



**LABRADOR**  
DISTRICT SCHOOL BOARD



# Access to Information and Protection of Privacy Act



Handbook of  
Frequently Asked Questions  
*for Educators*



## ACCESS TO INFORMATION AND PROTECTION OF PRIVACY ACT

### *Frequently Asked Questions*



The *Access to Information and Protection of Privacy (ATIPPA) Act* aims to strike a balance between the public's right to know and the individual's right to privacy, as those rights relate to information held by public bodies in Newfoundland and Labrador.

Below is a listing of questions that may be asked by various stakeholders involved in the education sector. This list is by no means exhaustive and will grow in terms of numbers of questions as different scenarios are encountered relative to the legislation.

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### 1. What is "personal information"?

- "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;

### 2. What is a "record"?

- The ATIPP Act defines a "record" as a record of information in any form, and includes information that is written, photographed, recorded or stored in any manner, but does not include a computer program or a mechanism that produced records on any storage medium;
- It includes handwritten notes and electronic correspondence or messages, which are in the custody or control of a school.
- Not all records need to be kept by schools. You can routinely discard transitory records, those that have only short-term, immediate or no value to your organization

and that you won't need again in the future. It is strongly recommended that such records be shredded.

- If the information in a record will have some future administrative, financial, legal, research or historical value to the school board, then you should file the record. For example, e-mail messages that record approvals, recommendations, opinions, decisions or business transactions have future value, and are not transitory and should be filed. You can print and file them in your manual filing system or store them in an electronic filing system. The security of such filing systems is a priority consideration.

### **3. What records of schools are subject to the ATIPP Act?**

- All records that are in the custody or under the control of the school are subject to the ATIPP Act unless a specific exclusion applies, as outlined in Section 5 (1) of ATIPP.
- A school has custody of a record when the record is in the possession of the school. This includes situations where the records of a third party are kept on the premises of the school.
- A record is under the control of a school when it has the authority to manage the record, including restricting, regulating and administering its use, disclosure and disposition. This does not apply to third-party records, e.g. cadets that use school facility but are not "school run".

### **4. How long should a school keep its paper/electronic records?**

- ATIPP Section 37. Where a public body uses an individual's personal information to make a decision that directly affects the individual, the public body shall retain that information for at least one year after using it so that the individual has a reasonable opportunity to obtain access to it.
- All existing records procedures still exist, e.g. student's permanent file, etc.

### **5. Should e-mail be printed before it is deleted, or should it be saved instead of being deleted?**

- The same records management principles for paper files/records should also apply to e-mail documents. Transitory e-mails may be deleted.
- Labrador School Board does not have electronic records management for email, thus paper (print out) will form the historical record.

## **6. Who is an "employee" under the ATIPP Act?**

- "Employee", in relation to a public body, includes a person retained under a contract to perform services for the public body; However, volunteers, students on work experience arrangements and contractors have the same responsibility to protect privacy as other employees of the school.
- School council members are not considered to be employees under the ATIPP Act. Personal information may only be disclosed to school council members with consent.

## **7. Are records of contractors subject to the ATIPP Act?**

- The definition of "employee" in the ATIPP Act includes a person retained under contract to perform services for the public body ([section 2\(e\)](#)).
- A record may be under the control of a school where a contract permits the school to inspect, review or copy records produced, received or acquired by a contractor.
- Often schools have contracts with an organization to provide some kind of service to individuals. Services such as meal preparation or janitorial services may be provided through contracts. The contractor is functioning in the place of the school; the records the contractor creates are subject to the same privacy and access rules as records of the school. As a result, contracts need to include privacy protection clauses, as well as clarity on control of and access to records.

## **8. Who is responsible for ATIPPA within a school?**

- Under the ATIPP Act, the Director has delegated within the Labrador School Board, the Assistant Director of Education (Finance & Administration) as the ATIPP Coordinator. School administration are responsible for ATIPP within the school.

## **9. Does a school have any control over how records that have been released in response to an ATIPPA request are used by the applicant?**

- No. A school does not have any control over the use of information once it is released to an applicant.

## **10. What are the expectations around "accuracy" of information/records?**

- School personnel shall make every reasonable effort to ensure that the information/record is accurate and complete.

- Student records should be updated on a regular basis via a Correction Form sent home to parents.
- Parents requesting a correction of information must be accommodated once proof of correction is provided.

