



REPORT TO

REGULAR BOARD

PHOTOGRAPHING AND FILMING OF INDIVIDUALS AT BOARD AND COMMITTEE MEETINGS

*“For this is the message you have heard from the beginning, that we should love one another.”
1 John 3:11*

Created, Draft	First Tabling	Review
February 16, 2018	March 22, 2018	Click here to enter a date.

Paul Matthews, General Legal Counsel

RECOMMENDATION REPORT

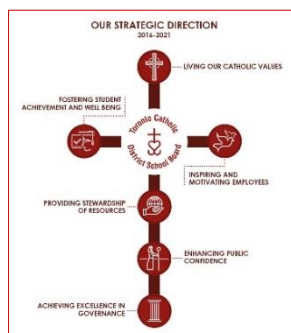
Vision:

At Toronto Catholic we transform the world through witness, faith, innovation and action.

Mission:

The Toronto Catholic District School Board is an inclusive learning community uniting home, parish and school and rooted in the love of Christ.

We educate students to grow in grace and knowledge to lead lives of faith, hope and charity.



Rory McGuckin
Director of Education

D. Koenig
Associate Director
of Academic Affairs

T.B.D.
Associate Director
of Planning and Facilities

L. Noronha
Executive Superintendent
of Business Services and
Chief Financial Officer

A. EXECUTIVE SUMMARY

1. Taking photographs or filming individuals on TCDSB property or at Board-sponsored events are both subject to the rules described in this report. The rules described herein are based on the *Municipal Freedom of Information and Protection of Privacy Act* (R.S.O. 1990, c. M.56) and Toronto Catholic District School Board (“TCDSB”) Policy A.29 “Electronic Communication System: Acceptable Use Policy”. There is currently no TCDSB policy that adequately addresses this matter. This report recommends that this report be referred to the Governance and Policy Committee, with a recommendation from the Board that the Committee submit a draft policy on “Photographing and Filming of Individuals at Board and Committee Meetings” to the Board of Trustees.

The cumulative staff time required to prepare this report was 6 hours.

B. PURPOSE

1. The purpose of this report is to describe the legal regime applicable to a person taking photographs of, or filming, individuals at TCDSB Board or Committee meetings. The law has rules for when the photographer is an employee, or agent, of the TCDSB, and different rules when the photographer is an individual acting on his or her own initiative and not as an agent or employee of the Board.

C. BACKGROUND

1. This report was written to clarify the legal requirements applicable to a person taking photographs or filming individuals at TCDSB Board or Committee meetings. Note that this report describes the law applicable to all Committees of the Board, including Standing Committees, Steering Committees, Statutory Committees, Ad-Hoc Committees, Trustee-Staff & Community Advisory Committees, and Special/Other Committees. A complete listing of the Committees of the Board can be found in Appendix “A” attached hereto.

D. EVIDENCE/RESEARCH/ANALYSIS

2. The *Municipal Freedom of Information and Protection of Privacy Act* (R.S.O. 1990, c. M.56) (“MFIPPA”) has provisions, applicable to institutions, which protect the privacy of individuals with respect to personal information. Photographs and filmed images of individuals are “personal information” for the purposes of MFIPPA.
3. School boards are institutions for the purposes of MFIPPA and the privacy provisions of that Act are therefore applicable to the TCDSB.
4. The requirements of MFIPPA at issue for school boards in the context of photographing or filming individuals are:
 - i) Photographs or films of individuals may only be collected by the TCDSB on the consent of the individual whose picture or image is being captured;
 - ii) If the photograph or film of the individual is going to be used by the TCDSB (for example, in a newsletter, publication, etc.), the individual must give consent for its use;
5. It is important to note that MFIPPA only applies to “institutions” and consequently applies to individuals or agents who collect personal information on behalf of the institution.
6. MFIPPA does not apply to individuals who take photographs or film individuals on TCDSB property or at TCDSB events if the photographer is not acting on behalf of the TCDSB.
7. A photographer taking photos or filming at a Board or Committee meeting at the request of an official of the TCDSB must comply with the requirements of MFIPPA which, as stated above, are:
 - i) consent of the individual to be photographed or filmed must be obtained; and
 - ii) the person photographed or filmed must consent to the use by TCDSB of the photograph or film.
8. For purposes of MFIPPA, consent may be obtained verbally, in writing, or by notice to individuals.

9. At Board or Committee meetings, it is likely not practical to obtain consent (written or otherwise), because of the large numbers of individuals in attendance at the meetings.
10. Where it is impractical for the TCDSB to obtain written consent, the TCDSB will post a notice in the meeting room visible to those in attendance that filming and/or photography may be collected and used by the TCDSB. (See Notice of Collection attached hereto at Appendix “B”.) Posting of such a notice is a form of consent permitted under MFIPPA.
11. It is important to note that the Board’s schools and other buildings, including the Catholic Education Centre, are private property owned by the TCDSB. Even if the taking of photographs or filming of individuals is otherwise legally permissible, the Board, as property owner, may in its sole discretion restrict or prohibit the taking of photographs or filming of individuals at any Board or Committee meeting.
12. The legal requirements of MFIPPA described in this report are also described in Board Policy A.29 “Electronic Communication System: Acceptable Use Policy”.
13. Attached hereto as Appendix “C” is a document published by the Ontario Information and Privacy Commissioner which generally describes the provisions of MFIPPA applicable to “School Photographs”. The Information and Privacy Commissioner recommends that school boards develop a policy on Photographing and Filming of Individuals at Board and Committee Meetings.
14. There is currently no TCDSB policy on Photographing and Filming of Individuals at Board and Committee Meetings.

