



Freedom of Information and Protection of Privacy: New Policy, Phase 5

To: Governance and Policy Committee

Date: 26 March, 2019

Report No.: 03-19-3607

Strategic Directions

- Create a Culture for Student and Staff Well-Being
- Build Strong Relationships and Partnerships Within School Communities to Support Student Learning and Well-Being
- Allocate Human and Financial Resources Strategically to Support Student Needs

Recommendation

It is recommended that the Freedom of Information and Protection of Privacy Policy, Phase 5, as presented in this report, be approved.

Context

The proposed Freedom of Information and Protection of Privacy Policy (the “Policy”) was developed to support the implementation of the TDSB’s obligations under the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA), particularly with regard to the collection, use, and disclosure of information and protection of personal information held by the Board. The Policy (Appendix A) was prepared in accordance with the Policy Development Work Plan (see Appendix C) that was approved by the Governance and Policy Committee on May 30, 2018.

The Policy is based on legislative requirements, operational requirements, and consistent with the best practices of other school boards and local municipalities.

As part of the Policy development, the draft Policy was shared with various stakeholder groups for input and posted for public consultation from December 19, 2018 to February 4, 2019. The feedback obtained through public consultations was reviewed and is

reflected in the updated draft Policy which is attached for Committee's consideration and approval.

Action Plan and Associated Timeline

Subject to the Governance and Policy Committee's directions, the Policy will be provided to the Board of Trustees for consideration and final approval on April 17, 2019. Once approved by the Board, the new Policy will come into effect immediately. Staff will initiate the review of existing and, as required, development of new operational procedures to support implementation of the Policy.

Resource Implications

No additional resources will be required for the development and implementation of this Policy.

Communications Considerations

The Policy will be communicated in accordance with the Policy Development Work Plan.

Board Policy and Procedure Reference(s)

- Open Data Policy (P091)
- Freedom of Information and Protection of Privacy Procedure (PR676)

Appendices

- Appendix A: Freedom of Information and Protection of Privacy Policy
- Appendix B: Policy Development Work Plan

From

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Toronto District School Board

Policy P [0XX]

Title: **FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY**

Adopted: [DATE]

Effectuated: [DATE]

Revised: [DATE]

Reviewed: [DATE]

Authorization: Board of Trustees

1. RATIONALE

The Freedom of Information and Protection of Privacy Policy (“the Policy”) supports the implementation of the Toronto District School Board’s obligations under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*, particularly with regard to the collection, use, retention, and disclosure of information and protection of personal information held by the Board.

2. OBJECTIVE

- To establish the framework for the Board’s compliance with the *MFIPPA* and other applicable legislations; and
- To demonstrate the Board’s commitment to protection of personal information while recognizing and supporting the public’s right of access to information in the custody and control of the Board and its third party providers.

3. DEFINITIONS

Board is the Toronto District School Board, which is also referred to as “TDSB”.

Data Standards for the Identification and Monitoring of Systemic Racism, also known as Ontario’s Anti-Racism Data Standards (Standards) were established to help identify and monitor systemic racism and racial disparities within the public sector by the *Anti-Racism Act 2017*. The Standards establish consistent, effective practices for producing reliable information to support evidence-based

decision-making and public accountability to help eliminate systemic racism and promote racial equity.

Freedom of Information (FOI) Request is a request under *MFIPPA* for access to information that is in the custody or control of the Board.

Information and Privacy Commissioner (IPC) of Ontario is an independent officer of the Ontario Legislature with the powers and duties prescribed by the *Freedom of Information and Protection of Privacy Act*, the *Municipal Freedom of Information and Protection of Privacy Act*, and the *Personal Health Information Protection Act*. The office of the IPC is an independent body tasked with upholding and promoting open government and the protection of personal privacy in Ontario. The Commissioner has the authority to conduct investigations, issue orders, enforce fines and review disclosure decisions.

Major Privacy Breach, for the purpose of this Policy, is a type of Privacy Breach determined by the TDSB's FOI Office which by its nature and seriousness requires an immediate response and must be reported to the IPC as soon as practicable. The cause of the breach, the risks associated with the breach, and any foreseeable harm from the breach will be evaluated by the FOI Office and action will be taken, if required, to mitigate any future risk.