### **11. What is a “privacy breach”?**

- A privacy breach occurs when there is unauthorized access, collection, use, disclosure or disposal of personal information. Such activity is “unauthorized” if it occurs in contravention of the Access to Information and Protection of Privacy (ATIPP) Act.
- The most common privacy breaches occur when personal information of customers, patients, clients or employees is stolen, lost or mistakenly emailed to the wrong person.

### **12. What do I do if a “privacy breach” occurs?**

- If a privacy breach occurs you should notify immediately the lead ATIPP Coordinator with the Labrador School Board - Assistant Director of Education (Finance & Administration) or if the lead coordinator is unavailable, the Director of Education.

## **Photographs**

### **13. Who can photograph students at public events at schools?**

- Classrooms are not public places. Schools control who has access to school property and to students. When students are at school, school staff act in the place of parents to protect students.
- Schools can decide to invite spectators, including parents or media, to certain school events. This is a school policy issue rather than an ATIPPA issue. Once parents or other members of the public are invited (other than as volunteers within the school), the event becomes a public event, and anyone in attendance may take photographs without first obtaining consent.

**14. Who can photograph students involved in performing arts or competitive teams?**

- Students involved in performing arts or competitive teams perform or compete in public venues and it is reasonable to expect that photographs may be taken by spectators and by schools.
- Anyone may take photographs of students participating in a public event. These photographs may be disclosed for promotion of the school or the school board's activities.

**15. Can schools photograph students in classrooms?**

- School staff may take photographs of students for use within the school.
- Schools do not need to get parental consent for these photographs. This is part of the general notice that certain personal information is collected for the purpose of providing educational programs.

**16. Can the media photograph students in classrooms?**

- Schools need to obtain parental consent before allowing those outside the school, including parents, visitors, or media, to take photographs of students at non-public events. Consent is required only if individual students are identifiable in the pictures.
- For example, if the newspaper wants to interview and photograph the Grade 6 student who had the highest marks, the school must get parental consent first. If the newspaper wants to photograph the school's new computer lab, it could photograph the students from the back, in a way that did not identify individuals, without requiring consent.
- The media are expected to behave responsibly and co-operate with schools that have invited them to participate in school events.
- Schools must be proactive by communicating with the local media and agreeing upon guidelines in advance of inviting media into the schools.

**17. Would visits by a celebrity or dignitary to a classroom be considered a public event?**

- Probably not. Visits by celebrities or dignitaries to a classroom when the public is not invited, are not public events. If the media are invited, parental consent must be sought for photos or interviews.

**18. Can the media interview or photograph students at school events such as student modeled fashion shows or Safe and Caring School programs, when the public has not been invited?**

- No. Schools must seek parental consent before allowing the media to interview or photograph students at non-public events.

**19. How should schools go about producing newsletters?**

- Newsletters are used to announce student success, events and activities within the school and its community and are generally made available to parents, bus drivers, board members, trustees and other schools in the community. As such they are public documents.
- Schools need to determine whether all personal information being placed in the newsletter is a use consistent with the purpose for which the information was collected or compiled, and has a reasonable and direct connection to that purpose (part of regular education program for that school). If the use of personal information is consistent with the purpose for which it was collected or compiled, then schools would only need to give notice to parents on how the information will be used. Notification of what is normally published in the newsletter could be part of the notification process done during September registration. If the use of personal information is not a consistent use, then consent is required.
- The notice can describe that the school newsletter regularly includes for example, a welcome to new students (age and grade), names and photos of students of the month, or students achieving honours, news on sports teams and athletic achievements, and photos of students involved in school projects.
- Normally newsletters include a mixture of general information and personal information. An example of the former may be a story about the grade 5 class visiting the museum. The story describing the class visit may not disclose personal information about individual students. Schools should seek parental consent when students are being profiled individually in an in-depth manner or is relative to a sensitive subject.

- Expressed objections by parents on the use and disclosure of the personal information must be respected.

**20. Can schools photograph students for student identification cards?**

- Schools can photograph students for student identification cards without asking for consent from parents. These identification cards are in the custody of students, so no personal information is disclosed.

