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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 YOUTH CRIMINAL JUSTICE INFORMATION WITH MANITOBA SCHOOLS BY MANITOBA JUSTICE AND POLICE OFFICERS

FEBRUARY 2004

Manitoba Justice
Manitoba Education, Citizenship and Youth

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Your School Division Superintendent

Manitoba Justice – Provincial Director for YCJA: 945-7890

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LEGISLATIVE AUTHORITY TO DISCLOSE INFORMATION TO SCHOOLS

Subsection 125(6) of the *Youth Criminal Justice Act* authorizes the limited disclosure of information respecting young persons dealt with under that Act to school "representatives".

> 125(6) The provincial director, a youth worker, the Attorney General, a peace officer or any other person engaged in the provision of services to young persons may disclose to any professional or other person engaged in the supervision or care of a young person – including the representative of any school board or school or any other educational or training institution – any information contained in a record kept under sections 114 to 116 if the disclosure is necessary
>
> (a) to ensure compliance by the young person with an authorization under section 91 [for reintegration leave or day release] or an order of the youth justice court;
> (b) to ensure the safety of staff, students or other persons; or
> (c) to facilitate the rehabilitation of the young person.

PREAMBLE

The federal *Youth Criminal Justice Act* (the "YCJA") replaces the *Young Offenders Act* and came into effect on April 1, 2003. The term "young person" is used in the *Youth Criminal Justice Act* rather than the term "young offender".

Part 6 of the *Youth Criminal Justice Act* (sections 110 to 129) deals with records and information about young persons who have been dealt with under the Act. In particular:

- sections 114 to 116 describe the records which may be kept about a young person dealt with under the *Youth Criminal Justice Act* by a youth justice court, review board or any other court, by a police force or by a department or agency of a government in Canada, such as Manitoba Justice;

- sections 117 to 124 set out who may have access to these court, police and government records, and under what conditions. Subsection 119(2) contains time limits after which information about a young person cannot be disclosed (the "period of access");

- Sections 125 to 127 permit disclosure of information in records kept under the Act by the Attorney General of Manitoba, the provincial director, youth workers, peace officers and other persons engaged in providing services to young persons to certain persons in specified circumstances. Subsection 125(6) permits disclosure of such information for specific purposes to "a representative of any school board or school or any other educational or training institution", as well as to any professional or other person engaged in the supervision or care of the young person for certain specified purposes;

- Subsection 125(7) and section 128 deal with how information provided under the Act is to be protected, shared, stored and destroyed by persons, such as school representatives, who have received the information; and

- Section 129 restricts further disclosure of records and information by persons, such as school representatives, who have been given access to information, or to whom information has been disclosed, under the Act.

This Protocol was developed jointly by Manitoba Justice, Manitoba Education, Citizenship and Youth and stakeholder groups including police services, school trustees and senior school administrators. It provides 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.

This Protocol is intended to:

- describe Manitoba Justice's responsibilities and procedures for the disclosure and security of such information;

- make possible the exchange of information necessary to:

  - make sure young persons comply with Youth Justice Court orders (including orders of probation and supervision) and with temporary leave authorizations,
  - provide for the safety of students, staff and other persons, and
  - carry out programs of rehabilitation for young persons;

- assist schools in developing their own policies and procedures for use of, access to, further disclosure, security, storage and destruction of shared information, including policies and procedures:

  - for sharing information about young persons dealt with under the Act which will ensure that the balance between the need to know and the privacy rights of young persons under the Act is maintained,
  - about the restrictions on subsequent disclosure and sharing of information about young persons dealt with under the Act, and
  - for the security and destruction of information about young persons dealt with under the Act;

- ensure that staff of Manitoba Justice, police officers and school officials are aware of their respective responsibilities under the *Youth Criminal Justice Act*.

GUIDING PRINCIPLES

- Crime prevention amongst young persons is essential to the long-term protection of society. The ultimate goal is to act in the best interests of the young person, through early identification, prevention and rehabilitation, while at the same time ensuring the safety of society.

- Protection of society, a primary objective of the criminal law applicable to young persons, is best served by rehabilitation. Rehabilitation is best achieved by addressing the needs and circumstances of the young person that are relevant to the young person's behaviour.

- A multi-system approach by professionals working with young persons is essential in identifying and responding to the needs and circumstances of those young persons at risk of committing crimes.

GUIDELINES AND PROCEDURES

Definitions

The following definitions will be useful in understanding this Protocol:

- "police records" means a record held by a police agency for the investigation, identification and administration of a case.

