



April 3, 2008

David Loukidelis,  
Privacy Commissioner  
Office of the Information and Privacy Commissioner for British Columbia  
PO Box 9038, Stn. Prov. Govt.  
Victoria, BC V8W 9A4  
F: (250) 387-1696

Dear Commissioner Loukidelis

Re: Safe Schools and Social Responsibility Survey

I am writing on behalf of the B.C. Civil Liberties Association to initiate a complaint against the B.C. Centre for Safe Schools and Communities and the University College of the Fraser Valley any other body involved in the administration of the Safe School and Social Responsibility Survey.

It is our understanding that the BC Centre for Safe Schools and Communities, in partnership with researchers at the University College of the Fraser Valley, administer the Safe School and Social Responsibility Survey to more than 80,000 public school students across British Columbia each year. The survey asks students to reveal extremely sensitive information such as their involvement in criminal activity and use of illicit drugs. In completing the survey, students are asked to provide certain information so that their participation can be tracked from year to year. The BCCLA believes this method of tracking individuals could be used by law enforcement authorities to identify students and their responses. The Safe School and Social Responsibility Survey effectively asks students to provide self-incriminating evidence. Should a student be matched to their survey, participation could result in criminal investigation and/or criminal proceedings.

As there is a reasonably foreseeable possibility that law enforcement authorities could obtain personal information to identify individuals, the BCCLA believes that the survey violates the privacy rights of students. The fact that the survey is presented as anonymous and confidential without any notice to students or their parents that the survey could be used for

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disciplinary or law enforcement purposes is a further violation of students' privacy rights.

In 2007, the BC Civil Liberties Association met with the Research Ethics Board of the University College of the Fraser Valley to express our concerns regarding the Safe School and Social Responsibility Survey. After our meeting, the Research Ethics Board agreed to modify the 2007 survey so that individual students would no longer be tracked. According to our understanding of our agreement with Chair of the Research Ethics Board Ken Brealey, this agreement on the 2007 survey applied to all future incarnations of the survey. Recently, the BCCLA discovered that the 2008 Safe School and Social Responsibility Survey would once again resume tracking individuals. The Chair of the Research Ethics Board has stated that the 2008 survey is a different survey than the 2007 survey, and that the agreement between the Research Ethics Board and the BCCLA only applies to the 2007 survey. The principal difference between the 2007 and 2008 surveys is that the questions used to track students are now cited as optional. The BCCLA contends that the method used to track student responses over time allows individual students to be identified, thus negating anonymity. Merely allowing students to choose whether they would like to be individually tracked without informing them of the consequences of that choice appears to be an underhanded gesture that is contrary to students' privacy rights and the need for free and informed consent.

Collecting personal information for the purposes of research requires that information only be used for the purposes for which it is collected. This principle is present in the *Personal Information Protection Act*, the *Freedom of Information and Protection of Privacy Act*, and the *Personal Information Protection and Electronic Documents Act*. Specifically, under S. 32 of FOIPPA,

A public body must ensure that personal information in its custody or under its control is used only

- (a) for the purpose for which that information was obtained or compiled, or for a use consistent with that purpose (see section 34),
- (b) if the individual the information is about has identified the information and has consented, in the prescribed manner, to the use, or
- (c) for a purpose for which that information may be disclosed to that public body under sections 33 to 36

The Safe School and Social Responsibility Survey purports to be confidential. The Tri-Council Policy Statement, which provides the ethical guidelines for academic research in Canada, explicitly discusses the precedented and foreseeable possibility of research data being subpoenaed. Foreknowledge of the potential for use that is contrary to the purpose of collection (i.e. law enforcement) necessitates disclosure. *PIPEDA* addresses this in Schedule 1, Section 4.3.5 and *PIPA* requires full disclosure for valid consent as part of Section 7(3). S. 32 of *FOIPPA* would likely apply similarly in our opinion. That law enforcement authorities have a special interest in criminological research that discusses criminal activity is well known by those professionals undertaking such research. Consent appears to be invalid if the full extent of confidentiality is not discussed.

The Safe School and Social Responsibility Survey Claiming also purports to be anonymous. This is not the case, and students can be easily matched to their survey through the use of the 'privacy code' and demographics questions. The privacy code consists of the following:

- The first letter of the student's mother's first name
- The last number of the student's birth year
- The last letter of the student's last name
- The third letter of the student's birth month
- The number of the student's older siblings

The next six questions ask for school name, grade, gender, ethnicity, residency, and home language. (The survey no longer asks students for their postal code, a remnant from our previous agreement with the Research Ethics Board).

The survey does not record a student's name; however, the information contained in the privacy code and six other questions can identify a student when combined with knowledge of the student. Criminal justice agencies may have records with sufficient information on a student to match a survey to that student. As well, school records can be easily obtained by criminal justice agencies, even without a subpoena. Seven of the eleven responses will be in a student's school record, and the remaining four may be present. It is also reasonable to assume the privacy code and demographic information, in whole or in part, will be known by some teachers and students. The effectiveness of the survey in isolating individuals for longitudinal tracking ensures that an extremely small

number of people will have the same responses to the privacy code and demographics questions. Matching a student to their survey can be done merely by piecing together information that is readily available. With minimal investigation, law enforcement authorities can draft a subpoena for a specific student's survey. Anonymity is absolutely integral to the survey and consent is invalidated by the ability to identify participants.

The limitations on confidentiality and lack of anonymity, in combination, causes significant concern given that the survey is administered to students and parental consent is not required. The BCCLA also expressed concerns to the UCFV Research Ethics Board that the survey did not explain how personal information was being used. The survey's purpose is noted merely to "support student success". The BCCLA continues to assert that the information provided by the survey to parents and participants is vague, misleading, and inadequate.

The BCCLA contends that the researchers at the University College of the Fraser Valley and the BC Centre for Safe Schools and Communities are offering inadequate protections to student research participants by failing to ensure confidentiality and anonymity and turning a blind eye to the potential harm that can result from their research. Former Federal Privacy Commissioner of Canada George Radwanski outlined his office's position on the role of the Office of the Privacy Commissioner and the privacy rights of research participants:

All this liberal interpretation on my part comes with an absolutely inflexible requirement: the information used for health research must remain strictly within the confines of the research project and it must be used in a manner that cannot in any way harm the individual to whom it pertains.

Under no circumstances whatsoever can it find its way to the individual's employers, insurers, relatives or acquaintances, governmental or law enforcement authorities, marketers or any other third parties. And the individual must not be contacted as a result of this information by anyone other than his or her own physician, or other primary health care provider, as the case may be. I will regard any breach whatsoever of this condition as an extremely grave violation of the Act.

The BCCLA hopes that your office will echo this strong stance on privacy to ensure that the privacy of research participants is maintained when research bodies refuse to offer adequate protections and safeguards.

Sincerely

A handwritten signature in black ink, appearing to read 'J. Gratl', with a stylized flourish at the end.

Jason Gratl,  
President