

# INVESTIGATION REPORT

## INVESTIGATION P97-008

### Report on an investigation by the Office of the Information and Privacy Commissioner into Privacy Complaints Concerning the Career and Personal Planning (CAPP) Curriculum of the Ministry of Education, Skills and Training

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## EXECUTIVE SUMMARY

### The Complaints

The Office of the Information and Privacy Commissioner received a number of complaints from parents about the "Career and Personal Planning" (CAPP) curriculum created by the Ministry of Education, Skills and Training. The curriculum's purpose is to prepare students to deal with technological change, make informed choices, and to take responsibility for their own personal and career development.

The parents' concerns focused on some of the curriculum's "Suggested Activities" which involve the students collecting and recording personal information about themselves, their families, and friends. The parents felt that these activities could cause an unreasonable invasion of their privacy and that of their children. In addition, parents expressed concern over the fact that the CAPP material involved the recording of a student's Personal Education Number (PEN) with the apparent purpose of linking students' names to their CAPP files throughout their school years.

The Office did not receive any complaints alleging specific violations by individual schools of the privacy requirements established in Part 3 of the *Freedom of Information and Protection of Privacy Act*.

The Office carried out an investigation of the potential privacy issues. Despite the lack of awareness of fair information practices and other aspects of the Act in the CAPP material, our discussions with some Greater Victoria CAPP teachers revealed that most of the suggested activities which had caused the complaints are not in fact used, at least in the Victoria area. Also, we found no violation of Part 3 of the Act. In addition, the Ministry is prepared to eliminate the references to the PEN in all CAPP materials. Due to the general concerns of some parents about

the CAPP, the Ministry began its own review of the CAPP curriculum in late summer 1996 and is currently revising the curriculum to reflect the results of this review. We drew up general comments for use by the Ministry's privacy and curriculum staff in developing detailed privacy guidelines, for use by teachers, as part of the overall revision of the curriculum. The Ministry's staff has agreed to create these detailed guidelines and incorporate them into the revised CAPP materials.

## RECOMMENDATIONS

*The Freedom of Information and Protection of Privacy Act* allows the Information and Privacy Commissioner to comment on the implications for protection of privacy of proposed programs of public bodies. Therefore, we have provided some general recommendations to the Ministry of Education, Skills and Training on fair information practices that relate to CAPP records in the custody and control of schools, and for the delivery of the CAPP curriculum in the schools.

The recommendations include:

- addressing the issue of custody and control of CAPP records;
- minimizing the type and amount of personal information that is considered appropriate for teachers to collect for the CAPP curriculum;
- having alternative activities where CAPP classes involve exercises in which students are asked to record the personal information of other people, such as parents, employers, siblings, teachers, fellow students, and co-workers, and other relatives, and where students may have concerns about recording personal information regarding these people;
- ensuring that any personal information used in assessing students' progress in the CAPP curriculum is up-to-date, accurate, and complete;
- allowing students to request the correction or annotation of their personal information found in records in the custody or under the control of the school;
- providing proper physical or other security for personal information in order to prevent unauthorized access, collection, use, disclosure, or disposal of that personal information;
- retention of a student's personal information which is used to make a decision that directly affects that student for at least one year after using it, so that the student has a reasonable opportunity to request access to it;
- using students' personal information which has been gathered for the CAPP curriculum only for activities directly associated with the CAPP curriculum;
- ensuring that students and parents are aware of the contents of the CAPP curriculum and permitting alternative activities in cases where students are not comfortable with sharing or disclosing their views, experiences, and other personal information; and
- preparing guidelines on use, access, and disclosure of CAPP records by students, teachers, and families.

# **Report on an Investigation by the Office of the Information and Privacy Commissioner into Privacy Complaints Concerning the Career and Personal Planning (CAPP) Curriculum of the Ministry of Education, Skills and Training**

## **Opening Remarks**

The Office of the Information and Privacy Commissioner sent a first draft of this report to the Ministry of Education, Skills and Training (formerly the Ministry of Education) in August 1996. The Office learned in October 1996 that the Ministry had accepted the report's recommendations in principle and was prepared to draft detailed privacy guidelines for use by teachers in delivering the Career and Personal Planning (CAPP) curriculum.

Due to the general concerns of some parents about the CAPP, the Ministry began a review of the CAPP curriculum in late summer 1996. As of early February 1997, the Ministry had finished its review and was preparing revisions to the CAPP program, based mainly on comments from the students who participated in the review. The Ministry will also incorporate privacy guidelines in the updated CAPP materials, based on this Office's recommendations. Thus, in the interests of informing complainants to this Office of our findings, we are now issuing the final version of our report.

