
INVESTIGATION REPORT

INVESTIGATION P99-014

**Report of an Investigation by the Office of the Information and
Privacy Commissioner into privacy complaints concerning
the Provincial Learning Assessment Program of the
Ministry of Education**

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1. The Complaint and Media and Public Interest

In mid-November 1998, a number of stories appeared in the print media regarding the Ministry of Education's (the Ministry) July 1998 disclosure to the Ministry for Children and Families (MCF) of 46 of the 140,000 Provincial Learning Assessment Program tests that had been written in May 1998. The Provincial Learning Assessment Program tests are standardized tests that have been administered annually by the Ministry for over twenty years to assess the effectiveness of provincial curriculum and programs.

The B.C. Teachers' Federation issued a November 13, 1998 news release indicating concerns with the decision to include a test question that asked students to write about their homes, and the resulting disclosure of certain tests to MCF. The federation was also concerned about the Ministry's shift from using the tests to evaluate provincial programs and curricula to their use, in 1998, in evaluating individual student performance.

The media stories suggested that the disclosure had resulted in a number of MCF investigations into possible child abuse. Several reporters contacted the Office concerning the matter. Most stories appeared in mid to late November 1998 in several British Columbia newspapers and the National Post, and were aired on television stations in British Columbia and on CBC's national radio program, "As It Happens." These stories concentrated on concerns raised by the BC Teachers' Federation and others that the disclosures to MCF had been inappropriate and an invasion of privacy. They were also critical of the Ministry's decision to ask students to write about their home situation. Other concerns included the use of the student's "Personal Identification Number" in the tests and the lack of notification to parents and students about the purposes for the tests. Journalist Barbara Amiel, writing in the *National Post* on December 4, 1998, was particularly critical of the bureaucrats for failing to recognize the consequences of asking students to write about their home situation.

The Victoria Community News Group newspapers confirmed in its December 2, 1998 editions that the results of the tests would help in determining the effectiveness of the Greater Victoria school district's Reading Recovery program. The December 7, 1998 edition of *Maclean's* magazine reported that the Ministry was already taking steps to address the concerns that girls scored better than boys at all levels in reading and writing skills in the 1998 Provincial Learning Assessment Program tests.

A Member of the Legislative Assembly made a formal complaint to the Office. His complaint concerned the appropriateness of the disclosure to MCF and possible disclosure to other government bodies. He also complained about the collection of students' personal information, in particular that which could easily reveal a student's identity. As well, he was concerned that students were not properly notified of the intended uses of whatever they wrote in the tests.

A number of parents also contacted the Office to express concerns about the administration of the Provincial Learning Assessment Program tests and the uses of the students' personal information.

2. The Office of the Information and Privacy Commissioner's Jurisdiction to Investigate Complaints

The British Columbia *Freedom of Information and Protection of Privacy Act* (the Act) established an Information and Privacy Commissioner with a variety of powers. These include, under section 42 of the Act, the authority to “monitor how the Act is administered to ensure that its purposes are achieved, . . . to comment on the implications for protection of privacy of proposed programs of public bodies,” and to receive and investigate complaints that public bodies have “collected, used, or disclosed personal information in contravention” of the Act. Thus the Commissioner has wide powers to carry out complaint investigations.

The Commissioner has the authority to investigate and to comment on the privacy issues which have arisen from the Ministry's administration of the Provincial Learning Assessment Program tests; that is, the collection, use, and disclosure of personal information that may occur during the writing and marking of the tests and the reporting of the results. This report addresses these issues and provides recommendations to the Ministry for improving privacy protection measures in the administration of the Provincial Learning Assessment Program tests.

3. Methodology

The investigation of this complaint included the following steps:

- reviewed and analyzed the MLA's complaint letter and interviewed the MLA's constituency assistant regarding the specific concerns;
- interviewed the policy, evaluation and analysis branch officials who are responsible for the administration of the Provincial Learning Assessment Program tests, and information and privacy staff at the Ministry;
- interviewed 1998 Provincial Learning Assessment Program test markers from one independent and two public schools;
- reviewed media articles and reports about this issue;
- reviewed and analyzed the Provincial Learning Assessment Program test materials, written instructions to teachers and principals, brochures for students and parents, reports of test results, and other related materials;
- interviewed a school district superintendent and administrators in the Greater Victoria, North Vancouver, and South East Kootenay school districts, who are responsible for coordinating learning assessment programs in their districts (the latter two districts received scores for individual students as well as scores by school and for the district as a whole that the Ministry sent to all districts);
- interviewed the child protection specialist who had a contract with the Ministry to review the Provincial Learning Assessment Program tests containing

information that indicated a child may be in need of protection, and a child protection manager with the MCF;

- interviewed a university expert on standardized testing.