Municipal Freedom of Information and Protection of Privacy Act (MFIPPA) establishes legal obligations on how public organizations may collect, use, and disclose personal information. *MFIPPA* also establishes a right of access that enables individuals to request their own personal information and have it corrected.

Open Data is data that is made publically available, independent of the FOI request process, for it to be freely used, copied, modified, published, translated, adapted, and/or distributed in any medium, mode, or format for any lawful purpose. Data that contains personal information, or information that may pose a security or confidentiality concern, will not be released as open data.

Personal Information is recorded information about an identifiable individual. As defined by the *MFIPPA* this may include, but is not limited to:

- Information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- Information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- Any identifying number, symbol or other particular assigned to the individual,

- The address, telephone number, fingerprints or blood type of the individual,
- The personal opinions or views of the individual except if they relate to another individual,
- Correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- The views or opinions of another individual about the individual, and
- The individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

Personal Information Bank (PIB) is a collection of personal information that is organized and capable of being retrieved by using an individual's name, identifying number or particular unique identifier assigned to the individual.

Privacy is the right or interest of an individual to control the collection, use, and disclosure of their personal information. Privacy is a fundamental right for citizens of Ontario. Municipal organizations and agencies that collect personal information are required to follow legal obligations outlined in the *MFIPPA*.

Privacy Breach is an incident in which personal information is collected, used, retained or disclosed without authorization or in error.

Privacy Impact Assessment (PIA) is a risk management tool used to identify the actual or potential effects that a proposed or existing information system, technology, program, process or other activity may have on an individual's privacy.

Service Level Agreement (SLA) is a contract between a service provider and the end user (TDSB) that defines the level of service expected from the service provider. The SLA records a common understanding about services, priorities, responsibilities, guarantees and warranties.

4. RESPONSIBILITY

The Director of Education holds primary responsibility for this Policy.

Within the Director's Office, the responsibility for the implementation, coordination and day-to-day management of the Policy is assigned to the Executive Officer, Information Technology/Information Management and Freedom of Information and Privacy.

Pursuant to s. 49(1) of the *MFIPPA*, as may be amended from time to time, the Board delegated its powers and duties as a head of institution to the Director of

Education, who has the authority to sub delegate some or all of these powers and duties in writing to appropriate staff, acting as the delegate of the head of institution under the *MFIPPA* and is accountable for compliance with privacy legislation.

5. APPLICATION AND SCOPE

This Policy applies to all employees, service providers, volunteers, and Trustees of the Board.

6. POLICY

- 6.1. The Board will only collect, use, retain and disclose personal information in accordance with applicable legislations.
- 6.2. A notice of collection will be provided to the individuals in order to collect, use, retain and disclose their personal information. The notice of collection will contain information about (1) the legal authority for the collection, (2) the purpose(s) for which the personal information is intended to be used; and (3) the contact information of the TDSB employee who is responsible for the collection of the information. The Board will include a notice of collection on all new and revised TDSB forms, including web-forms and other documents used for the collection of personal information.
- 6.3. The Board will establish, maintain and continuously improve organizational structures, systems, processes and controls to advance compliance with all applicable legislations , as related to:
 - (a) collection, use, retention, and disclosure of information in the custody and control of the Board and its third-party providers.
 - (b) protection of personal information in the custody and control of the Board and its third-party providers.
- 6.4. The Board will implement the process for accessing information under the *MFIPPA* and ensure it is available and accessible to the public and staff.
- 6.5. The Board will ensure that the principles of equity and fairness, as stated in the TDSB's Equity Policy (P037), are embedded in the FOI process.
- 6.6. Personal demographic information collected under the *Anti-Racism Act, 2017*, will be kept in a data set that is aligned with the Ontario's Anti-Racism Data Standards. This data set will be separate from the administrative data set, and will be anonymized or recorded with unique pseudonym or identification number assigned so that only a designated manager is able to link the data sets as necessary to facilitate analyses. Access to this personal demographic information will be limited to only

those individuals who need it in the performance of their duties, in connection with requirements under the *Anti-Racism Act 2017*, regulations and the standards.