## **The Complaints**

In late 1995, the Office of the Information and Privacy Commissioner received a number of complaints (13 plus another 60 names in a petition) from parents about a new curriculum called "Career and Personal Planning" (CAPP). The parents' concerns revolved around a number of aspects of the CAPP, particularly some of the "Suggested Activities" found in the curriculum materials, which involved the students collecting and recording personal information about themselves, their families, and friends. The parents felt that these activities could cause an unreasonable invasion of their own privacy and that of their children.

**It must be noted, however, that this Office has not received any complaints alleging specific violations by individual schools of the privacy requirements established in Part 3 of the *Freedom of Information and Protection of Privacy Act*. Again, the complaints centred around the "Suggested Activities" in the Ministry's curriculum.**

Most complaints concerned the CAPP curriculum for grades 8 to 12, but the Office of the Information and Privacy Commissioner also received complaints about the related Personal Planning curriculum for students in kindergarten to grade 7. In this report, all references to the CAPP include this Personal Planning curriculum.

## **The Office of the Information and Privacy Commissioner's Jurisdiction to Investigate Complaints**

The British Columbia *Freedom of Information and Protection of Privacy Act* (the Act) established an Information and Privacy Commissioner with a variety of powers. These include, under section 42 of the Act, the authority to monitor how the Act is administered to ensure that

its purposes are achieved, to comment on the implications for protection of privacy of proposed programs of public bodies, and to receive and investigate complaints that public bodies have collected, used, or disclosed personal information in contravention of the Act. Thus the Commissioner and his Office have wide powers to carry out complaint investigations.

Many parents complained to the Office of the Information and Privacy Commissioner about the existence of the CAPP curriculum, its content, and the fact that it is mandatory for grades 8 to 12. It should be noted, however, that the Minister of Education, Skills and Training has the authority under the *School Act* to establish school curriculums and to determine graduation requirements for students in this province.

The Commissioner and his Office have authority to investigate and comment on the privacy issues which have arisen from the Ministry's CAPP curriculum; that is, the suggested collection, use, and disclosure of personal information that may occur during the teaching of the CAPP course. This report addresses these issues and provides general recommendations to the Ministry on the content of privacy guidelines intended for issuance to schools.

### **The CAPP Curriculum**

The curriculum comprises three components: a planning process, personal development, and career development (with a fourth called work experience for grades 11 and 12 only). It is designed to help students develop skills that are applicable to their work in other subjects and to activities after graduation. Its purpose is to prepare students to deal with technological change, make informed choices, and take responsibility for their own personal and career development.

The CAPP curriculum consists of an Integrated Resources Package and a box of supplementary materials called "A Resource for Schools." The Integrated Resources Package outlines the "prescribed learning outcomes" (objectives of the program which each student must achieve in order to pass the course), "suggested instructional strategies" (suggested activities designed to achieve the learning outcomes), "suggested assessment strategies" (suggested ways for teachers to assess students' progress and achievements), and "recommended learning resources" (suggested books and other printed material, video tapes, computer software, and other items which teachers might find useful).

The Resource for Schools is a boxed set of printed material containing additional suggested activities for teachers to use in teaching the CAPP curriculum. It is sometimes referred to as "Help in a Box."

A few random examples of these suggested instructional strategies or activities might be helpful to the reader. On page 22 of the Integrated Resources Package, one of the "prescribed learning outcomes" is "to encourage students to value and adopt balanced, healthy lifestyles." The related suggested instructional strategies include "brainstorming different activities that contribute to a healthy lifestyle; invite guest speakers to talk about health issues; have students record their daily health-related activities and discuss them in pairs." The suggested assessment strategies include "collecting evidence of students' ability to select healthy practices."

Page 52 of the Integrated Resources Package describes the prescribed learning outcome as "to develop in students the capacity to assess, prevent and resolve abusive situations." Suggested activities include: "invite street workers or counsellors to talk to the class; have students use speech and thought bubbles to depict harassment situations; have students present the myths and realities of subjects such as date rape or family violence; to personalize the issues, have students keep journals of their reactions to the subjects discussed in class." Suggested assessment strategies include: "collecting evidence of students' ability to use intervention skills and to identify support services; looking for evidence of students' ability to define abuse and to respond appropriately to a range of emotions in various situations."