**21. How should schools go about producing yearbooks?**

- Yearbooks are normally available to anyone who wants to purchase a copy and they may be placed in public libraries. As such, they are public documents.
- Schools must decide whether their yearbooks are part of an educational program. If yes, then photographs and other personal information may be included without requiring consent. If no, consent must be obtained before using some personal information.
- Photographs taken at public events, as in [questions 13 and 14](#) above, or in classrooms as in [question 16b](#), can be included without consent.
- Consent should be obtained to include individual or group photographs which do not fit into the above categories.
- Personal information to be included in the yearbook, for example, the student's educational or career plans, should be collected directly from the individual the information is about.

**22. Can schools disclose the names of graduating students or students who received an honour or award?**

- The school can disclose a list of names of students who have received an honour or award granted by the school. This can include graduation certificates or diplomas. However, giving parents/guardians the right to object/opt out in a September newsletter is strongly recommended.

**23. Can schools and school boards display pictures of graduating students and historical photographs within the schools and administrative offices?**

- While photo and name are both personal, their presence as graduation record, etc. on school walls poses minimal risk/exposure. Therefore we have been advised that this practice is acceptable.

**24. Can a school continue to maintain a student contact information system that includes a photograph of the student on Rolodex or in a database or CD?**

- Yes, but protection and security must be a high priority.

**25. Who can have access to student/parent names and contact information?**

- This information can be disclosed on a need-to-know basis, i.e. if the information is necessary for the performance of the duties of a school employee or volunteer. For example, a teacher may need this information for each of the students in his/her class, to contact parents to discuss the student's progress. As well, the school guidance counsellor may need the information for similar purposes.
- It should be noted that volunteers are included in the definition of an employee under the ATIPP Act.
- Some schools have parent volunteers who call parents to verify absences; in such cases, volunteers can have access to the information they need to carry out their task.
- K-6 classes often distribute phone lists to all parents in a class; permission to do so **must** be sought in advance. Teachers can indicate their intention to provide list, and offer parents the opportunity to opt out.
- Schools can use information for the purpose for which it was collected. The examples above illustrate this and are therefore acceptable.

**26. Can schools give the names of students who are transported to and from school by bus, to the bus driver?**

- Yes. The disclosure of student names to bus drivers would be a use that is consistent with the purpose for which it was collected or compiled, and are part of the school's obligation to provide students with transportation to an educational program under the *Schools Act (1997)*.

**27. Can schools release information about students and parents to the regional health authority?**

- The Health authorities are also governed by ATIPPA and therefore follow identical information usage/protection guidelines. However, the District may choose to formalize this with an Information Sharing Agreement.
- Certain information is typically provided when a school board receives a written request from a medical officer or his/her designate.
- Schools may disclose the student's name, address, date of birth, sex and school, and the name, address and telephone number of the student's parent or guardian.
- The regional health authority may use the information for the purpose of contacting parents or guardians regarding voluntary health programs offered by the regional health authority, including immunization, hearing, vision, speech and dental health programs, and communicable disease control.

**28. Does a school need to enter into a personal information sharing agreement regarding police liaison or child protection worker?**

- If the role of the police officer in the school is just to be a law enforcement liaison presence in the school, to interact with and provide advice to students and staff, there is no need for the officer to collect personal information or for the school to disclose the personal information of students.
- If a police officer or child protection worker is investigating a particular incident or the possibility of a criminal offence having been committed, the officer/worker would have the authority to collect and the school must disclose only the pertinent personal information of the student(s) involved to assist in an investigation. There is no need for a personal information sharing agreement to set out the terms and conditions of this disclosure.
- If the police officer or child protection worker is presenting a workshop of some sort to students, staff or parents, the officer should be collecting personal information about the participants directly from them, rather than the school disclosing this information.
- If the police officer or child protection worker is delivering school board programs or community services, or programs there is no necessity for the officer or worker to be collecting personal information.
- Whenever resource officers are assigned to schools, it is recommended that school boards and police services agree upon terms of reference or guidelines regarding the role, authority and activities of the police officer.

**29. Can school boards collect the names, addresses and phone numbers of students who may be eligible for enrollment for the next school year from regional health authorities for the purpose of staffing and budgeting?**

- No. Normally personal information has to be collected directly from the individual it is about. This type of collection by the school would be considered an indirect collection.
- Note the school board could ask regional health authorities for statistical information such as the number and ages of children in a geographic area.