4. The Provincial Learning Assessment Program

The Ministry has used standardized tests for over twenty years to assess the effectiveness of the provincial curriculum and programs. In the past, only a sample of the tests were scored. For the tests administered in 1998, the focus shifted to an assessment of the students' reading and writing skills. All 1998 tests were scored.

The Ministry relies on the authority of sections 81 and 168 of the *School Act* and the Student Learning Assessment Order (Ministerial Order 60/94 – M60/94) to collect information through school boards for assessment purposes.

In late 1997 and early 1998, the Ministry, working with a committee of educators who have expertise in standardized testing, was involved in the development of the tests to be administered in the spring of 1998. All questions, topics and reading passages selected for use in the tests were “pilot-tested” by students in grades 4, 7, and 10 in December 1997.

The results of the pilot testing and the analysis by the Ministry and the committee of education experts were then presented to an advisory committee for review and approval. This committee includes representatives of the following organizations or groups: B.C. Teachers' Federation; B.C. School Trustees' Association; B.C. Council of Parent Advisory Committees; B.C. School Superintendents' Association; B.C. Principals and Vice-Principals' Association, and grade twelve School Student Councils. The advisory committee approved the proposed tests put forward by the Ministry and the committee of education experts.

In May 1998, approximately 140,000 students in grades 4, 7 and 10 in British Columbia public and independent schools completed a series of three tests as part of the Ministry's annual Provincial Learning Assessment Program tests. The regular classroom teachers were responsible for administering the tests to their classes, and school principals were responsible for coordinating the process in their schools. The Ministry provided detailed instructions for delivering the tests to teachers and principals. It also provided an information brochure for parents and students concerning the rationale and importance of the tests. The instructions provided to principals included a reminder to maintain the security of all assessment materials, but none of the instructions or brochures addressed the issue of privacy or confidentiality.

In July 1998, about 250 teachers were involved in marking the tests at one location in the lower mainland. Ministry staff supervised the marking procedure, including providing security for the handling of any student personal information included in the test papers. In previous marking sessions, regardless of the topic used, information had been identified in students' tests suggesting that a child might be in need

of protection. In 1998 the Ministry decided a more formal procedure was needed to deal with any of this information. A child protection specialist, under contract with the Ministry of Education, provided training to marker team leaders, at the start of the marking exercise, about identifying information in the tests that could suggest a child was in need of protection. This specialist (who has 25 years' experience in teaching and counselling on child protection issues) reviewed actual tests daily that had been identified by markers as possibly containing information related to child abuse.

In November 1998, the Ministry released reports of the results and analysis of the test scores for the province as a whole, each school district, and each school. Reports were sent to each school district and school. At the request of seventeen school districts, the Ministry also provided scores for individual students in these districts. The scores for individual students were identified by a unique number only, not by the student's name.

5. What the Office of the Information and Privacy Commissioner Learned about the Provincial Learning Assessment Program Tests

5.1 The decision to use the “home” topic

In 1998, all students were asked to write an essay on the following topic:

“When people think about ‘home’, they sometimes think of their family, or their own personal space. Think about why people have strong feelings about their home.

Write about what is most important to you about your home and tell why.

What makes it ‘home’ to you? Your account should be several paragraphs long and should include descriptive language.”

According to Ministry officials, students will write about situations of abuse regardless of the topic chosen for an essay. The Ministry does try, however, to avoid topics about politics, religion, or other sensitive issues. The “home” topic was chosen because it was one that all students would have both knowledge of, and a general interest in. It would, therefore, make it easier for students to complete their writing within the forty-five minutes allowed. The markers were attempting to evaluate the students' ability to communicate effectively. This same topic had also been used in the 1993 Provincial Learning Assessment Program tests and it was “pilot-tested” before the 1998 tests were written.

The Provincial Learning Assessment Program markers, the school district superintendent, the university expert on standardized testing, and the child protection experts interviewed by this Office all stated that the assigned topic was “emotionally charged” and should not have been used. The MCF child protection manager has confirmed that he was not consulted on the decision to choose the “home” topic. Again, the decision to use the “home” topic was a common criticism in the media reports. **Based on this information and my own assessment as Privacy Commissioner, I find**

that the Ministry should have anticipated the unintended consequences of choosing such a topic. Ministry officials have informed this office that the “home” topic will not be used again.