Page 106 of the Integrated Resources Package deals with the learning outcome "to develop students' understanding and appreciation of personal characteristics and how these relate to potential careers." Suggested activities include: "have students complete self-assessments and share them with other students; write self-instruction manuals and create portfolios." Suggested assessments include "collecting evidence of students' ability to identify careers of interest to them and relate their skills and abilities to those careers."

## **Methodology**

The two Portfolio Officers assigned to investigate this complaint carried out the following steps:

- reviewed and analyzed the complaint letters and interviewed the principal complainants regarding their specific concerns;
- interviewed the information and privacy staff at the Ministry of Education (later the Ministry of Education, Skills and Training);
- interviewed CAPP curriculum officials at the Ministry;
- reviewed and analyzed the CAPP curriculum material; and
- interviewed a number of teachers in Greater Victoria who are responsible for teaching the CAPP curriculum in senior high school.

Our interviews with Ministry employees revealed that the Ministry's curriculum staff had developed the CAPP material without considering the potential privacy implications and without consulting the Ministry's information and privacy office.

We do not feel it appropriate to comment in detail on the potential privacy issues, until the Ministry itself has had the opportunity to develop them. We therefore suggested drawing up some general comments for use by the Ministry's privacy and curriculum staff in developing detailed privacy guidelines, in consultation with schools and parents, which they could issue to schools for use by teachers. The Ministry's staff expressed willingness to create these detailed guidelines and the principal complainants also felt that our suggestions made sense.

## **What the Office of the Information and Privacy Commissioner Learned about the CAPP**

### ***The Personal Education Number Issue***

The Personal Education Number is a unique identifier assigned to each student by the Ministry which is used primarily to track student performance. We learned that the Personal Education Number was mentioned in CAPP materials as being a desirable element, but that it was not considered a requirement for students to record it. Some parents suggested that if the Personal Education Number were recorded on CAPP records, in particular the Student Learning Plan, it would be possible to gain unauthorized access to a student's personal information.

**The curriculum officials at the Ministry were, however, quite prepared to eliminate the references to the Personal Education Number in all CAPP materials. The Office of the Information and Privacy Commissioner believes that this is an appropriate response to the concern raised by the parents.**

### *CAPP Material*

After reviewing the complaint letters and the CAPP material, it became clear that the principal focus of the complaints was the "Suggested Instructional Strategies" and "Suggested Assessment Strategies" in portions of the curriculum. We learned that the Ministry mandates the curriculum but only provides suggestions to school districts on how to achieve the appropriate learning outcomes. Both the school districts and individual teachers have complete discretion on how to achieve these learning outcomes. They may use the suggested strategies or not, as they see fit. They are also free to develop their own activities and assessment techniques.

It was apparent from the CAPP material, however, that if teachers chose to use exercises involving the collection of personal information, there was no guidance on how to collect or use such personal information in CAPP classes. Nor was there any guidance on physical security and the protection of CAPP records containing personal information. The *Freedom of Information and Protection of Privacy Act* is mentioned once and then only in the boxed set of supplementary resource materials. There is little discussion in that one reference of the necessity to follow fair information practices for CAPP records in the custody and control of schools, and none of the fact that records in the custody of or under the control of schools are subject to an access request under the Act.

There is also no mention of the notion that students and staff should be informed of their information and privacy rights and obligations under the Act.

### *Interviews with Teachers*

The teachers we talked to in the Greater Victoria School District used very few of the suggestions in the Integrated Resources Package but had instead developed their own activities. At the beginning of the course, they had sent letters home with the students informing parents that the CAPP course was pending and would involve sensitive subjects. An outline of the CAPP topics was included. Parents were asked to sign the letters, confirming that they had read them, and then return the letters to the CAPP teacher.

The Victoria teachers told us that they would have been willing to talk to parents about any concerns about the curriculum contents but that, in fact, they had received no complaints from parents about the CAPP curriculum.

These teachers also do not ask students to record personal information in logs or journals and were not aware of any teachers who did. Students were, however, required to assemble items in an official record called the Student Learning Plan, which teachers must use to mark students' work and progress in the course. The Student Learning Plans are kept locked up in the classroom when not in use, although students have ready access to their own Student Learning Plans.

The teachers also told us that they do not normally collect the students' working notebooks, which contain the students' personal notes for the CAPP classes. The principal work containing personal information to which the teachers have access is the Student Learning Plan as an official record of a student's progress in the CAPP program. Students are told that they control what goes into their Student Learning Plans and that parents and teachers will see their contents.

