more fully in the portion of this Report dealing with section 39.

[49] As to the Complainant’s allegation that the personal information collected from her by the Consultant was being used to make findings about her that were beyond the scope of the what the Consultant was engaged to do, it is not entirely clear what the Consultant was engaged to do. Section 38 states as follows:

38. (1) A public body may use personal information only

(a) for the purpose for which that information was obtained or compiled, or for a use consistent with that purpose as described in section 40;

(b) where the individual the information is about has identified the information and has consented to the use, in the manner set by the minister responsible for this Act; or

(c) for a purpose for which that information may be disclosed to that public body under sections 39 to 42 .

(2) The use of personal information by a public body shall be limited to the minimum amount of information necessary to accomplish the purpose for which it is used.

[50] Further, section 40 states:

40. *A use of personal information is consistent under section 38 or 39 with the purposes for which the information was obtained or compiled where the use*

(a) has a reasonable and direct connection to that purpose; and

(b) is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information.

[51] Given the evidence before me, it *appears* that the information collected by both the Consultant and the Psychologist has been used for the purpose of assessing and dealing with the workplace relationship issues that had arisen in the school and then to help the Complainant deal with the stress of the situation, which included continued counselling and time off. These were certainly two purposes for the collection, but, given the overall lack of clarity surrounding the purpose of collection, I cannot be certain that these were the only purposes. Therefore, I cannot say that the use was for (or consistent with) the purpose for which it was collected. As such, I find that ESD failed to meet the obligation set out in section 38. Likewise, because the purpose of collection is not clear, I find that section 38(2) was also not complied with.

[52] With respect to section 40, the Complainant believed she was undergoing a mediation process, based on the unclear explanation she received from ESD. While the use of the Complainant's personal information may have had a reasonable and direct connection to the purpose of the collection from both the Consultant's and ESD's points of view (dealing with the workplace relationship issues), given the Complainant's misunderstanding of the purpose for the collection, it is questionable whether ESD can be found to have complied with this section. Again, because all parties were not clear on the purpose for the collection, I cannot be sure that the information was used in accordance with section 40.

[53] For the sake of brevity, I have included below only those parts of section 39 which might be relevant, as follows:

39. (1) *A public body may disclose personal information only*

(a) in accordance with Parts II and III;

- (b) *where the individual the information is about has identified the information and consented to the disclosure in the manner set by the minister responsible for this Act;*
- (c) *for the purpose for which it was obtained or compiled or for a use consistent with that purpose as described in section 40;*
- (d) *for the purpose of complying with an Act or regulation of, or with a treaty, arrangement or agreement made under an Act or regulation of the province or Canada;*
- ...
- (f) *to an officer or employee of the public body or to a minister, where the information is necessary for the performance of the duties of, or for the protection of the health or safety of, the officer, employee or minister;*
- ...
- (p) *where the head of the public body determines that compelling circumstances exist that affect a person's health or safety and where notice of disclosure is mailed to the last known address of the individual the information is about;*
- ...
- (r) *in accordance with an Act of the province or Canada that authorizes or requires the disclosure;*
- ...
- (t) *where the disclosure would not be an unreasonable invasion of a third party's personal privacy under section 30;*
- ...
- (2) *The disclosure of personal information by a public body shall be limited to the minimum amount of information necessary to accomplish the purpose for which it is disclosed.*

[54] Obviously, the Complainant did not consent to the disclosures she is complaining about. Also, I am not aware of any legislation that would require the disclosure of the Complainant's personal information in any of the situations alleged. The other sections will be dealt with in turn as they arise in the particular instance where an improper disclosure is alleged.

[55] Before addressing the individual disclosures listed in the Privacy Complaint, I would like to note that what constitutes an authorized disclosure can vary depending on the circumstances, as

recognized, for example, in section 30(1)(t) – the disclosure would not be an unreasonable invasion of a third party’s privacy. The circumstances of this case are somewhat “tangly”, in that the Principal of the Complainant’s school was also one of the people against whom she had filed a harassment complaint. This situation may have called for additional discretion when considering whether the disclosure would be an unreasonable invasion of privacy. Turning to the specific disclosures:

- the March 18th, 2011 meeting in which the findings of the “Report on Professional Relations” were communicated, I agree with the Complainant that the meeting should have been structured differently. The parties not directly involved in the conflict and the review should not have been privy to all the details of the report, given that it made several findings about the Complainant’s state of mind. I find that this was inappropriate disclosure of the Complainant’s personal information. For those not directly involved in the conflict but who would need to know of its general outcomes for staffing and leave purposes, only that information necessary for them to perform their duties should have been disclosed to those people. Therefore, I find that this disclosure was not in compliance with section 39(1)(f). I also find that this was a breach of section 39(2) of the *ATIPPA* as some of the Complainant’s personal information was disclosed to more people than necessary.
- The disclosure to the psychologist to whom the Complainant was being referred that she was already receiving psychological counselling services was also not in compliance with section 39(1)(f), in my opinion. ESD has not clearly explained why this was necessary, except to say that it was to “place the engagement of her services in the appropriate context”. However, the fact that the existing counselling was being undertaken to deal with the workplace issues was not included. In accordance with sections 39(1)(c) and 40, information can be disclosed for the purpose for which it was collected, or for a use consistent with that purpose. The Complainant was referred to the psychologist for the express purpose of helping her deal with the workplace conflict. It is unclear how disclosing the fact that the Complainant was already seeing a psychologist is related to the purpose for which this information was being gathered or a use consistent therewith. As ESD points out, the psychologist, as the expert was in the best position to determine what information she needed to complete the tasks asked of her and she could have asked the Complainant herself

whether she had received counselling in the past, if such information was necessary to complete the assessment she was hired to undertake.

- I find that the disclosure, by copy of a letter to the Principal of the Complainant's school, of the fact that Complainant was already receiving psychological counselling services is not in compliance with section 39(1). I do not see how this disclosure is consistent with the purpose for which the information was collected or a consistent purpose. It was not necessary for the fulfillment of his duties, and given the situation between the Complainant and the Principal, it is an unreasonable invasion of her privacy. Information with respect to granting the Complainant leave from her position is also contained in this letter. This information was relevant to the Principal's duties, and as such, that disclosure was proper. However, because more information was disclosed than necessary for the fulfillment of his job duties, then it is also not in compliance with section 39(2).
- ESD disclosed to the Principal of her school the name of the psychologist she was being referred to as a result of the initial assessment of the workplace relations, as well as the referral letter dated April 11, 2011, that was being sent to this psychologist. I find that this is also not in compliance with section 39(1) as ESD has not explained why the Principal needed to be copied on the referral letter sent to the psychologist. This letter contained no information relevant to staffing issues and it is unclear why the Principal would need to know exactly what ESD required from the psychologist and what kind of assessment the Complainant was to undergo. Based on the evidence I have seen, in this situation, the usual role of the Principal as "first point of contact" between the teacher and ESD was not present. ESD was directly involved in arranging for the required services and also approving time off for the Complainant. The Complainant was in direct contact with ESD given their involvement in the situation, and the involvement of the Principal was minimal (at best) in terms of fulfilling duties such as informing ESD about teacher absences and returns. In fact, it seems as if the roles were reversed in this situation, with ESD making sure the Principal was informed of such things. Therefore, given the specific situation in this case, it does not appear that the Principal needed all the information that he might normally need in order to fulfill his job duties. The information given to the Principal should just have been sufficient

to fulfill any duties that still remained (i.e. arranging substitute teachers in the Complainant's absence).

- ESD disclosed to the Principal of her school the fact that her counselling was continuing in a letter dated September 6, 2011. The purpose of this letter was to forward to the Complainant correspondence from one of the people she had made a harassment complaint against. The letter itself represented a conclusion of the Complainant's harassment complaint and was something that the Principal, as the manager of the school would likely need to be aware of. However, there was no need to reference the Complainant's ongoing counselling with the psychologist. It was extraneous information, the inclusion of which served no purpose. I find that this was not in compliance with section 39(1).
- The information disclosed to the Principal of another school where the Complainant was to be transferred was fully explained by ESD and I find that disclosure was in keeping with section 39(1)(f) and was the minimum amount necessary in order for this Principal to fulfill her duties with respect to ensuring adequate staffing for her school.

[56] Briefly returning to section 36 (protection of personal information), given the above breaches of section 39, it appears to me that while ESD may have reasonable security measures in place to protect paper and electronic file, it appears that some administrative measures (i.e. privacy training for employees) may be missing. ESD did state that it is aware of its responsibilities related to the collection use and disclosure of information and that information exchanged between staff members is limited to the minimum amount necessary for completion of a task. However, given my findings above, this is clearly not always the case, and because of the disclosures above, I find that ESD also breached section 36 of the *ATIPPA*.

V CONCLUSION

[57] For the reasons outlined in detail above, I find that ESD did not comply with sections 33(2), 34, 36, 38, 39 and 40 of the *ATIPPA*.