- "Provincial Director" means the person appointed by Order of the Lieutenant Governor in Council to perform the duties of the provincial director under the *Youth Criminal Justice Act* in Manitoba.

- "school representative" means the person designated by a school board, school or other educational or training institution to receive information about young persons under subsection 125(6) of the *Youth Criminal Justice Act*. The "school representative" will usually be the principal of a school.

- "young person" means a person who is 12 years of age or over, but less than 18, who has been charged with an offence or found guilty of an offence under the *Youth Criminal Justice Act*.

- "youth worker" means a youth worker or probation officer employed by Manitoba Justice and who has been appointed or designated to perform the duties or functions of a youth worker under the *Youth Criminal Justice Act*.

Information that may be disclosed to a school

Information from the following records may be disclosed to a designated "school representative" to the extent necessary to accomplish the purposes set out in subsection 125(6) of the *Youth Criminal Justice Act*:

- Youth Justice Court records and the records of other courts;
- police records;
- government records, such as the records of Manitoba Justice, containing information obtained:
  - for the purpose of an investigation;
  - for use in proceedings;
  - to administer a youth sentence or order;
  - to determine whether to use extrajudicial measures;
  - as a result of the use of extrajudicial measures.

Disclosure of information from these records should be limited to the amount of information necessary to accomplish the purposes set out in subsection 125(6) of the Act (see **"When may the information be disclosed"**).

Who may disclose the information to a school

The persons who are authorized to disclose information in a record about a young person to a school representative under subsection 125(6) of the Act are:

- the Provincial Director;
- a Manitoba Justice youth worker;
- the Crown Attorney's office; and
- a peace officer, such as a police officer.

Who may the information be disclosed to

A person authorized under subsection 125(6) may disclose information in a record about a young person 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.

Information about a young person dealt with under the *Youth Criminal Justice Act* can only be disclosed to the representative of a school board, a school or any educational or training institution for the following purposes set out in clauses 125(6)(a), (b) and (c) of the Act:

(a) to ensure compliance by the young person with an authorization under section 91 *[for reintegration leave or day release]* or an order of the Youth Justice Court;

(b) to ensure the safety of staff, students or other persons; or

(c) to facilitate the rehabilitation of the young person. (See "**When may the information be disclosed**").

School divisions, school districts, schools and other educational and training institutions should designate specific persons to act as their "school representatives" for the purposes of receiving information from the Crown, Provincial Director, Manitoba Justice youth workers or police officers under the *Youth Criminal Justice Act.*

The representative designated 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 *Youth Criminal Justice Act* respecting use, access, further disclosure, storage and destruction are complied with.

It is recommended that school boards, schools and educational and training institutions formally designate, in writing, the principal of each school or institution as the school representative for the purpose of receiving information about young persons under the *Youth Criminal Justice Act*. The responsibilities flowing from this designation are consistent with a principal's responsibilities respecting pupil files under *The Public Schools Act* and the regulations under that Act. (See "Manitoba Pupil File Guidelines" prepared by Manitoba Education and Training, April 2000.)

Copies of these written designations should be provided to the Crown's office (Youth Prosecutions), Provincial Director, and the local police service in their area in Manitoba.

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 (the Crown, Provincial Director, Manitoba Justice youth worker, or police officer) to ensure that the requirements of the *Youth Criminal Justice Act* are met.

1) *Disclosure of information is permitted if it is necessary to ensure that the young person complies with an authorization under section 91 of the Act or an order of the Youth Justice Court (clause 125(6)(a) of the Act).*

   For example, disclosure of information may be necessary to ensure compliance with:

   - an authorization of the Provincial Director for reintegration leave;

- an authorization of the Provincial Director for day release from a youth custody facility to attend school, etc;
- an order of the Youth Justice Court such as an order concerning:
    - a promise to appear, recognizance, undertaking **(Appendix 1)**,
    - probation,
    - the serving of a portion of the sentence in the community under supervision or conditional supervision, or
    - peace bonds (e.g. non-communication, non-association, or non-attendance).

In these situations, the information will be disclosed in a timely fashion.

2) *Disclosure of information is permitted if it is necessary "to ensure the safety of staff, students or other persons" (clause 125(6)(b))*.

To ensure the safety of school staff, students and others for whom a school or school board is responsible, information should be provided by the person authorized to disclose it (e.g. the Manitoba Justice youth worker, Crown Attorney, provincial director, police officer, etc.) as soon as the risk is identified. **(Appendix 1)**

Examples of situations where disclosure of information may be necessary to "ensure safety" may include, but are not restricted to, situations where the young person is alleged to have committed, has been charged with or found guilty of:

- physical assault,
- sexual assault,
- strong arm robberies,
- street muggings,
- utter threats,
- weapons offences,
- drug offences, or
- any other instances where the safety and well being of staff, students or other persons is determined to be at risk.