Some of these teachers' class activities involve some voluntary sharing of personal information, for example, in group discussions during which students offer their opinions on various topics or in sessions where pairs of students work on self-portraits. In a class discussion of networking, students are asked to list contacts or allies in a potential job search but do not share these lists with their fellow students. Exercises involving the recording of students' strengths, goals, and other attributes are generally done individually. The teacher reviews these written exercises, but no one else sees them.

**The teachers pointed out that the concept of students' recording personal information is not new. English classes have for some years included exercises in which students record personal feelings and experiences in journals, to which teachers alone have access.**

The teachers also told us that, for sensitive subjects, they normally arrange for guest speakers to address students in large groups. The teachers also told us that students are warned about upcoming CAPP classes on sensitive subjects and are informed that they need not attend these classes if they are uncomfortable with the subject matter. The teachers again stressed that they would be prepared to develop alternative activities and teaching methods for achieving the learning outcomes, if parents or students asked them to do so.

The teachers were unaware that school records in the custody or under the control of the school district are covered by, and subject to, an access request under, the *Freedom of Information and Protection of Privacy Act* (the Act), nor had they considered the idea of informing students of their information and privacy rights under the Act.

## **Findings**

Despite the lack of awareness of fair information practices and other aspects of the Act in the CAPP material, our discussions with the CAPP teachers revealed that most of the suggested activities which had caused the complaints are not in fact used, at least in the Victoria area. Also,

we found no violation of Part 3 of the Act. The teachers are obviously already sensitive to the nature of the information in CAPP records and welcome the prospect of written guidelines on fair information practices. They also expressed a willingness to incorporate a briefing on students' information and privacy rights at the beginning of CAPP courses.

## **General Privacy Guidelines**

Part 3 of the Act sets down the requirements for the handling of personal information by public bodies. It must be emphasized, though, **that these requirements and our recommendations below, apply to personal information contained in CAPP records in the custody or under the control of a school district as a public body.** Similarly, in response to a request for access to records or a request to correct personal information made under the Act, the public body must first determine if the requested records are in its custody or under its control.

Therefore, the Ministry should address the issue of custody and control of CAPP records in its guidelines.

Part 3 of the Act begins with the authority for, and manner of, collecting personal information and then describes the requirements for retention, use, and security of personal information. It also sets out the public's right to request corrections to personal information.

We have set out below some general recommendations to the Ministry of Education, Skills and Training on fair information practices for the CAPP curriculum. The Ministry has agreed to develop these general guidelines into detailed privacy guidelines and policies on the CAPP program. Schools will in turn be asked to ensure that teachers and students are aware of these detailed guidelines.

**It should be noted that the Act's privacy requirements apply to any records in the custody or under the control of the school district, not just those concerning the CAPP curriculum.**

### ***Section 26 - Authority to Collect Personal Information***

This section of the Act instructs public bodies that they may collect personal information where it "relates directly to and is necessary for an operating program or activity of the public body." The Minister of Education, Skills and Training has the authority under section 182 of the *School Act* to determine school programs. Schools in turn implement these programs.

Public bodies are expected to collect only the minimum amount of personal information needed to administer a given program. Students and teachers should therefore be aware that schools have legal authority to collect only necessary and relevant personal information for the administration of the CAPP program.

Teachers should receive guidance on the type and amount of personal information that is



considered appropriate for teachers to collect for the CAPP curriculum.

### ***Section 27 - Manner of Collection***

(1) This section instructs public bodies to collect personal information directly from the person concerned, with some exceptions. These exceptions include where the person concerned has consented to indirect collection of her/his personal information, for example, from another person.

Students and teachers should be aware that students should be the ones recording personal information about themselves, unless the students have consented to teachers collecting that information from other people, such as their parents.

Where CAPP classes involve exercises in which students are asked to record the personal information of other people, such as parents, employers, siblings, teachers, fellow students and co-workers, and other relatives, students may have concerns about recording information regarding these people.

Teachers should have guidelines about alternative activities which are considered appropriate in these circumstances and which will still enable students to achieve the prescribed learning outcomes.

(2) This section also states that, with limited exceptions (that would not likely apply to schools), public bodies must notify individuals from whom they collect personal information:

- of the purpose of the collection;
- the authority for the collection; and
- the title, business address, and telephone number of a school employee who can answer questions about the collection.

Teachers should ensure that students are aware of the authority for the CAPP program and the reasons for which they are asked to provide any personal information in the context of the CAPP curriculum. Students should also be told where they can obtain further information on the CAPP course content (likely the CAPP teacher).

### ***Section 28 - Accuracy***

This section tells public bodies that, where they are using personal information to make a decision that affects individuals, they are to make every reasonable effort to ensure that the personal information is accurate and complete.