**30. Can a school collect the MCP number of a student?**

- Yes, if it is a requirement of the Department of Education and the collection of the MCP number relates directly to and is necessary for operating the school. Section 32(c) of the ATIPP Act allows its collection. The security and protection of MCP numbers is of utmost importance.

**31. Can the personal information of students be disclosed for the purposes of a longitudinal research project? Is the consent of the parents required?**

- **Section 41** of the ATIPP Act sets out the circumstances concerning the disclosure of personal information for a research purpose.
- The purpose for the disclosure of students' personal information must only be for research or statistical analysis – not for other purposes such as administration of a program or making decisions affecting an individual.
- Schools are not to engage in any research or survey work unless approval for such research is formally approved by the school board.
- If and where approval for research is given by the Labrador School Board, schools are to ensure that parental consent is obtained.

**32. Can a school administer a questionnaire to students for a study being conducted by another body without prior consent from a parent/guardian?**

- No!
- It is also strongly recommended that the schools administering the questionnaire provide notice to the students about the purpose for which the information is to be collected. It is also recommended that the school provide written notice to the parents including information about the study, how the child's information will be used, which

organizations are involved, the measures in place to protect privacy, and the conditions on participation in the survey.

- A school would also need to satisfy the provision of [section 41](#), disclosures for research purposes.

**33. What types of student information can schools disclose to Child Welfare workers when the worker is conducting an investigation? Can they disclose the address of a child for the purpose of locating the child?**

- The Child, Youth & Family Services Act requires that any person who has reasonable and probable grounds to believe that a child is in need of protective services must report that matter to the Director of Child Welfare (who delegates his authority to employees of Child, Youth & Family Services). Once the Director receives a report (either from a peace officer or any other person) that a child may be in need of protection, the Director must have the matter investigated.
- Under section 6(1) of the *Child, Youth & Family Services Act*, the worker conducting the investigation can collect and the teacher or other school staff must disclose personal information necessary to assist in the child welfare investigation, including providing the address of the child.
- If a supervision order has been made or if the guardian of the child has entered into a support or temporary guardianship agreement with the Director of Child Welfare under the *Child, Youth & Family Services Act*, [sections 39\(1\)\(o\), or \(d\)](#) of the ATIPP Act would likely permit the school to disclose the whereabouts of a child to a child welfare worker so that the worker can monitor the effectiveness of the support services and determine whether there are still concerns related to the protection of the child.

**34. Can students ask counsellors or teachers to keep certain personal information confidential and not to disclose it to parents?**

- It depends upon the age or legal status of the student.
- Parents have access to the student record, unless the student is over 19 or is legally declared to be an independent student.
- A school Principal may disclose other personal information of students over 19 or legally independent to parents against the wishes of the student if the Principal believes the disclosure will avert or minimize imminent danger to any person ([section 39\(1\)\(p\)](#)) or if the disclosure would not be an unreasonable invasion of the student's personal privacy under [section 26](#). A situation of imminent danger might be a student

confiding suicidal thoughts to a counsellor. In order to make a determination that a disclosure would not be an unreasonable invasion of personal privacy, a school would have to weigh the factors in [section 26](#). For example, it would not be an unreasonable invasion of personal privacy to disclose the student's personal information to the parent if there are compelling circumstances affecting either the health or safety of the student or of any other person (e.g. the student threatens to harm someone).

**35. What information about graduating students can be provided to Members of the House of Assembly or Parliament.**

- Schools cannot release the names of the graduating students to a Member of the House of Assembly or Parliament.

**36. Can schools release the names of teachers and other staff, for example, in a school newsletter?**

- Staff names are used for a number of purposes. For example, to advise parents about which teacher teaches their child.
- Schools should notify staff of how their personal information will be used. If staff names are then released for these or consistent uses, this is allowed under the ATIPP Act.
- In general, disclosure of personal information of a staff member would not be considered without consent.
- LSB email addresses are **not** personal, and can be released without consent.

**37. Can schools release the names of school council members, for example, in a school newsletter?**

- Like school staff, school council members should be notified of why their personal information (e.g. name, phone number) is being collected, how it will be used, and to whom it will be disclosed. Information may then be released accordingly.
- Schools should discuss with council members how their personal information will be used, for example, whether home phone numbers will be released, and to whom.
- For an elected member of the council, there is an expectation that the individual's name and contact information will be available to anyone.

