

INFORMATION SHARING PROTOCOL
UNDER THE *YOUTH CRIMINAL JUSTICE ACT* (CANADA)

February 2004

A partnership of:

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INFORMATION SHARING PROTOCOL
UNDER THE *YOUTH CRIMINAL JUSTICE ACT* (CANADA)

for

THE SHARING OF INFORMATION WITH MANITOBA
SCHOOLS BY MANITOBA JUSTICE AND POLICE OFFICERS

COMPANION GUIDE

Manitoba Justice
Manitoba Education, Citizenship & Youth

FEBRUARY 2004

INFORMATION SHARING PROTOCOL COMPANION GUIDE

The *Youth Criminal Justice Act* (YCJA) authorizes limited disclosure of information about young persons dealt with under that Act to schools. The sharing of information is permitted in order to:

- **ensure the young person follows conditions of reintegration leave, or an order of the youth justice court, such as bail or probation conditions;**
- **ensure the safety of school staff, students or other persons; or**
- **facilitate the rehabilitation of the young person.**

Manitoba Justice and Manitoba Education, Citizenship and Youth and stakeholders including police services, school trustees and senior school administrators jointly developed a protocol to provide guidelines for the disclosure of information about young persons who have been dealt with under the *Youth Criminal Justice Act*, or the *Young Offenders Act*, to schools and how schools must protect and deal with this information. A copy of the protocol is available to all staff in each respective system.

Information that may be disclosed to a school

Information from the following records may be disclosed to a school representative to the extent necessary to accomplish the purposes set out above.

Examples of what may be disclosed include bail conditions where no contact between a young person and another student or probation conditions where school attendance has been ordered.

Disclosure of information from these records should be limited to the amount of information necessary to accomplish the purpose for which disclosure was made, such as ensuring safety at school. The information will be disclosed in a timely fashion.

Who may disclose the information to a school?

Information providers include:

- Manitoba Justice youth workers or officials;
- Crown Attorneys; and
- peace officers

Who may the information be disclosed to?

Information in a record about a young person may be disclosed to any professional or other person engaged in the supervision or care of the young person – including the representative of any school board or school or any other educational or training institution.

School divisions, school districts, schools and other educational and training institutions may designate specific persons to act as their “school representatives” for the purposes of receiving disclosure from information providers.

The person who receives the information should be in the position to ensure that:

- the information is used only for the purposes for which it is disclosed; and
- proper security measures are implemented and followed to ensure that the privacy of the young person is protected and that the requirements of the YCJA respecting use, access, further disclosure, storage and destruction are met.

When may the information be disclosed?

Each decision to disclose information about a young person, and each request by a school for information, must be reviewed by the person authorized to disclose the information to ensure that the requirements of the *Youth Criminal Justice Act* are met. Disclosure will take place on a timely basis.

How should the information be disclosed?

Information may be disclosed verbally or in written form. The school representative may request a written copy of information provided verbally.

Any information provider must ensure that all reasonable steps are taken to protect the information while it is being provided or transmitted to the school representative. For example, information should not be transmitted by fax or electronic mail unless reasonable steps have been taken to protect the information from risks such as access by unauthorized persons.

In all cases, the particulars of the disclosure should be recorded on the information provider's file. These particulars should include:

- the name of the person who released the information;
- the date, and form in which the information was released (verbal or written) and the manner of transmission (that is, how it was provided);
- a description of the information provided. A copy of the document should be included on the file; and
- the purpose for which the information was released.

Students leaving school

The school representative must immediately inform the original information provider when a young person transfers to another school, graduates or leaves the school. In the situation where the young person has moved to a different school, the original school does not have any authority to disclose this information to the new ('receiving') school under the YCJA.

It is the information provider's responsibility to send the relevant information to the new school.

For more information

Contact the following for further information or a copy of the protocol:

- Your School Division Superintendent
- Office of the Provincial Director
Manitoba Justice
8th floor, 405 Broadway Avenue
Winnipeg, Manitoba R3C 3L6
Phone (204) 945-7890
Fax (204) 948-2166
- Manitoba Education, Citizenship
and Youth
Room 507 – 1181 Portage Ave.
Winnipeg, Manitoba R3G 0T3
Phone (204) 945-6899
Fax (204) 948-2154

Frequently asked questions

1. What is the relationship of The Freedom of Information and Protection of Privacy Act (FIPPA) and The Personal Health Information Act (PHIA) to the Youth Criminal Justice Act (YCJA)?

The provisions of the YCJA dealing with access to and disclosure of records relating to a young person dealt with under it prevail over the provisions of FIPPA and PHIA where there is a conflict between the provisions.

In constitutional law, there is a doctrine, known as the paramountcy doctrine that applies when validly enacted federal and provincial legislation conflict. In effect, where the federal government and a provincial government have each passed legislation which relates to the same subject matter, and each level of government has authority to pass the legislation in question, if there is a conflict between the legislation, the federal legislation will prevail or be 'paramount'.

As a footnote to the above, it should be noted that the YCJA applies only to access to, and the sharing and disclosure of, records and information about young persons who have been dealt with under the YCJA, and that the sharing and disclosure of these records and information is governed by stringent criteria. **FIPPA and PHIA apply in all other situations where personal information or personal health information is collected, used or disclosed by Manitoba government departments (such as Manitoba Justice), by Manitoba municipal police forces (such as the City of Winnipeg Police Department) and by Manitoba public schools (those schools which are operated by a school division or school district established under *The Public Schools Act*).**

2. What is the relationship of The Public Schools Act (PSA) to the Youth Criminal Justice Act?

The Public Schools Act of Manitoba, and the regulations under that Act and under *The Education Administration Act*, governs the operation of public schools in Manitoba. The **Manitoba Pupil File Guidelines** developed by Manitoba Education, Citizenship and Youth discuss the obligations of public schools respecting information about students under provincial legislation such as *The Public Schools Act*, *The Freedom of Information and Protection of Privacy Act* and *The Personal Health Information Act*, as well as the obligations of public schools under the former federal *Young Offenders Act*.