5.2 The disclosure of students’ personal information to the Ministry for Children and Families

Ministry staff told this Office that, regardless of the topic selected for the essay portion in previous Provincial Learning Assessment Program tests, some students had written about situations that suggested possible child abuse involving the students. The Ministry wanted to be prepared in case this situation occurred again with the 1998 tests. The MCF child protection manager has confirmed that, in July 1998, he received only “last minute notice” that the Ministry might be sending him copies of Provincial Learning Assessment Program tests, if they contained reportable information.

As a result, the Ministry entered into a contract with a child protection specialist who provided training to marker team leaders about identifying information that suggests possible child abuse. The specialist also reviewed, on a daily basis, test booklets identified by markers as containing this type of information.

Whenever a marker found information in a student’s writing assignment that suggested a possible child abuse situation involving that student, the test paper was given to a Ministry of Education official on site. That official made a photocopy of the test and then, that same day, gave the copy to the child protection specialist, who would make a determination about the need for MCF to make further inquiries.

The child protection specialist has confirmed that she reviewed between 80 and 100 tests, in total, in July 1998, two months after the tests had been written. She did not know the students’ names. In making a decision, she relied on the circumstances identified in Section 13 of the *Child, Family and Community Service Act* for determining when a child needs protection. In her words, she was looking for “what really stood out” and “not ordinary stories.” The specialist has told this Office that, before making a final decision that certain tests contained “reportable” information, she consulted two other child protection specialists on the content of the tests.

The specialist identified 46 tests for further consideration by MCF. A Ministry official then confirmed the identity of the student and school and sent the tests to the MCF Manager, Child Protection, Policy and Standards, in Victoria. This Office examined six of the tests, selected at random, that had been sent to MCF and can confirm that they contain disturbing information, including several reports of physical or verbal abuse by a parent.

The Ministry has confirmed that these tests were sent to MCF because of the requirement in the *Child, Family and Community Service Act* (section 14) to report information where it is believed a child needs protection. That provision reads:

- 14(1) A person who has reason to believe that a child needs protection must promptly report the matter to a director or a person designated by the director.

The “director” refers to a person designated by the Minister of Children and Families.

The MCF manager has confirmed that he did not review the content of the 46 tests but he did confirm the student’s name and school. He then sent the tests to the appropriate MCF regional or district office for processing by local child protection staff as a regular child welfare case. The Provincial Learning Assessment Program tests were added to the regular child protection intake process in MCF district offices. The MCF manager has told this Office that it is not possible to determine the exact number of investigations that resulted from reporting the 46 tests. Through informal discussions with MCF regional and district staff, he has been told that no strong protective action was taken in these cases. He was also told that several situations were already known to MCF, some of the information turned out to be untrue, and, in a few cases, counselling the student was sufficient to address the situation. He has also confirmed that, in the normal course of events, school teachers or counselors make most child protection reports. Thus it was not unusual that a small number of children chose to disclose such information at school.

The child protection experts and the Provincial Learning Assessment Program markers have all told this Office that the procedure used by the Ministry, during the marking phase, to identify and report child protection information was reasonable and effective. They also believe, however, that it would be better if this information were identified in the schools at the time the tests are written, primarily because any reports made would be more timely and the teachers and principals know the students and their particular circumstances. I find that the issue of timeliness strongly militates in favour of local review of all work written by students. The child protection experts and the Provincial Learning Assessment Program markers also recognized, however, that the Ministry must still have a reporting procedure, after the tests leave each school, because child protection information must be reported whenever it is received. The Ministry and MCF are close to finalizing a formal procedure for the 1999 Provincial Learning Assessment Program tests and other provincial examinations.

Other than the disclosure to MCF, the Ministry has confirmed that there was no disclosure of students’ personal information to other government bodies.

5.3 Collection of students’ personal information

The May 1998 Provincial Learning Assessment Program tests had three parts: reading and multiple-choice answers; the comprehensive written response on the same topic for all grades (the “home” topic); and reading and short written responses.

Each part had an answer booklet or answer sheet. The Ministry created a label for each answer booklet or sheet that included a unique number and bar code and the name of

the school for each student. This unique number was not the Personal Education Number (PEN), the student identifier already used by the Ministry and school districts for funding or administrative purposes. The classroom teacher noted the student's name opposite the label number for that student on the sheet of labels provided for the teacher's class. The teacher was also expected to insure that the correct label was attached to the right answer booklet or sheet for each student.

The classroom teachers instructed students to write their names and the school name on each answer booklet or sheet. All of the forty completed tests examined by staff of the Office of the Information and Privacy Commissioner (OIPC) included the students' names and school. It should be noted that Ministry officials have told us that they did not need to know the students' names. Their primary concern was that the proper label was attached to each answer booklet or sheet. According to the Ministry, a space was provided in the answer booklets or sheets for students' names and schools at the request of the committee of educators. The reasons were that students write their names automatically on any written work submitted to their teachers, and students give more importance to a test when their names must be shown. Including students' names also makes it easier for the classroom teacher who is administering the tests.