**Students' Names**

**38. Can schools put student names in hallways, for example above coat hooks, on lockers or on classroom doors?**

- Schools often label coat hooks and lockers for younger students. Schools can continue to do so as this assists the students and teachers in the regular conduct of school affairs/educational programs.

**39. Can students' names be disclosed as part of an e-mail exchange program between schools?**

- If this is part of an educational program of the school, then disclosing the students' names would be permissible.
- If it involves putting student names or photos on a web page, parental consent is required.

**40. Can swimming pool staff, ski slope staff, etc., be given the names of students attending school outings/activities?**

- The release of information relates to the enrolment in a school.
- Recipients of the lists should be told that the names may only be used for the purpose of running the swim class and records destroyed after lessons are over for the year.

**41. Can students put their names on assignments, tests or artwork?**

- There is no barrier in the ATIPP Act to prevent students from putting their names on their work.

**42. Can schools provide students with lists of classmates for the purpose of sending St. Valentine's Day cards, etc?**

- Teachers can provide students with the names of the students to send St. Valentine's Day cards to when this is a regular part of the educational program of the school.

**Students' Marks and Achievements**

**43. Can teachers write comments on student assignments or tests as well as the student's grade?**

- There is no barrier in the ATIPP Act to prevent teachers from commenting on students' work.

**44. Can students' grades and detentions be posted in the hallway or classroom?**

- Posting students' grades or detentions may be a breach of privacy. The educational benefits need to be taken into consideration. In a Grade 1 class, a poster with student names and stickers for each book read by a student is entirely appropriate. By contrast, posting Math exam results with the students' names in the hallway has no educational benefit, and so would be an unauthorized disclosure of personal information.

**45. Can students' CRT or Public Exam results be posted in the hallway or classroom?**

- No, CRT or Public Exam results for students cannot be posted in a classroom or hallway in any manner that permits the identification of individual students.

**46. Can parents find out how their children's marks compare to those of other students in the class?**

- Class averages without additional identifying information may be provided. If required, parents may receive a list of other students' marks that excludes the names of other students and organized in such a way as to ensure anonymity and privacy of other students.

**47. Can parents receive information on the performance of a school?**

- Yes. This is not a privacy issue, as the performance of individual students would not be released.

**48. Can students mark each other's tests?**

- Personal information of students is disclosed when students mark each other's tests.
- This disclosure is permitted when it is done for an educational purpose. Group learning activities may be used in the classroom, and students can learn from critiquing the work of other students.
- Schools should consider the merits of this practice in the classroom and use it at the discretion of teachers.
- If this method of marking is done for convenience, but not educational reasons, it should not be used.

**49. Can students read their essays aloud in class?**

- If the school decides that this activity is part of an educational program, there is no barrier to this in the ATIPP Act.

**50. Can a parent, in an ATIPPA request, receive a copy of their child's examination paper?**

- The answers to examination questions are a part of the student's educational history and are personal information. However, if the examination paper is going to be used again in the near future and the school can document this fact as an established practice, then the questions may be severed from the record before releasing the answers to the student.

## Former Students

### **51. Can class lists of former students be released to plan special events like class reunions?**

- The ATIPP Act provides discretion to release information already available to the public. If lists of students and graduates have been previously released and are available in public sources such as in a library, yearbooks or newspaper articles, the same information can be disclosed.

## Volunteers

### **52. How does the ATIPP Act affect the use of volunteers by schools?**

- Schools can continue to welcome volunteers into schools, but should inform them of the need to protect student privacy, as they are considered employees for purposes of the Act.
- It is recommended that volunteers who work closely with students sign a confidentiality agreement in which volunteers agree to protect personal information that they may learn of in the course of fulfilling their duties. This is a way for schools to demonstrate that they are taking steps to protect privacy.

### **53. Can parent volunteers take part in calling parents regarding school business?**

- Yes, but volunteers are required to protect the privacy of the personal information they have access to in the course of performing their volunteer duties. This does not prevent parents from volunteering at the school.

**54. Should direct consent be obtained for personal information for scholarships, awards, prizes, or recognition purposes?**

- The school does not have to get direct consent to collect personal information directly from an individual when determining suitability for an honour or award including a scholarship, award, prize or recognition.