3) *Disclosure of information is permitted if it is necessary "to facilitate the rehabilitation of the young person" (clause 125(6)(c)).*

For example, disclosure may be necessary to ensure the young person is complying with the following requirements:

- bail supervision conditions,
- conditions of release on Promise to Appear with undertaking to a peace officer;
- conditions of release on recognizance
- reintegration leaves,
- probation supervision,
- community/conditional supervision,
- educational programming;

How should the information be disclosed

A Manitoba Justice youth worker, the Provincial Director, Crown Attorney, or a police officer can disclose information about a young person to a school representative verbally or in written form. The school representative may request a written copy of information provided verbally.

Any authorized person who discloses information 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 by the Provincial Director, youth worker, Crown Attorney, or police officer on the young person's file. These particulars should include:

- the name of the person who released the information;
- the name of the person to whom the information was released;
- 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, if a special summary is prepared; and
- the purpose for which the information was released. This purpose must be one of the three purposes set out in subsection 125(6) of the *Youth Criminal Justice Act*.

Responsibilities of the school and the school representative

The person designated as a school representative for the purposes of receiving information about a young person under the *Youth Criminal Justice Act* (usually the school principal) has specific duties and responsibilities under subsection 125(7) and section 129 of the Act to protect the information received. The school and the school representative must develop procedures to ensure that the information remains confidential, privacy is protected and that these duties and responsibilities are met. The Act contains criminal penalties for unauthorized disclosure of this information (and of information provided under the former *Young Offenders Act*) in section 138 (see **Appendix 3**).

1) *Duty to ensure access and disclosure is restricted to authorized persons (clause 125(7)(b) and section 129)*

The school representative must ensure that no other person has access to the information and that the information is not disclosed to any other person unless:

(a) access to or disclosure of the information is necessary for the purpose for which the information was provided to the school representative.

That is, the school representative must not disclose the information to any person (including teaching and other staff of the school) except where disclosure to that person is necessary:

- to ensure compliance with a Youth Justice Court order or authorization for reintegration leave or day release,
- to ensure the safety of the staff or students of the school or other persons, or
- to facilitate the rehabilitation of the young person the information is about; or

(b) access is authorized under some other provision of the *Youth Criminal Justice Act*.

It is recommended that the school representative (usually the school principal) should verbally advise school staff and others who need to know the information for the authorized purposes, or should let them review but not copy the information for these purposes.

Specific measures must be put in place to ensure that the information is secure and protected from unauthorized access and unauthorized disclosure (see "**Storage of Information**").

Subsection 119(2) of the *Youth Criminal Justice Act* limits the period of time during which a school representative can disclose information about a young person to anyone – the "period of access" – see **Appendix 2**.

2) *Duty to keep the information separate (clause 125(7)(a))*

The school representative must keep the information separate from all other records about the young person, which are kept by the school representative or by the school. For example, information provided under the *Youth Criminal Justice Act* should not form part of the "permanent" pupil file of the student. (See the **"Manitoba Pupil File Guidelines"** prepared by Manitoba Education and Training, April 2000.)

3) *Duty to destroy the information when no longer required for the purpose for which it was disclosed (clause 125(7)(c))*

The school representative must destroy the school's copy of the information when the information is no longer required for the purpose for which it was disclosed. That is, the school representative must destroy the information (and all copies he or she or the school has of the information) when it is no longer required:

- to ensure compliance with a Youth Justice Court order or authorization for reintegration leave or day release;
- to ensure the safety of the staff or students of the school or other persons; or
- to facilitate the rehabilitation of the young person the information is about.

The school representative should also ensure that all copies he or she or the school has of the information are destroyed when the "period of access" under subsection 119(2) of the Act has expired (see **Appendix 2**).

The school representative must ensure that the information is destroyed in a secure manner so that the confidentiality of the information and the privacy of the young person are adequately protected.