- 6.7. The Board will take reasonable measures to embed privacy protection requirements in the design of TDSB programs, initiatives, projects, service provider contracts, agreements and information technology solutions such as: Privacy Impact Assessments (“PIA”), Service-Level Agreements (“SLA”) and Personal Information Banks (“PIB”).
- 6.8. The Board shall ensure that third party service providers who have custody of personal information on behalf of the Board will be held accountable for the required protection of that information. Third party service providers are obligated to abide by applicable legislations and the Board’s privacy policies, procedures, and protocols.
- 6.9. The Board will take reasonable measures to secure and protect personal information from unauthorized access, use, disclosure and inadvertent destruction by adhering to established safeguards and the Board’s Retention Schedule.
- 6.10. The Board will develop and implement a privacy breach protocol (i.e., a procedure for mitigating any incidents in which personal information is collected, used, and/or disclosed by an individual unauthorized to do so). The protocol will outline the process for investigating the breaches, and preventing future occurrences.
- 6.11. The Board acknowledges that an individual has the right to access their own personal information and will be given access to that information, subject to legislative requirements and in the case of employees, Collective Agreement provisions and relevant Employee Services protocols. This includes the individual’s right to challenge the accuracy and completeness of the information and request that it be amended as appropriate.
- 6.12. The Board has implemented mandatory FOI and protection of privacy training for all TDSB staff.
- 6.13. The Board will report to the Information and Privacy Commissioner (IPC) of Ontario any major privacy breaches of personal information and will ensure that recommendations of the IPC related to the breach are thoroughly considered and implemented.
- 6.14. The Board will provide an annual statistical report with consolidated information on FOI requests to the IPC in the form and format prescribed

by the Commissioner. A copy of the report will be presented to the Board of Trustees and Legal Services for information.

- 6.15. The Board will monitor and track the types of information commonly and frequently requested by the public through the FOI process on a quarterly basis. Information that represents continuous interest to the public, and is not personal or confidential, will be considered for posting on the Board's website in accordance with the Open Data Policy.

7. SPECIFIC DIRECTIVES

The Director of Education has authority to issue operational procedures to implement this Policy.

8. EVALUATION

This Policy will be reviewed as required, but at a minimum every four (4) years after the effective date.

9. APPENDICES

Not Applicable

10. REFERENCE DOCUMENTS

Policies:

- Equity Policy (P037)
- Human Rights Policy (P031)
- Open Data Policy (P091)

Legislative Acts and Regulations:

- *Anti-Racism Act, 2017*
- *Data Standards for the Identification and Monitoring of Systemic Racism, 2018*
- *Education Act, R.S.O. 1990, Chapter E.2*
- *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*

POLICY DEVELOPMENT WORK PLAN

Date: May 30, 2018

All policies will be developed to ensure consistency with the TDSB's *Mission and Value (P002)* policy, including the principles within the TDSB's Integrated Equity Framework that promote equity and inclusion.

POLICY INFORMATION

Proposed Policy Title: [Freedom of Information and Protection of Privacy Policy](#)

Executive Council member responsible for development of the new Policy: [Executive Officer, Governance and Board Services](#).

Phase I. APPROVAL OF POLICY RATIONALE

The rationale for the new Policy: [The draft Freedom of Information and Protection of Privacy Policy](#) is being developed to support the implementation of the TDSB's obligations under [the Municipal Freedom of Information and Protection of Privacy Act \(MFIPPA\)](#), particularly with regard to the collection, use, and disclosure of information as well as the protection of personal information held by the Board.

Considerations

- Establish the framework for the Board's compliance with the [Municipal Freedom of Information and Protection of Privacy Act](#).
- Demonstrate the Board's commitment to the protection of personal information while recognizing and supporting the public's right of access to information in the custody and control of the Board.
- Ensure that the principles of equity and fairness, as stated in the TDSB's Equity Policy (P037), are embedded in the FOI process.
- Ensure that privacy protection requirements are embedded in the design of TDSB programs, initiatives, projects including service provider contracts, , and information technology solutions.
- Embed provisions that adhere to developing and implementing a privacy breach protocol for mitigating any breaches of personal information, investigating, and preventing future occurrences.
- Include provisions that ensure personal information is secured and protected from unauthorized access, disclosure and inadvertent destruction by adhering to

established safeguards and the Board's Retention Schedule.