**55. Can the names of students who submitted an application for a memorial scholarship be disclosed to the individual or family sponsoring the memorial scholarship?**

- Generally, this information would only be disclosed to employees and the members of the scholarship selection committee, as the information would be necessary for the performance of their duties. This would not be an unreasonable invasion of privacy to disclose the name of the recipient of the scholarship unless the person has requested that the information not be disclosed.
- A school may disclose the information to the sponsor if the student consents to the disclosure.
- If a school establishes, as a condition of application, the disclosure of the name of individuals who have submitted an application for a particular scholarship, to the sponsor, it must inform the student of this at the time of applying and decide what input the sponsor will have in the selection process, if any.

**56. Why is consent required to display students' work outside of the school?**

- The federal *Copyright Act* requires that permission from the copyright owner, in this case the student, be obtained from the student's parent to use or reproduce the schoolwork (e.g. artwork, essays, poems) in this way. For example, schools may want to display student artwork at community events or on a school's web pages, or submit schoolwork to Newfoundland and Labrador School Board Association and Department of Education. Displaying the work would be considered a "public performance" of the work under the *Copyright Act*.
- Copyright consent forms can be obtained as part of the student registration process. This is not generally an ATIPP Act issue or privacy issue, unless the artwork contains personal information.

**57. How is the personal information of international or out-of-province students attending school in Newfoundland and Labrador protected?**

- The ATIPP Act applies to the personal information of international and out-of-province students in exactly the same way as it applies to other students.

**58. Should I give out any personal information over the telephone?**

- Absolutely not over the telephone!

**59. What information should be on school entry forms?**

- Only collect what is needed
- Kindergarten (and other) enrollment forms must be modified to include the following:

*"This information is being collected for the purposes of student enrolment/registration, under authority of the Schools Act (1997). If you have any questions regarding data collection or use, please contact the Labrador School Board - contact information is on <http://www.lsb.ca>"*

**60. What are some of the common technical weaknesses found in schools?**

- Files exported for AGR, e-reporting, feeder transfer, etc. left on computer after transfer. These should be deleted.
- Files saved to desktop or local drive of Notebook computers. All files should be stored on server.
- USB Flash Drives- information left on them, lost/misplaced, left in computers, etc. Use only secure/encrypted for personal/private information.
- Writing down passwords. **Don't do it!** Sharing passwords. **Don't do it!**
- Too many network administrators- limit to 1 or 2.
- Office computer left on and unattended.
- Filing cabinets left unlocked.
- Laptops left unsecured.

**61. Can schools utilize video surveillance systems for security?**

*Yes, but the following must be noted:*

- Video containing person's image forms part of their personal record.
- Protection/deterrence must be shown to outweigh privacy concerns.

- Privacy Impact Statement is likely required before installation, completed by ATIPP coordinators.

**62. Should a school pass along personal information to such community groups as: Cubs, Scouts, Guides, Cadets, Minor Hockey, Soccer, etc.?**

- NO! Unless parental consent is given

**63. How should schools get consent for “standard” school operational items? Eg. Allergy notification (general), K-12 Planet, Phone lists in K-6, Synre-voice.**

- At the beginning of the school year (or upon enrollment) schools should note, in a memo sent home to **all** students, how personal information will be used. Parents should be told that their permission is **assumed granted** unless they specifically inform schools otherwise.
- Detailed allergy etc. notifications with picture, name, and information are posted for health and welfare of child, however schools should still get direct parental approval.

**64. Are complainants’ identities kept confidential?**

- The Access to Information and Protection of Privacy Act has some ambiguity in this regard, in that complaints to schools are part of the personal record of both the complainant and the person being complained about. The balance of privacy vs. access to information generally adopted by the District is to release the content of the complaint, while redacting (“blacking out”) the complainant’s identity. However, students and parents should be aware that a school may not be able to properly investigate a complaint without implicitly identifying the source of the information, particularly if the complaint concerns a specific event. In some contexts, such as investigations into a teacher’s conduct, the Collective Agreement may require disclosure of the complainant’s identity.
- If a student or parent is concerned about his/her identity being revealed, particularly if safety is an issue, he/she should discuss the matter with the principal. He/She should ask if the matter can be investigated without revealing her identity and if not, what other options are available.