Storage of Information

Specific measures should be undertaken by the school representative to ensure that the information is reasonably protected from risks such as unauthorized access, use, disclosure and destruction. Such measures can include the following:

- ensuring that the information is never left unattended in an unsecured area;
- storing the information in locked filing cabinets, and restricting the use of these cabinets to this information;
- putting in place procedures to control distribution of keys or lock combinations to the locked cabinets or locating them in secure areas where access is restricted to staff authorized to have access to the information;
- labelling filing cabinets so as to not reveal the fact that they contain this sensitive information;
- training school staff on confidentiality of information, privacy and security procedures and monitoring compliance with security procedures;
- ensuring that unauthorized copies are not made of the information. It is recommended that the school representative (usually the principal) should verbally advise school staff and others who need to know the information for the authorized purposes, or should let them review but not copy the information; and
- if the information is stored electronically, ensuring the computer system has access control codes (encryption), and can automatically track attempts to obtain access to the information.

Students leaving school

The school representative must immediately inform the Provincial Director, Manitoba Justice youth worker, Crown Attorney, or police officer who originally provided the information about a young person when that young person transfers to another school, graduates or leaves the school.

Clause 125(7)(c) of the *Youth Criminal Justice Act* requires that the school representative destroy his or her copy of the information (and any other school copies of the information) once the information is no longer required for the purpose for which it was disclosed to the school representative.

When the young person has transferred to another school, the Crown Attorney's office, Provincial Director, Manitoba Justice youth worker or police officer is then responsible for providing the school representative of the new school with any

information about the young person, in accordance with the provisions of the *Youth Criminal Justice Act*.

The school representative for the student's home school – usually the school principal -- does not have any authority to disclose this information to the new ('receiving') school under the Act.

The Provincial Director, Manitoba Justice youth workers, Crown Attorney's office and police officers cannot provide the receiving school with information if the period of time for providing access to the information under subsection 119(2) of the *Youth Criminal Justice Act* has expired (see **Appendix 2**).

Destruction of Information

Clause 125(7)(c) of the *Youth Criminal Justice Act* requires that the school representative destroy his or her copy of the information (and any other school copies of the information) once the information is no longer required for the purpose for which it was disclosed.

The *Youth Criminal Justice Act* contains, in subsection 119(2), time limits after which information about a young person cannot be disclosed by a school representative to any person -- the period of access -- see **Appendix 2**. The school representative should also ensure that all copies he or she or the school has of the information are destroyed when this "period of access" has expired.

The school representative must ensure that the information is destroyed in a secure manner so that the confidentiality of the information and the privacy of the young person are adequately protected. For example:

(a) paper records should be destroyed by shredding or otherwise physically destroying the record;

(b) a record in electronic form should be destroyed in a manner which ensures that the record and any backup copies are no longer accessible or retrievable.

Dispute Resolution Mechanism

When there is a difference of opinion between a Manitoba Justice youth worker, provincial director, Crown Attorney's office or a police officer and a school representative regarding the nature or extent of information to be disclosed, the matter should be referred to the supervisor of each for resolution.

If the dispute cannot be resolved at the supervisor level, the dispute shall be referred to the Provincial Director.

Contact the following for interpretation or advice on the implementation of this Protocol:

Your School Division Superintendent

or

Office of the Provincial Director
Manitoba Justice
8th floor, 405 Broadway Avenue
Winnipeg MB R3C 3L6
Phone (204) 945-7890
Fax (204) 948-2166

or

Manitoba Education, Citizenship and Youth
Education Administration Services
Room 507 – 1181 Portage Avenue
Winnipeg MB R3G 0T3
Phone (204) 945- 6899Fax (204) 948-2154

Appendix 1 - Police Notification to Schools for Promise to Appear or Recognizance

Police Participation

In most instances, Police participation in the school notification process will be limited to issues of safety of staff, students or other persons (clause 125(6)(b) of the *Youth Criminal Justice Act*) or to ensure compliance by a young person with conditions in a court or police order pertaining to a Promise to Appear or a Recognizance (clauses 125(6)(a) or (c) of the Act).

When a young person is arrested as a result of a serious crime against persons offence such as:

- physical assault,
- sexual assault,
- strong arm robberies,
- street muggings,
- utter threats,
- weapons offences,
- drug offences or
- any other instances where the safety and well being of staff or students of a school or of other persons is determined to be at risk;

the arresting officer, in consultation with the police supervisor, shall determine whether or not it would be appropriate to issue a formal written notification to a school representative to ensure the safety of others including the victim, other students and staff. The issue of detention/release will govern what if any action police will take regarding school notification.

The two most common occurrences in which it may be deemed appropriate for police to issue a school notification to a school representative are:

(1) release upon a Promise to Appear along with an undertaking given to a Peace Officer or Officer in Charge with a condition of no contact or communication with victim and or not to attend a particular school(s) as a result of the offence,

(2) release by a Hearing Officer on Recognizance with similar conditions as above.