E. METRICS AND ACCOUNTABILITY

1. Compliance with the requirements of MFIPPA as described in this report will be monitored by the TCDSB privacy officer.

F. STAFF RECOMMENDATION

It is recommended that this report be referred to the Governance and Policy (“GAP”) Committee with a recommendation from the Board that the GAP Committee submit a draft policy on Photographing and Filming of Individuals at Board and Committee Meetings to the Board of Trustees.

APPENDIX “A”

STANDING COMMITTEES	STEERING COMMITTEES	STATUTORY COMMITTEES	AD-HOC COMMITTEES	TRUSTEE-STAFF & COMMUNITY ADVISORY	SPECIAL COMMITTEES & OTHER
Corporate Services, Strategic Planning and Property	Communications Roundtable * Concluded *	Audit	By-laws Review	Award Nomination	Budget Committee * Concluded *
Governance and Policy	Nurturing Our Catholic Community	Catholic Parent Involvement	Director Performance Appraisal	Catholic Social Justice	School Accomodation Review (SARC)
Student Achievement and Well Being, Catholic Education & HR		Expulsions & Suspensions		Credit Course Outside Canada	School Boundary Review
		Special Education Advisory Committee		Equity and Inclusive Education	
		Supervised Alternative Learning (SAL)		Filipino Speaking Advisory Committee	
				International Languages	
				Mental Health	
				Portuguese Speaking Advisory Committee	
				Safe Schools	
				Spanish Speaking Advisory Committee	
				Sweatshop Free	

NOTICE OF COLLECTION:

Personal information, in the form of filming and/or photography, may be collected by the TCDSB during this meeting under the authority of the *Education Act*, R.S.O. 1990, c. E.2, s. 207, and will be used to communicate the Board’s activities to its school communities and to the general public. Questions about this collection should be directed to the Director of Education, 80 Sheppard Avenue East, Toronto ON M2N 6E8, 416-222-8282.

F.A.Q.

Frequently Asked Questions

Access and Privacy in the School System

FAQ #3

Revised November 2012

School Photographs

Q: *I have a number of concerns about the use of photographs of children in school and school board publications and the media. I would prefer to know where and when my children's pictures will appear. What restrictions or rules apply here?*

A: Photographs are definitely personal information and therefore all the rules and provisions of the *Municipal Freedom of Information and Protection of Privacy Act (the Act)* apply. Personal information is defined as recorded information about an identifiable individual; and a record is any record of information however recorded, whether in printed form, on film, by electronic means or otherwise.

Within a school or school board, personal information must be collected, used, and disclosed within the framework of the *Act*. Information should be collected only with proper authority and notice (see FAQ #1). Generally, it should be collected directly from the individual; and should be used or disclosed only in accordance with the provisions of the *Act*, including with the individual's consent, for the purpose for which it was collected, or for a consistent purpose. A consistent purpose is a use or disclosure that the individual might reasonably have expected to take place. This general framework applies to photographs as personal information.

There are a number of circumstances where photographs are taken of school children, usually by professional photographers at the request of the school, but also in other circumstances.

In most schools, a photographer comes once a year to take individual and class photographs for sale to parents and for use within the school. This practice has been a part of school and family life for decades. In spite of this practice, the taking of photographs for this purpose is not “expressly authorized by a statute” or “necessary to the proper administration of a lawfully authorized activity” as set out in the *Act* and, as such, a school should have the consent of the parent/guardian regarding the actual taking of the photographs, and the use or disclosure of the photographs. Before the photo day, the parent/guardian should receive notice that school photographs will be taken and afforded the opportunity to provide or refuse consent. In addition, the Information and Privacy Commissioner recommends that access and privacy protection provisions form part of any contract with a third-party service provider (in this case, the photographer).

From time to time, photographers will request permission to photograph within the school setting. They may be from the local news media, working with a trustee from the board office, a researcher, etc. In all cases, the permission of the parent/guardian

is required for students under 18 years of age to take part in any such project.




More informally, parents, teachers, and students will often take snapshots at sports events, school concerts, etc., and these photos will appear in the school newsletter or in photo displays within the school, etc. Where personal information is collected in the form of photographs taken by board employees, there should be clear notice of collection, including the authority for taking the photos, the purpose for which the photos will be used, and a contact person, and the consent of the individual to whom the information relates should be requested.

A school should develop a workable policy regarding the taking of photographs of its students on school property or at school events by non-board employees. Such a policy should be developed in consultation with parents/guardians

and communicated to them. Remember, these considerations should apply to all images, including photographs, postings to the Internet, films, and video recordings. Ideally, this policy should be based on the consent of the photographed subject or, if it is a student who is under age, that of the parent or guardian.

If parents or students are concerned about the use of photographs within the school community or by the media, they should speak to the principal. It is not unreasonable for a parent to request that photographs of his or her child not be taken or used without particular consent.

While the question asked concerns photographs, it is useful to note that these same considerations apply to interviews with students as well. A person's opinions or views, except if they relate to another individual, are defined as personal information as described in section 2(1) of the *Act*.

F.A.Q. <i>Access and Privacy in the School System</i>		is published by the Toronto District School Board and the Office of the Information and Privacy Commissioner of Ontario . If you have any comments regarding this publication, contact:		 30% recycled paper
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