- Ensure that the policy acknowledges that individuals have the right to access their own personal information and be given access to that information, subject to legislative requirements.
- Ensure policy has provisions for including notice of collection when collecting and using personal information.
- Include provisions on FOI and protection of privacy mandatory training for all TDSB staff.
- Ensure the Board submits the mandated annual statistical report with consolidated information on FOI requests to the IPC. The annual report will also be provided to the Board of Trustees for information.
- Include provisions to ensure the Board reports to the IPC on major privacy breaches of personal information.
- Ensure that the Policy is aligned with and supports implementation of the Open Data Policy.

This Policy Development Work Plan has been discussed with the Policy Coordinator:

- Yes
 No

Phase II. OBTAINING TRUSTEES' DIRECTIONS AND DRAFTING POLICY

This Policy Development Work Plan will be discussed at the Governance and Policy Committee meeting held on: [May 30th 2018](#)

Creating the Draft Policy

The draft Policy will be created and aligned with the current Policy Template (see Operational Procedure PR501, Policy Development and Management, Appendix A):

- Yes
 No

- A review of leading practices for similar policies across jurisdictions will be undertaken for this policy.

Phase III. INTERNAL REVIEWS AND SIGN-OFFS

The draft Policy will include input from TDSB departments affected by the Policy:

- Equity and Achievement
- Facility Services, Sustainability and Planning
- Finance and Operations

In addition, the following three departments will be required to sign-off on the proposed draft Policy:

- Governance and Board Services
- Government, Public and Community Relations
- Legal Services

Following internal reviews and TDSB departments' sign-offs, the draft Policy will be submitted to Executive Council in: [June 2018](#)

A sign-off from the Director of Education will be obtained before proceeding with external consultations and/or Committee/Board approval.

- Director of Education

Phase IV. EXTERNAL CONSULTATIONS

Are external consultations applicable to this Policy?

- Yes
- No (*Ministry of Education mandated policy or corporate policy without external stakeholders*)

Mandatory external consultations will include, at minimum:

1. Posting of the working draft Policy on the TDSB website for public feedback (45 days minimum)
2. Extending invitations for consultation to all Advisory Committees of the Board and conducting consultations with the Advisory Committees that expressed interest (either individually with each interested committee or collectively with representatives of all interested committees):
 - Aboriginal Community Advisory Committee

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- Alternative Schools Advisory Committee
 - Black Student Achievement Community Advisory Committee
 - Community Use of Schools Advisory Committee
 - Early Years Advisory Committee
 - Environmental Sustainability Community Advisory Committee
 - Equity Policy Advisory Committee
 - French as a Second Language Advisory Committee
 - Inner City Advisory Committee
 - Parent Involvement Advisory Committee (PIAC)
 - Special Education Advisory Committee (SEAC)
 - Student Nutrition Advisory Committee

In addition to mandatory consultations, other external participants and projected dates of consultation(s) include: [June-October 2018](#)

- Student Senate
- School Councils
- Other:

The following methods will be applied in the external consultations:

- Public meeting
- Facilitated focus group
- Call for public delegations
- Expert panel discussion
- Survey
- Posting on the TDSB website
- Other: [Email Correspondence](#)

Phase V. COMMITTEE/BOARD APPROVALS

Following external consultations and revisions, the working draft Policy will be presented to the Governance and Policy Committee on the following date: [November 7, 2018](#)

Following recommendation by the Governance and Policy Committee, the new Policy will be presented to the Board on the following date: [November 28, 2018](#)

Once approved, the new Policy will be added to the TDSB website.

Phase VI. IMPLEMENTATION

Following Board approval, the new Policy will be communicated through:

- Posting of the new Policy on the TDSB website through the Policy Coordinator
- Sharing with staff through the System Leaders' Bulletin
- Informing departments at staff meetings and channeling information to the school principals through respective superintendents
- Implementation of a broad communication plan for internal and external audiences

Policy implementation will include:

- Conducting information/training sessions to TDSB staff affected by the Policy

The projected time period for conducting information/training sessions to staff will be:
TBD

- Initiate review of associated procedures
 - [Freedom of Information and Protection of Privacy Procedure \(PR676\)](#)

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