#### **65. Can a non-custodial parent access their child's information?**

- Under the Access to Information and Protection of Privacy Act, personal information about a student belongs to the student, not a parent. However, the ATIPP Act recognizes that certain individuals, such as young people, are incapable of exercising their access rights and allows other individuals to act for them. Regulation 65 of the ATIPP Act allows the access rights of a young person to be exercised on his behalf by his parent or guardian if the District feels that this is not "unreasonable invasion" of the student's privacy.
- In orders dealing with a non-custodial parent's right of access to a child's information, the Information and Privacy Commissioners in other jurisdictions have interpreted "parent or guardian" as meaning "custodial parent". Therefore, only a parent with legal or physical custody of child can exercise that child's access rights under the ATIPP Act. A non-custodial parent has no access rights to a child's information under the ATIPP Act, without consent of the custodial parent. However, a non-custodial parent may have a right to information about his child granted by the court in a divorce or separation agreement. These are separate rights than those found in the ATIPP Act and cannot be exercised through an access request under the ATIPP Act.
- A parent with sole custody of a child should make sure the school is aware of the custody arrangement and clarify with the school what information, if any, can be disclosed to a non-custodial parent.

#### **66. Can a Parent access information about their child's teacher?**

- Some information about teachers should be available to the public but other information must be protected for privacy reasons.
- As a public service employee, information about a teacher's position, functions, etc. can be released to the public for accountability reasons. However, this does not mean that teachers have no privacy rights. With the exception of the above, personal information about a teacher is subject to the same protections in the Access to Information and Protection of Privacy Act as the personal information of any other individual.
- Under the ATIPP Act, schools must refuse to release personal information about a teacher if release would be an "unreasonable invasion" of the teacher's personal privacy. In making this determination, schools must weigh several factors including whether disclosure is likely to promote public health and safety but, generally speaking, the following information would not be disclosed: a teacher's home address, telephone number, or marital status, employment, medical or educational history.

- The most common type of information parents may want to access regarding teachers is complaint or disciplinary information. Although each case is different and must be assessed on its own merits, generally complaint and disciplinary information about public service employees is private.

**67. Can a parent request and receive information about a school bully?**

- All students have privacy rights, including bullies. Under the ATIPP Act, a student's personal information can only be disclosed for limited, specific reasons. Disclosure to someone other than the student's parent, or another government agency for educational or law enforcement reasons should only occur if "compelling circumstances affecting anyone's health or safety" are at issue. Compelling health or safety concerns override individual privacy rights. Therefore, if the school has reason to believe that a student or other individual is at risk, it may release personal information about the bully to the person at risk, or the police.
- Concerned parents should be informed how the school is managing the bullying problem and how it will deal with future incidents. It is not necessary, however, to share details of the bully's home life, behavioural problems, medications, etc. Disclosure of this type of information would be an unreasonable invasion of the student's personal privacy.

**68. Can a parent request access to school policy?**

- School policy is not personal information and release of non-personal information is not limited or restricted by the ATIPP Act. It is also not normally necessary to file a formal Access to Information request for school policies. In most cases, policy is available routinely without a request under the Act.

**69. Can a parent find out the results of background checks conducted on teachers, non-teaching staff, volunteers and parent helpers?**

- Every person in the Labrador School Board that works with children in an employment or professional capacity must undergo a criminal record check through local law enforcement authorities. The results of these checks are provided to employers for employment purposes only and are considered to be confidential. The ATIPP Act defines personal information to include information about an individual's criminal history. Therefore, this information would not normally be disclosed without their consent. Volunteers or parent helpers who are required to have criminal records checks done also fall within this category. The results of these checks would be

treated in the same way as ones conducted for teachers and non-teaching staff. e.g. School administrators would not tell a sports group that Parent X cannot be a coach because they have a criminal record; they would inform the parent that they could not coach though.

**70. Is the school required to notify parents that complaints have been made against a teacher?**

- Under the ATIPP Act, notification to the public is required only where a risk of significant harm to the environment or to the health or safety of the public exists or where a matter is clearly in the public interest. Complaints about a teacher are unlikely to fall into this category. Complaints and disciplinary information about a teacher is the personal information of the teacher and would normally not be released to the public. Complainants, however, may be entitled to certain limited information about an investigation into their complaint about a teacher.

