Paul Bennett



Office of the Information and Privacy Commissioner for Nova Scotia Report of the Commissioner (Review Officer) Tricia Ralph

REVIEW REPORT 24-15

August 13, 2024

Halifax Regional Centre for Education

Summary: The applicant made a request to the Halifax Regional Centre for Education (public body) for records related to both provincial and individual school assessment results in literacy and math over a five-year period. The applicant also requested a list of which schools the public body deemed as "priority schools", the criteria used to deem a school as "priority" and records showing how funding was allocated to priority schools. The public body applied s. 18(1)(a) (health and safety) and s. 20 (personal information) of the Freedom of Information and Protection of Privacy Act to withhold the responsive record in full. The Commissioner finds that s. 18(1)(a) does not apply and so the record cannot be withheld under that section. Regarding s. 20, the Commissioner finds that after balancing all relevant circumstances, disclosure of the withheld record would not be an unreasonable invasion of any third party's privacy. The Commissioner recommends the withheld record be released in full to the applicant.

INTRODUCTION:

- [1] The Halifax Regional Centre for Education (HRCE)¹ (public body) operates English public schools throughout the Halifax Regional Municipality. It employs more than 11,000 staff who serve more than 58,000 children, students and families in 137 schools. It is the largest school system in Atlantic Canada.²
- [2] The applicant asked the public body for records related to school performance. More specifically, the applicant asked the public body for:
 - a) "Comprehensive analysis of the past five years of provincial assessment results in literacy and math." (Report No. 2015-10-38).
 - b) List of HRSB/HRCE "priority schools" and criteria used for identification.
 - c) Any other relevant data or information produced in support of the Priority Schools initiative, including budget and school-by-school allocations.

¹ HRCE was created on April 1, 2018. Prior to this, there existed the Halifax Regional School Board (HRSB). HRSB ceased to exist on April 1, 2018, and is now part of HRCE. At times there is reference to the HRSB in this review report because of the age of the records.

² Halifax Regional Centre for Education, online: https://www.hrce.ga/about-hrce/about-us>

- d) Might I request a copy of the comprehensive staff analysis and/or report assessing literacy and math scores by school, over that five year period?
- e) Might I have a list of those schools classified as "priority schools" in need of such support?
- f) How much was allocated to the Priority Schools project each year? How was the funding allocated on a school-by-school basis?
- [3] Following some additional releases of information, the responsive record at issue in this review report is a 54-page report (Assessment Report) related to compilation and analysis of aggregate individual and provincial school performance (by grade) on standardized student tests for math and literacy, covering the years 2008-09 to 2013-14. The Assessment Report largely consists of charts of data showing school performance on key indicators over time. Some charts and tables also include socioeconomic and race data. The Assessment Report also lists schools that have been designated as priority schools (meaning schools that are underperforming and so need additional supports).³ There are no names of any persons included in the Assessment Report. The Department of Education and Early Childhood Development annually releases aggregate data of student performance on things like reading and math scores by regional education centres in the province. However individual school-based data is not made publicly available.⁴
- [4] The public body withheld the Assessment Report in full from the applicant. It relied on s. 18(1)(a) (health and safety) and s. 20(1) (personal information) of the Freedom of Information and Protection of Privacy Act (FOIPOP) to do so.
- [5] The applicant objected to the public body's decision to withhold the Assessment Report in full and requested a review with the Office of the Information and Privacy Commissioner (OIPC). The OIPC's informal resolution process did not resolve this matter. As a result, it proceeded to this public review report.

ISSUES:

- [6] There are two issues under review:
 - 1. Was the public body authorized to refuse access to information under s. 18(1)(a) of FOIPOP because disclosure of the information could reasonably be expected to threaten anyone else's safety or mental or physical health?
 - 2. Was the public body required to refuse access to information under s. 20 of *FOIPOP* because disclosure of the information would be an unreasonable invasion of a third party's personal privacy?

³ The public body has provided the applicant with budget documents that identify priority schools and show budget information relating to those schools.