Where police have determined it appropriate to issue a notification to a school representative, a notification form will be completed and along with a copy of the court undertaking or recognizance will be provided forthwith to the school representative for further action as deemed appropriate. A copy of the notification and undertaking or recognizance form will accompany the police report to the Crown Attorney, who (as the delegate of the Attorney General) will be responsible for any further notification as the case proceeds through the courts.

Where a young person is detained in custody either by direct lock-up or via the Hearing Officer, responsibility for school notification will be with the Crown Attorney's office.

DATE OF NOTICE TO SCHOOL

ATTENTION: Name of the School Representative

RE Young person's name

Date of Birth - Young person
Date of Birth - Protected person
Date of Birth - Protected person

Please be advised that on (Month/Day/Year), the above named young person was released on bail (promise to appear, recognizance, undertaking) with a condition that they not have any communication with the protected person or persons named above.

As these individuals are believed to attend the same school, your assistance in monitoring the no contact condition would be greatly appreciated.

If you require further information please contact the Crown Attorney's office in your region.

ADDITIONAL INFORMATION:

_____
Police Officer/Crown Attorney

CC. Young person
Protected person(s)

Appendix 2 - Time limits for disclosure – "period of access"

Subsection 125(8) provides that after the period of access to records set out in subsection 119(2) of the Act has expired, information may not be disclosed under subsection 125(6) of the *Youth Criminal Justice Act*.

Subsection 125(8) states:

> 125(8) No information may be disclosed under this section after the end of the applicable period set out in subsection 119(2) (period of access to records).

Subsection 119(2) sets out the following periods of access:

1. two years after the young person consents to an extrajudicial sanction – paragraph 119(2)(a)
2. two months after the expiration of the appeal period if the young person is acquitted of the offence (other than an acquittal by reason of a verdict of not being criminally responsible) – paragraph 119(2)(b)
3. three months after all proceedings in respect of appeal have been completed if the young person is acquitted of the offence (other than an acquittal by reason of a verdict of not being criminally responsible) – paragraph 119(2)(b)
4. two months after a dismissal, a withdrawal of charges or a finding of guilt where a reprimand is given – paragraph 119(2)(c)
5. one year after the charge against the young person is stayed, provided no proceedings have been taken against the young person during that time – paragraph 119(2)(d)
6. one year after the young person is found guilty and the sentence is an absolute discharge – paragraph 119(2)(e)
7. three years after the young person is found guilty and the sentence is a conditional discharge – paragraph 119(2)(f)
8. three years after the sentence has been completed if the offence is a summary conviction offence (subject to points 10 and 11) – paragraph 119(2)(g)
9. five years after the completion of the sentence if the offence is an indictable offence (subject to points 10 and 11) – paragraph 119(2)(h)
10. if the offender is convicted of a second offence which is a summary conviction offence during the time outlined in points 8 or 9, the time limit during which access and disclosure is permitted is the latest of:
    (a) the period calculated under point 8 or 9 (whichever is applicable), and
    (b) three years after the sentence for the second offence has been completed – paragraph 119(2)(l)
11. if the offender is convicted of a second offence which is an indictable offence during the time outlined in points 8 or 9, five years after the sentence for the second offence has been completed – paragraph 119(2)(j)

Appendix 3 - Penalties for unauthorized disclosure of information

The potential legal penalties for unauthorized disclosure of *Youth Criminal Justice Act* information are set out in section 129 and 138 of the Act:

No subsequent disclosure

129 No person who is given access to a record or to whom information is disclosed under this Act shall disclose that information to any other person unless the disclosure is authorized under this Act.

Offences

138(1) Every person who contravenes subsection 110(1) (identity of offender not to be published), 111(1) (identity of victim or witness not to be published), 118(1) (no access to records unless authorized) or 128(3) (disposal of R.C.M.P. records) or section 129 (no subsequent disclosure) of this Act, or subsection 38(1) (identity not to be published), (1.2) (no subsequent disclosure), (1.14) (no subsequent disclosure by school) or (1.15) (information to be kept separate), 45(2) (destruction of records) or 46(1) (prohibition against disclosure) of the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985,

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or

(b) is guilty of an offence punishable on summary conviction.

(2) The jurisdiction of a provincial court judge to try an adult charged with an offence under paragraph (1)(a) is absolute and does not depend on the consent of the accused.

Appendix 4 - 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 both 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*, govern 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 coordinators 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 coordinator (and legal counsel, if necessary).

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