On the multiple-choice answer sheet, students were required to provide personal information about themselves by filling the appropriate bubble on the answer sheet. The personal information collected about each student included: age, grade, gender, language spoken most often at home, and whether the student had ever been involved in the learning assistance or English as a second language programs. The students were also asked to confirm their reading, writing, and computer interests and skills and the amount of time they devoted to television and video viewing. The Ministry collected this information to create student profiles for statistical purposes.

In the Ministry's instructions to teachers and principals, the Ministry invited classroom teachers to score the tests before submitting them to the school principal. A scoring guide was provided, and the instructions state that teachers could use the results of their scoring of the tests "as they see fit." In the 1,661 teacher feedback forms sent to the Ministry, about half of the teachers reported that they had scored their students' tests and half of those teachers confirmed that they used the scores as part of their classroom evaluation. Anecdotal information provided by the school district administrators indicated, however, that classroom teachers used their own scoring for information purposes only.

School principals retained the used label sheets (confirming the unique label number for each student) that the teachers had completed. The principals were also asked to complete a principal's checklist that included information about students who did not write the tests. This information was the student's name and grade and the reason for the student not writing the test. The OIPC staff reviewed a sample checklist which showed that, among other reasons, two students were excused because of "moderate to severe intellectual disabilities." The Ministry has confirmed that this information was needed to determine if students were excused for one of the established reasons. Also the reasons

were recorded as part of the creation of the student profile, but no student names were entered.

When the markers scored the tests in July 1998, they made an assessment of each student's reading and writing ability and then entered the score on a bubble sheet. The score would indicate, for example, that a grade seven student was writing at, above, or below the level expected of a grade seven student. These scores, the answers to the multiple-choice questions, and the background and habits information were then tabulated by machine. The scores for individual students could be linked to each student's unique label number. The Ministry has emphasized, however, that student names were not recorded.

5.4 Notifying students and parents or guardians about the purposes for collecting students' personal information

In the Provincial Learning Assessment Program brochure prepared by the Ministry for distribution to students and parents or guardians, there is information confirming that some background information about students will be collected and that the test scores prepared by the Ministry are intended to complement the regular classroom assessment. There is, however, no explanation or indication of the purposes for collecting the students' personal information, including the information about students who are excused from writing the tests. As well, the brochures do not indicate that classroom teachers may also score the tests and what uses the teachers will make of this information.

5.5 Retention and security of the Provincial Learning Assessment Program tests and students' personal information

The Ministry has confirmed that most Provincial Learning Assessment Program tests are destroyed after one year, with only a small sample retained for reference purposes.

The completed tests are kept in a secure storage facility. Also Provincial Learning Assessment Program markers, the child protection experts, and Ministry staff have confirmed that there were proper security measures in place to protect all of the completed tests, including those identified as containing possible child protection information. A Ministry official or a marker team leader was always present when markers were scoring tests. The Ministry used separate sealed envelopes for each test identified for review by the child protection specialist, and the envelopes were transported between the Ministry and the specialist by courier.

6. Application of the *Freedom of Information and Protection of Privacy Act*

Part 3 of the Act establishes the requirements for the handling of personal information by public bodies. These requirements are known as "fair information practices."

In this investigation, the focus was on the Ministry's collection of students' personal information at the time the tests were written, notification to the students and their parents of the purposes for collecting the personal information, and the disclosure of information in the 46 tests to MCF.

At the conclusion of the report, I have made some recommendations to the Ministry of Education for improving its fair information practices for the administration of the Provincial Learning Assessment Program tests. The Ministry has agreed to adopt these recommendations.

Section 26 - Authority to Collect Personal Information

This section of the Act allows public bodies to collect personal information where it "relates directly to and is necessary for an operating program or activity of the public body." The Minister of Education has the authority under sections 81 and 168 of the *School Act* and the Student Learning Assessment Order (Ministerial Order 60/94 – M60/94) to collect information through school boards for assessment purposes. Schools administer the assessment tests on behalf of the Ministry.

Public bodies are expected to collect only the minimum amount of personal information needed to administer a given program. Students and parents should therefore be aware that the Ministry has legal authority to collect only necessary and relevant personal information for the administration of the Provincial Learning Assessment Program tests.

Section 27 - Manner of Collection

This section requires public bodies to collect personal information directly from the person concerned, with some exceptions. In this case, the personal information is collected directly from the students.