⁴ See for example 2023-2024 Nova Scotia Assessment Reading, Writing and Mathematics in Grade 6 (undated), online: Department of Education and Early Childhood Development

https://plans.ednet.ns.ca/sites/default/files/documents/2023-24-RW/M6.pdf>,

September 03, 2024

To: Paul Bennett - via email

Cc: OIPC - via email

Re: OIPC Review Report 24-15; OIPC 19-00173; Halifax Regional Centre for Education ("HRCE") File 18-025

Dear Paul Bennett:

Please accept this letter as HRCE's decision regarding the recommendation contained in the above-referenced Review Report issued on August 13, 2023. The Commissioner recommended that the responsive record at issue, a 54-page report titled "Analysis of HRSB School Achievement Over Time" (the "Record") be released to you in full.

For the reasons more fully set out below, and in alignment with HRCE's commitment to student and community mental health, safety and well-being, HRCE's decision is to continue to withhold the Record from disclosure in accordance with s. 18(1) and s. 20 of the Freedom of Information and Protection of Privacy Act ("FOIPOP").

Your request was for the following:

- i) "Comprehensive analysis of the past five years of provincial assessment results in literacy and math." (Report No. 2015-10-38).
- ii) List of HRSB/HRCE "priority schools" and criteria used for identification.
- iii) Any other relevant data or information produced in support of the Priority Schools initiative, including budget and school-by-school allocations.
- iv) Might I request a copy of the comprehensive staff analysis and/or report assessing literacy and math scores by school, over that five year period?
- v) Might I have a list of those schools classified as "priority schools" in need of such support?
- vi) How much was allocated to the Priority Schools project each year? How was the funding allocated on a school-by-school basis?

On May 24, 2022, HRCE released to you certain records responsive to your request, including budget documents identifying priority schools and showing budget information relating to those schools.

HRCE has very carefully considered your request and the implications of disclosure of the Record, in light of HRCE's legal obligations under FOIPOP, its duty relating to student safety and commitment to student and community mental health, and the Commissioner's decision and reasoning.

HRCE, as a public body in Nova Scotia, is accountable to the public, in part through giving the public a right of access to its records. HRCE takes access requests for information very seriously and is dedicated to being fully accountable and as transparent as possible with the public. However, the public's right to access records of a public body is not absolute – it is appropriately limited through certain exceptions to

disclosure under FOIPOP, meant to protect both public bodies and individuals from various harms.

The Record at issue includes extremely sensitive racial and socioeconomic data of students, tied to student test performance. HRCE is very concerned about the negative, long-lasting and possibly stigmatizing effect on student and community mental health and wellness if the Record is disclosed. The Record includes information that is stigmatizing to individual students whose information may be inferred from the disclosure, and disclosure could have a significant and detrimental effect on not only students but the school community and educators. Further, HRCE is concerned that individual students may be identifiable from the information provided in the Record, which in the context of the overall information contained in the Record would be particularly harmful.

While there are exceptions to disclosure under FOIPOP that are meant to protect a public body's own interests (for example, where disclosure could reasonably be expected to harm a public body's own financial or economic interests), HRCE is relying in the present case on FOIPOP disclosure exceptions that exist to protect individuals (here, students): Section 18(1)(a) gives a public body the discretion to refuse to disclose to an applicant information if the disclosure could reasonably be expected to threaten anyone else's safety or mental or physical health; and Section 20 directs a public body to not disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy. It is notable that at the investigation stage, on July 15, 2022, the OIPC Investigator considering this matter found that HRCE did in fact meet the criteria under both s. 18(1)(a) and s. 20 to withhold the Record from disclosure.

As set out in s. 66(2)(d) of the Education Act, it is the duty of every regional executive director of education in Nova Scotia to "maintain a safe, orderly and supportive learning environment in all schools in the school region". Protecting student health and safety is both a duty and a guiding principle in all HRCE policy and other decisions affecting students, schools, educators and school communities. In light of this, while HRCE respects the views of the Commissioner and the Commissioner's careful consideration of the matter as set out in her Review Report, HRCE has determined that disclosure of the Record could reasonably be expected to threaten student and community mental health and safety and would be an unreasonable invasion of student personal privacy. As such, in order to fulfill its duty to protect student safety, HRCE is making the decision to not disclose the Record.

Should you decide to appeal this decision, you may do so by filing an appeal with the Nova Scotia Supreme Court within 30 days from your receipt of this decision. HRCE feels that given the very real potential for harm to students as described above, disclosure of the Record should not occur without a court weighing in on these extremely important issues.

Yours truly,

Steve Gallagher

Regional Executive Director

Halifax Regional Centre for Education