Teachers should ensure that any personal information they use in assessing students' progress in the CAPP curriculum, assigning marks, and other administrative decisions, is up-to-date, accurate, and complete.

### ***Section 29 - Correction of Personal Information***

This section allows the public to request the correction or annotation of personal information in the hands of public bodies.

Students should be aware that they may request that schools correct or annotate their personal information found in records in the custody or under the control of the school. Any other person whose personal information may be found in records concerning a particular student (e.g., parents, employers, siblings, teachers, fellow students and co-workers, other relatives) may also request the correction or annotation of their personal information. This is true even where the personal information is not being used to make administrative decisions about those people. Schools should have a mechanism for handling correction requests.

### ***Section 30 - Protection***

This section requires public bodies to provide reasonable physical or other security for personal information in order to prevent unauthorized access, collection, use, disclosure, or disposal of that personal information.

Teachers should keep Student Learning Plans and other records containing personal information about students securely locked so that no one may obtain access to them without authority. Students should be aware that, normally, in addition to themselves, only teachers and parents will have access to their Student Learning Plans, without their consent.

Where school officials destroy records containing personal information (in accordance with an appropriate disposal schedule), they should ensure that the method of destruction is also secure, e.g., by shredding, incineration, demagnetization, or some other method that is appropriate to the medium and prevents reconstruction of the destroyed data.

### ***Section 31 - Retention***

Where a student's personal information is used to make a decision that directly affects that student, the school must keep that information for at least one year after using it so that the student has a reasonable opportunity to request access to it.

### ***Section 32 - Use***

Generally speaking, under this section, public bodies may use personal information only for the purpose for which it was gathered in the first place, for a use that is consistent with the original purpose, or for another use, if the person concerned has consented to another use.

Teachers may use students' personal information which has been gathered for the CAPP curriculum only for assessing progress and assigning marks in the CAPP curriculum or for other functions directly associated with it. Students may consent to other uses but should be fully aware of the type and extent of the proposed new use, so that they can give informed consent.

Teachers should have guidelines on appropriate uses and consistent uses for CAPP purposes.

### ***Sections 33, 35, and 36 - Disclosure***

These sections govern conditions under which public bodies may disclose personal information: for the original purpose of collection or for a consistent use, with consent, for law enforcement, and in a variety of other limited circumstances.

The issue of disclosing personal information from CAPP records arose mainly in the context of parents having access to their children's Student Learning Plans. Parents are entitled under the *School Act* to be informed of their children's academic progress. Students are told that their parents will see their Student Learning Plans (as well as other school records, presumably).

Teachers should be aware of the limits of parents' rights to have access to their children's personal information and that their entitlements do not extend to all personal information, but only what is necessary for the parents to understand how their children are progressing with the CAPP course.

It should also be clear that some exercises may involve the sharing of personal information with other students as well, where the students agree to share the information. Students should have the opportunity to consider the proposed sharing and to consent to it.

There should be guidelines on alternative activities in cases where students are not comfortable with sharing their views, experiences, and other personal information.

### ***Other Issues***

#### ***Opt-out Procedure***

The introduction to the CAPP materials states that schools will make alternative arrangements for students who are uncomfortable with the subject matter of a particular CAPP class. The teachers we interviewed also told us that their note to parents invites them to call if they have any concerns with the course content. They did not know if other school districts make the same

efforts to inform parents of the course content and that students may be asked to provide personal information about themselves and others.

The Ministry and all schools should ensure that parents and students are aware of the CAPP course content and the intended curriculum activities. It should also be clear that alternative teaching methods will be made available as much as possible to assist students in achieving the CAPP learning outcomes, where parents and/or students prefer not to record personal information, or object to some other aspect of the curriculum which they believe invades their privacy.

### *Access and privacy rights*

Students need to be aware that, under the *Freedom of Information and Protection of Privacy Act*, they have the right of access to their own personal information in CAPP records and other school files.

The teachers we spoke to told us that students have ready access to their own Student Learning Plans, but the right of access also extends to teachers' notes about students and even another student's notes, where they include personal information of a fellow student.

Students need to be aware that their parents and teachers will have some access to their CAPP records but that the records are kept secure from unauthorized access and disclosure. Students should also know that the public has a right to request access to records containing personal information about students if they are records subject to the Act.

A student's personal information would not likely be disclosed to another person without the student's permission. The school would have to retrieve the records and review them for release or exceptions to disclosure under the Act's provisions.

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