[58] With respect to section 33 (how personal information is to be collected), ESD did not adequately explain the purpose of the collection to the Complainant. By not having clear terms of engagement with respect to the Consultant, there were seemingly several different purposes for the collection of the Complainant's personal information. The Complainant believed it was for the purpose of mediating issues she was having with some of her co-workers. The official purpose, according to ESD, was to review professional relationships in the school and make recommendations with respect to improving these relationships. In addition to reviewing and commenting on the issues in the workplace, the Consultant appears to have been acting (at times) in the capacity of a psychologist, and used the Complainant's personal information for the purpose of making findings about her mental state (as related to the workplace issues). It is unclear whether she was retained by ESD to do this, but it is clearly not how her role was explained to the Complainant, and thus the purpose of her collection of the Complainant's personal information was not adequately explained to the Complainant.

[59] Lack of clarity with respect to the collection of personal information also leads to issues surrounding the proper use of personal information. If it is not clear why personal information was collected, then public bodies cannot be certain that the use of personal information is in keeping with the *ATIPPA*. If a public body cannot show that the use was consistent with a stated purpose, or a purpose directly related thereto, it will be found to have not complied with sections 38 and 40.

[60] ESD should ensure that it is clear in all communications to individuals about what information they will be collecting and the purpose for collecting it. Further, as independent contractors are considered employees of public bodies for the purposes of the *ATIPPA*, ESD should ensure that clear terms of engagement are drafted when outside services are engaged, so that there can be no misunderstanding as to the role of the contractor (especially when the contractor has multiple qualifications and can be put to use in different ways). These terms should state exactly what that person has been hired to do, and the precise purpose for the collection of any personal information. This includes informing the individual about the use to which the information will be put. The terms of engagement should also be shared with all parties to the process. Due to the uniqueness of each situation that can arise, a general policy may not be the best tool to clarify the engagement of independent contractors, except to the extent that a policy can set out expectations for contractors with respect to their responsibilities and obligations under *ATIPPA* with respect to the collection,

use, disclosure and protection of personal information (keeping in mind that for the purpose of the *ATIPPA*, independent contractors are considered public body employees, as per section 2(e)).

[61] With respect to section 34 (accuracy of personal information), when hiring an independent consultant/contractor, I am aware that some control of the process is given up to the hired professional; after all, they were engaged because of their expertise in a given area. However, the *ATIPPA* holds public bodies responsible for making all reasonable efforts to ensure the accuracy and completeness of the personal information it collects where that information will be used to make a decision about a person. As discussed earlier in this report, some decisions have long lasting and far reaching consequences for the people involved. If public bodies become aware of any concerns with respect to the accuracy and completeness of information they are collecting, these concerns should be addressed appropriately.

[62] Lastly, public bodies must be conscious of the need to disclose only the personal information that is necessary. In the normal course of events, where a principal is the first point of contact, and a teacher is going through the normal channels to arrange leave or deal with workplace issues, a principal may be privy to many personal details of the teacher's life or medical history. As such it may be the usual course to just copy the school principal (or other relevant people) on letters related to issues that concern a teacher in their school. Usually, doing so would not be an unreasonable invasion of the teacher's privacy. However this was an unusual circumstance, given the relationship between the Complainant and the Principal at her school and the direct involvement of ESD in arranging treatment and time off. Further, while some of the information contained in the letters was necessary for the fulfillment of the Principal's duties, some of the letters contained additional unnecessary information. Instead of sending a copy of the letter, a different letter could have been sent to the Principal, including only the information that was necessary for him to fulfill his duties.

VI RECOMMENDATIONS

[63] The following are my recommendations:

1. In future cases where the services of outside professionals are engaged, ESD should develop clear terms of engagement, particular to the circumstances, that explains the role of a

consultant or outside professional, the purpose for the collection of personal information and the use to which the information will be put. The terms of engagement should be written and distributed to the parties involved in the process.

2. ESD should also develop a policy with respect to the engagement of outside professionals, outlining their responsibilities and obligations under *ATIPPA* and ensure that anyone hired in this capacity is aware of this.
3. ESD must take reasonable steps, as are appropriate in the particular circumstances, to ensure the accuracy and completeness of the personal information it collects when using that information to make decisions about a person.
4. ESD should ensure that employees (especially those involved in a human resources capacity) are well aware of their obligation to protect personal information against unauthorized disclosures by ensuring that only the minimum amount of information needed to complete a task is disclosed. In addition to emphasizing this point during privacy training, employees should be sent periodic reminders of this important responsibility. Further, where advisable given the circumstances of particular situation, ESD should send separate letters to school administrators including only that information necessary for them to fulfill their duties (which may vary in different circumstances), instead of just copying them on letters sent to others. If others are to be copied, the personal information in the letter should be carefully reviewed to ensure that the disclosure is in keeping with the *ATIPPA* vis-a-vis all recipients.

[64] Dated at St. John's, in the Province of Newfoundland and Labrador, this 20th day of May, 2014.

Ed P. Ring
Information and Privacy Commissioner
Newfoundland and Labrador