3. Should disclosed information be communicated or stored electronically or by fax?

Disclosed information should not be communicated or stored electronically or communicated by fax unless adequate measures are available to properly safeguard the information and protect the privacy of the young person it is about.

The following is a protocol for confidential faxing that should be adopted:

- (a) phone first to ensure/advise authorized recipient at the receiving fax station.
- (b) advise authorized recipient to be on standby at receiving fax station.

- (c) DO NOT USE SPEED DIAL – it is not foolproof, and the margin of error is greater than manual dial up.
- (d) Confirm authorized recipient is in receipt of faxed document via telephone.

Information that is communicated or stored electronically can be protected with a device called PGP, which in effect electronically seals the information and makes it impossible to pull up information without a special encryption code. The device is relatively inexpensive, and needs to be installed with both receiver and sender before it will operate.

4. Are parents informed when information is disclosed to school officials under the YCJA?

Information about a young person who has been dealt with under the *Youth Criminal Justice Act* can only be disclosed if the disclosure is authorized by the Act. The *Youth Criminal Justice Act* does not provide a parent with a general right of access to information about his or her child. In keeping with the strict disclosure provisions in the Act, parents would only be informed when information is disclosed to a school representative under the *Youth Criminal Justice Act* if there is authority to do so under the Act. Similarly, schools would not share this information with a young person's parents unless authorized to do so by the Act.

5. Can a public school prevent a student from attending school if it receives information that the student's attendance may threaten the safety of staff or students?

There are provisions in *The Public Schools Act* and in the *Education Administration Miscellaneous Provisions Regulation* under *The Education Administration Act* which allow for the suspension or expulsion of a pupil in a public school in specified circumstances, and provided certain procedures are followed.

For example, with respect to suspension, the *Education Administration Miscellaneous Provisions Regulation* provides that:

- (a) a teacher may suspend a pupil from the classroom for a period of not more than 2 days, if the pupil engages in conduct the teacher considers detrimental to the classroom learning environment and which contravenes the school's code of conduct (section 40.3 of the *Regulation*);
- (b) a principal of a school in a division or district with a school superintendent may suspend a pupil who "engages in conduct that the principal considers injurious to the school's welfare or educational purpose" for a period of not more than 1 week (section 40.5 of the *Regulation*);
- (c) a school superintendent may, when authorized by the school board, suspend a pupil who "engages in conduct that the superintendent considers injurious to the school's welfare" for not more than 6 weeks (section 40.6 of the *Regulation*).

The *Regulation* sets out procedures that must be followed, including an automatic review of the suspension by the appropriate school board. The board must permit the parent

and pupil to make representations if the suspension is for more than 5 days (see section 40.8 of the *Regulation*).

Subsection 48(4) of *The Public Schools Act* deals with expulsion and states:

Suspension and expulsion

48(4) Subject to the regulations and notwithstanding any other provision of this Act, a school board may suspend or expel from a school any pupil who, upon investigation by the school board, is found to be guilty of conduct injurious to the welfare of the school.

Note that the school board is required to investigate. The procedure followed by a school board when considering whether to suspend or expel a pupil under this provision must meet the legal duty of fairness, etc.

Under the 'schools of choice' provisions in *The Public Schools Act*, a public school may refuse to enrol a pupil who is not resident in its school division or school district if the principal or other school board delegate is of the opinion "enrolling the pupil in the program likely would be seriously detrimental to order and discipline in the school or the educational well-being of pupils there" (clause 58.4(1)(e) of the Act).

6. What information can corrections or peace officers legally request of public school officials and under what authority?

Disclosure by a school board in the public school system of personal information (other than personal health information) about a young person to a police officer investigating an offence must be authorized under *The Freedom of Information and Protection of Privacy Act* (FIPPA) (subsections 42(1) and 44(1)). Disclosure of personal health information about a young person must be authorized under *The Personal Health Information Act* (PHIA) (subsection 20(1) and section 22).

A school board's decision as to whether there is authority to disclose personal information or personal health information to a police officer must be made on a case by case basis. It is recommended that school boards consult with their access and privacy co-ordinators and, where necessary, with their legal counsel, before disclosing personal information or personal health information about a young person to the police.

Examples of situations when such information may be disclosed by a school board include:

- when the young person consents, if the young person is legally capable of providing consent;
- if the young person is not legally capable of providing consent, when the young person's parent or guardian consents (and giving this consent would not unreasonably invade the young person's privacy);
- where the police officer has a subpoena, warrant or order issued or made by a court;

- in the case of personal information, where disclosure of the information is “necessary to protect the mental or physical health or the safety of any individual or group of individuals”;
- in the case of personal health information, where the school board “reasonably believes” that disclosure of the information is “necessary to prevent or lessen a serious and immediate threat” to the mental or physical health or safety of the individual the information is about or another individual, or to public health or public safety.
- in the case of personal information only, a school board may (but is not required to) disclose personal information for law enforcement purposes (as defined in FIPPA) or for crime prevention. Disclosure of a young person’s information for these purposes should only be done after consultation with the school board’s access and privacy co-ordinator (and legal counsel, if necessary).

(Also see the **Manitoba Pupil File Guidelines** issued by Manitoba Education, Citizenship and Youth.)