Section 27 also states that, with limited exceptions, public bodies must notify individuals from whom they collect personal information:

- of the purpose of the collection;
- the authority for the collection; and
- the title, business address, and telephone number of a public body employee who can answer questions about the collection.

The Ministry should ensure that students and parents are aware of the authority for the Provincial Learning Assessment Program and the reasons that students are asked to provide any personal information during the administration of the tests. Students and parents should also be told the sources of further information about the assessment tests.

Section 33 – Disclosure of Personal Information

Section 33 of the *Freedom of Information and Protection of Privacy Act* sets out the criteria under which a public body may disclose personal information. Section 33(d), in my view, is the relevant section for the purposes of this investigation.

Section 33(d)

This section allows the disclosure of personal information to comply with an enactment of the province of BC or Canada, or a treaty, agreement or arrangement under such an enactment. The Ministry has confirmed that the 46 tests were sent to MCF, because of the requirement in the *Child, Family and Community Service Act* (section 14) to report information where it is believed a child needs protection.

Section 33(d) of the *Freedom of Information and Protection of Privacy Act* is permissive in that it states “a public body *may* disclose personal information” In this case, however, the duty to report child protection information is a statutory requirement. Therefore, I find that the Ministry had the legal authority, under section 33(d) of the Act, to disclose personal information related to child protection matters to MCF.

7. Conclusions

I am satisfied that the disclosure of students’ personal information to the Ministry of Children and Families was in keeping with the requirements of the *Child, Family and Community Services Act*. However, I am proposing a change in the procedure for reporting this information. I am also recommending that the Ministry not choose any essay topics that, to any reasonable person, would prompt a student to disclose sensitive or unsettling personal information. That is not the proper mechanism to learn of child protection problems. Further, I recommend that the Ministry stop collecting students’ names since this information is not needed to mark the tests or prepare the results. Finally, it is my position that the Ministry must ensure that students and, in particular, their parents or guardians are properly notified of all uses of students’ personal information in the Provincial Learning Assessment Program testing, marking and reporting procedures.

8. Recommendations

1. Reportable information about child protection must be disclosed to MCF whenever it is identified. I have been told the formal procedure created by the Ministry and MCF will call for immediate disclosure to a MCF child protection regional manager whenever this type of information is found in a provincial assessment test or examination. I accept this procedure as a statutory requirement. I am also pleased that Ministry staff has initiated, and has continued to have, meetings with MCF representatives to further clarify and systematize reporting procedures and responsibilities.

2. As mentioned in my earlier comments, the Ministry should have anticipated the possible unintended consequences from using the “home” topic, especially since the issue of child abuse had arisen in previous provincial tests and the purpose of the tests was not to uncover child abuse. Therefore, I recommend that, in future, the Ministry and its advisors not select an essay topic in province-wide tests that would invite or prompt students to write about sensitive or unsettling personal situations.
3. It seems natural, to me, that teachers would want to review any work submitted by their students. Therefore, I also recommend that the Ministry and school districts encourage school principals and teachers to review completed tests before they are forwarded to the Ministry. If this is done, I believe that people who know the child and the particular circumstances could deal promptly with any information that would suggest a child might be in need of protection. This is a desirable “privacy scenario.”
4. The Ministry has confirmed that it does not need to know the students’ names for scoring the tests, recording the reasons for students not writing the test, or for preparing the test results. Therefore, I recommend that the Ministry adopt a procedure that will allow for the students’ names to be deleted at the school after the tests have been written. This should not, however, interfere with or delay the reporting requirements under section 14 of the *Child, Family and Community Service Act*.
5. I recommend that the label sheets used to link an individual student with the three identical labels should be kept for a limited time only. I also encourage the Ministry to continue the use of this unique identifier for these tests because, in general, I am opposed to the use of a single student identifier for a variety of purposes which may not be related.
6. In the brochures prepared by the Ministry for parents and students, I recommend that there should be a clearer notification that individual scores will be disclosed to the school and the school district, and that the scores will be used for a particular purpose. The Ministry has already confirmed that, for the 1999 assessment tests, results for individual students will not be returned to the school district or the school.
7. The brochures should also contain information that clearly explains the purpose for collecting the background and habits information for individual students. The Ministry has reported that a section explaining the purpose of gathering this information has been added to the 1999 brochure.
8. Parents and students should be notified that classroom teachers may score the tests before they are sent to the Ministry, and that the classroom teachers will use the scores for a particular purpose. The Ministry has said that it will alert parents that classroom teachers may score the tests and that parents can obtain further information about the use of such scores from the school.

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