

**THE NOVA SCOTIA FREEDOM OF INFORMATION  
AND PROTECTION OF PRIVACY ACT**

A **REQUEST FOR REVIEW** of a decision of the **TRI-COUNTY REGIONAL SCHOOL BOARD** with respect to a request for statistical information.

**REVIEW OFFICER:** Darce Fardy

**REPORT DATE:** January 23, 2006

**ISSUE:** Whether the School Board conducted an adequate search for records, and whether a reasonable effort was made to assist the Applicant.

In a Request for Review, under the **Freedom of Information and Protection of Privacy Act (FOIPOP)**, dated August 19, 2005, the Applicant asked for a review of the decision of the Tri-County Regional School Board (TCRSB) and a review of the fees quoted for providing the requested records.

The information sought by the Applicant includes:

- Average examination grade on the five provincial exams, listed by school, for the last five years.
- Correlative teacher-assigned grades for provincially examined courses, listed by school, for the last five years.

- Average overall grade and number of students enrolled for provincially examined courses, listed by school, for the last five years.
- Percentage or number of grade twelve students with a graduating average of greater than 80 per cent, listed by school, for the last five years.
- A completed listing of the average grade for grade 9 students, listed by school, for the last five years.
- Annual student attendance rates in grades 10, 11, and 12, listed by school, for the last five years.
- Discipline statistics in grades 10, 11, and 12, including but not limited to suspensions and expulsions, listed by school, for the last five years.
- Number of students by postal code in grades 10, 11, and 12, listed by school, for the last five years.

*Background:*

(While my reviews do not normally identify the Applicant, in this case it is unavoidable if one is to understand the issues. AIMS has agreed to being named.)

The Atlantic Institute for Market Studies (AIMS) has undertaken a project designed to report on high school performance across the four Atlantic Provinces. AIMS has already produced three reports on Atlantic High school performance and is now working on preparing a fourth and fifth.

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In its letter of decision the TCRSB stated “the schools involved have been contacted and have replied that they do not have the records as requested.” TCRSB was only able to provide the Applicant with the suspension reports at a cost of \$425.00. This led the Applicant to appeal for a review by this office.

During this office’s mediation process, AIMS reduced the scope of its request. AIMS withdrew its request for the average overall grades and the percentage of grade 12 students with a graduating average of greater than 80 percent. As well, AIMS reduced the time frame for many of the items it requested.

*Submission of the Applicant:*

AIMS wrote that it volunteered to be the library of record for this kind of information, provided the information is received every year. It also provided a comparison with similar information available from other Atlantic Provinces:

- Newfoundland provided all of the relevant information without recourse to that province’s access to information legislation.
- New Brunswick was also willing to provide the information without requiring AIMS to use its access legislation. Most of that province’s school districts have produced the information requested.
- Prince Edward Island’s three school districts provided all of the information requested at a charge of \$2000.00.

To quote the AIMS submission:

AIMS is mindful that there are key differences governing school boards and districts across these four provinces, but these policy differences ought not impact on the availability of good quality school performance data.

AIMS points out that in this province the separate requests to the school boards resulted in a collective request from them for a meeting between a representative of the Applicant and representatives of the Nova Scotia School Board Association. After a six-month wait, according to AIMS, the school boards “collectively refused to supply any additional information.”

AIMS recalls a criticism made by the federal Information Commission of federal agencies circumventing the federal information act by failing to keep adequate records.

“In the case of Nova Scotia’s school boards, the difficulty in collected some of the requested records is a similar type of omission of records keeping (as reported by the federal commissioner). With the key differences that a version of the records are available, but in general they have not been kept in a format that is conducive to easy reporting and retrieval . . . This omission of a readily accessible format for general public use is even more worrisome when you consider that the requested records are available and are being used by the Boards for various purposes, including: reporting to the province, school improvement planning, and commenting to the media.”

AIMS provided some examples of such uses and felt it could successfully challenge the way fees were compiled.

AIMS concluded its submission by providing what it called a “minimum request” to recognize that “fulfilling such requests have to be balanced with the core objectives of the affected

public body.” It said it remained open to suggestions from the school boards of alternate measures or timeliness.

On the question of the fees it said that “in light of the eight identical requests in Nova Scotia, and the over \$90,000 in fee estimates already received, it is clear that AIMS is being asked to shoulder an unnecessarily high fee burden.”

AIMS gave the School Board an opportunity to read and comment on its representations.

*Submission of the School Board:*

The School Board said that average examination grades and the teacher-assigned grades for provincially examined courses are unavailable.

“If there is a record it would be in each individual teacher’s record book. Teachers are under no obligation to retain these books after the final marks have been assigned. Once the provincial exams are marked at the school, the entire exam paper with the mark affixed, is sent to the Department of education. The provincial exam marks do not appear on the students’ records as a separate entry.”

TCRSB said that most of the records at its school are in electronic form and the Board “is under no obligation to create a record.” It continued by providing an estimate of 833.33 hours to determine the average grade for grade 9 students, listed by school, for the last five years.

**Conclusions:**

The only role for the Review Officer in any appeal is to determine if the TCRSB has been living up to its obligations under *FOIPOP*, not whether it’s doing what is expected of school boards.

To do this I must consider several sections of *FOIPOP*, to guide me. (TCRSB did not cite any of the exemptions that allow a public body to refuse to disclose all or part of the records requested.) The relevant sections are:

**Section 2** The purpose of this Act is

- (a) to ensure that public bodies are fully accountable to the public by
  - (i) giving the public a right of access to records,
  - (iii) specifying limited exceptions to the rights of access.

**Section 7 (1)** Where a request is made pursuant to this Act for access to a record, the head of the public body to which the request is made shall

- (a) make every reasonable effort to assist the applicant and to respond without delay to the applicant openly, accurately and completely.

With respect to Section 2, it's my view that for a school board to be "**fully accountable**" it should be in a position to provide the type of statistics being requested in this case in a timely fashion and should require schools to provide that kind of information to the school boards.

With respect to Section 7, the TCRSB could not have been said to have made "a reasonable effort to assist" the Applicant. A public body that cannot provide the majority of the records requested should be prepared to offer some alternatives to the Applicant. I am convinced that poor record keeping practices are a factor in lack of information available.

The TCRSB would have known of AIMS plans to produce school statistics and should have been better prepared for the application.

**Recommendations:**

That TCRSB:

- Provide the suspension statistics to the Applicant at no cost.
- Provide the attendance rates, where available, for the past year at no cost.
- Provide the Applicant with the number of students by postal code enrolled in each school, where available, for the past year at no cost.
- Put processes in place to provide similar information at a minimal cost in the future and improve its records keeping processes.

**Section 40** of the Act requires TCRSB to make a decision on these recommendations within 30 days of receiving them and to notify the Applicant and the Review Officer, in writing, of that decision. If a written decision is not received within 30 days, TCRSB is deemed to have refused to follow these recommendations.

**Dated** at Halifax, Nova Scotia this 23<sup>rd</sup> day of January, 2006.

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Darce Fardy, Review Officer