

- [3] The Commissioner has jurisdiction over the Department of Education, which is responsible for the management of schools: ATIPPA, s 2, definition of “public body”.

Issues

- [4] The issues in this review are:
- a. Were the Complainant’s phone calls to the school office monitored or recorded?
 - b. If so, was there a breach of the Complainant’s privacy?

Facts

- [5] The Complainant is a teacher. In December 2019, the Complainant’s principal gave them a notice of a “fact-finding meeting”, a form of investigation by the employer into potential workplace misconduct.
- [6] At the fact-finding meeting, the lead was taken by the superintendent of the Complainant’s school district. A number of allegations were raised at the meeting. It appears that all allegations originated with the school principal, who was not at the fact-finding meeting.
- [7] One of the allegations was that the Complainant had, within a short period on a particular day and while teaching, made three calls from the classroom to the school office. The calls were unrelated to the class the teacher was then teaching. One call involved personal information about a student, which the principal believed was overheard by the class.
- [8] The Complainant alleges that the principal and/or the school district breached their right to privacy, because the only way the principal or superintendent could have known about the calls and their contents was by recording or monitoring them.
- [9] The Department of Education states that calls to the school office are not recorded or monitored.

Law

[10] “Personal information” means any information about an identifiable individual: ATIPPA, s 2.

[11] Personal information may be collected only in one of the circumstances enumerated in s 40 of the ATIPPA:

No personal information may be collected by or for a public body unless

(a) the collection of the information is expressly authorized by an enactment;

(b) the information is collected for the purposes of law enforcement;

(c) the information relates directly to and is necessary for

(i) an existing program or activity of the public body, or

(ii) a proposed program or activity where collection of the information has been authorized by the head with the approval of the Executive Council; or

(d) the collection of the information for research or statistical purposes is authorized by or under the Statistics Act.

[12] Other than these general provisions, the ATIPPA does not directly address the question of recording devices in the workplace.

Analysis

Were the Complainant's phone calls monitored or recorded?

- [13] I begin with the basic factual question: were the Complainant's phone calls to the school office monitored or recorded? The Complainant says they "assume" so, because there was no other way for the principal (and through the principal, the superintendent) to know that the calls were made and what they were about. Other than this assumption, the Complainant offers no evidence of monitoring or recording.
- [14] For its part, the department says that calls to the school office are not monitored or recorded.
- [15] The factual record on this file is thin. I have no information, for example, on to whom the Complainant spoke in the office (although I infer that the calls were not to the principal), or the size or configuration or staffing of the school office.
- [16] For purposes of anonymization, I do not wish to mention the Complainant's community or school, but it is fair to say that the school office must be relatively small and is likely staffed by a small number of people.
- [17] The Complainant does not deny that the three calls were made in a short period on a particular day, nor the content of them. In any event, if the Complainant did deny the fact or content of the calls, that would be a human resources matter and not an ATIPPA matter.
- [18] The Complainant's objection, from the first contact with this office, is that monitoring or recording the calls was a breach of privacy.
- [19] I cannot find, on the evidence before me, that the Complainant's calls were monitored or recorded. The Complainant assumes they were, but it seems to me that there is a perfectly reasonable explanation as to how the principal became aware of the calls that does not involve monitoring or recording.

- [20] In my view, it is normal in a school office that conversations will be overheard by other office staff. There is nothing nefarious about that. It is in the nature of working in close quarters. School offices can be busy places. (But needless to say, greater care should be taken with conversations involving personal information of students, families, or staff.)
- [21] Moreover, it is normal, in my view, that staff in a school office will discuss school-related matters between themselves. Again, there is nothing nefarious about that. It is in the nature of managing a complex environment like a school, which is dealing simultaneously with students, staff, families, maintenance, buses, and more. One staff member in the school office (e.g. the principal, the vice-principal, the school secretary) may pass along information to or consult with another. That would also extend to school district staff, including the superintendent. They are all part of a team.
- [22] In this environment, I find it quite plausible that the principal either heard the office's end of the Complainant's three calls and, thinking them unusual, asked the person(s) who took the calls what was happening; or the person(s) who took the calls mentioned to the principal that the number and content of the calls was unusual for a teacher who was in front of a class.
- [23] There is no need to make an assumption, as the Complainant does, that the calls to the school office were monitored or recorded. Without that assumption, the complaint fails.

Was there a breach of the Complainant's privacy?

- [24] Having found that the calls to the school office were not monitored or recorded, it follows there was no breach of the Complainant's privacy. To put it in formal ATIPPA terms, there was no collection of the Complainant's personal information contrary to the Act.

- [25] The issue of workplace surveillance (including the surreptitious recording of telephone calls or meetings) is a serious issue. There is a substantial amount of legal precedent on this point, especially in the areas of labour relations and police investigations: see John Burchill, “Tale of the Tape: Policing Surreptitious Recordings in the Workplace”, 2017 CanLIIDocs 372.
- [26] The number of such cases will only grow. We live in a world where almost everyone is carrying in their pocket a sophisticated camera and recording device. It is inevitable that cases of workplace surveillance will arise. Indeed it already has: a recent Review Report by the former Commissioner considered the use of footage from a security camera at a school: *Complainant (Re)*, 2020 NUIPC 1 (CanLII).
- [27] When an appropriate case presents itself, I will examine how the ATIPPA applies to workplace surveillance. This is not that case.

Conclusion

- [28] The Complainant’s phone calls to the school office were not monitored or recorded.
- [29] The Complainant’s privacy was not breached.

Recommendations

- [30] Given my conclusions, I make no recommendations to the Department of Education.

Graham Steele

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