**71. Is the school required to notify parents about known predators?**

- Information about a known predator could very well require public notification. If the District has reason to believe that students or the public is at risk from a predator, it must, without delay, disclose this information to the public. Notices may be general, simply warning students and parents, about recent incidents or may include a picture and details about a specific individual of concern to the police. The latter notice clearly contains personal information about an individual but where warranted, public safety will override individual privacy. These decisions are made after weighing several factors and are normally made by, or in consultation with, the police and the school district.

**72. Is the school required to notify parents about students with violent histories or medical conditions?**

- Psychiatric, psychological and medical information is arguably the most sensitive type of personal information. Only a clear and significant risk to public health or safety should override the private nature of this information. A student with a history of violent behaviour or a communicable medical condition may pose a risk to other students or school staff. On the other hand, if the former behaviour is now under control or if the medical condition is non-communicable, the risk to others may be negligible. Each case must be assessed individually, carefully weighing the potential risk to others with the private nature of the condition. The District may wish to

consult the appropriate health professionals on the nature of the condition to fully understand the potential risks.

- In many cases, information about a risk to students can be provided without identifying the source (e.g.: in advising students and parents about an outbreak of head lice, there is no need to identify specific students with this condition). The identity of the student should only be provided when it is absolutely necessary, where, for example, direct contact with a student may have resulted in the transmission of a life-threatening disease. It is also preferable to seek the consent or at least advise the parents of the student that information about the condition may have to be released for public health or safety reasons.

### **73. Is a school required to notify parents about environmental hazards at the school?**

- Whether or not a request for access is made, section 31 of the ATIPP Act requires a public body to notify, without delay, the public or an affected group of people about a risk of significant harm to the environment or to the health or safety of the public. An environmental hazard at a school would fall into this category. School Administration must first consult with the Director's office regarding any issues or concerns of this nature.

### **74. Can the school search student lockers?**

- Strictly speaking, this isn't an ATIPP issue - the ATIPP Act only deals with privacy matters related to improper collection, use, protection and disclosure of recorded personal information by the public body. A locker search may be a privacy issue but it is not related to records. It is a physical search which is normally conducted if there is reasonable cause. Parents and students should direct questions about locker searches to the principal or the District.

### **75. Can a school conduct dog searches?**

- No - schools are not to allow random canine searches of Labrador School Board facilities. A 2008 ruling of the Supreme Court of Canada ruled that random or spontaneous police dog searches of schools were unlawful invasions of privacy "unreasonably undertaken because there was no justification". The ruling indicates that police who use dogs in schools must be able to justify prior suspicion of a crime in order to use evidence seized. In the particular case used to set this precedent, a 17

year old who was arrested and charged after a dog sniffed drugs contained in his backpack.

**76. What are some guidelines I should follow relative to faxes and emails?**

- Since faxes and emails are official records a privacy breach occurs when a fax or email is sent to a person other than the intended recipient. Hence, a detailed fax cover sheet ensuring the accuracy of the sender, recipient, address and telephone number or having the correct email address is of paramount importance.
- Every fax or email should have a confidentiality clause indicated on the cover page of the fax or at the end of an email message.
- Sample:
  - *This communication is intended for the use of the recipient to whom it is addressed, and may contain confidential, personal, and/or privileged information. Please contact us immediately if you are not the intended recipient of this communication, and do not copy, distribute, or take action relying on it. Any communication received in error should be deleted or destroyed.*
  - If at all possible avoid sending highly sensitive personal information unless it is absolutely unavoidable.
  - Sensitivity to the language, content, professionalism, style and tone of faxes and emails are of utmost importance.

**77. What is the best piece of advice relative to the Access to Information and Protection of Privacy Legislation?**

- If you have any requests for information, any questions, concerns, or doubts please check with the Labrador School Board's coordinator for ATIPP.

The Labrador School Board gratefully acknowledges the assistance of the Department of Justice, ATIPP Division, and the online resources of the Newfoundland and Labrador, Alberta, and British Columbia Offices of the Information and Privacy Commissioner. These sources offered a wealth of information and/or advice which assisted in compiling the questions and answers in this document.

<http://www.oipc.gov.nl.ca/>

<http://www.justice.gov.nl.ca/just/CIVIL/atipp/default.htm>

<http://www.oipc.ab.ca>

<http://www.oipcbc.org/>