



Yukon
Ombudsman

A Report from the Yukon Ombudsman

LEFT IN THE DARK

Report 1

Investigation into the mishandling of abuse allegations
at a Yukon school by the Department of Education

September 7, 2023



Yukon
Ombudsman

INVESTIGATION REPORT

**Pursuant to sections 11 and 23 of the
*Ombudsman Act***

Department of Education

File OMB-INV-2021-10-077

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Rick Smith, Investigator

Office of the Ombudsman

September 7, 2023

Summary

On October 6, 2021, the Ombudsman received a complaint that the inordinate delay by the Department of Education (Department) to inform the parents, guardians and caregivers (Parents) of students at Hidden Valley Elementary School (School) about allegations of sexualized abuse of a student by a staff member was unfair because they had no critical opportunity to talk to their children and provide or seek any necessary supports in a timely manner. The complainant also believed that the delay resulted in other alleged child victims not receiving the supports they needed in a timely manner (collectively, the *communications failure*).

This issue, which became public after a CBC News story on July 16, 2021, resulted in four independent investigations: one by BC lawyer Amanda Rogers, one by the Child & Youth Advocate, one by the RCMP and one by our office, each having different mandates.

Due to the broad mandate of the report commissioned by the Yukon government (Rogers Report), there was some overlap with issues that our office would typically investigate in respect of fairness. As such, we decided to divide our investigation into two separate reports. Our intent was to avoid duplication while still ensuring that we could identify the issues relevant to our office and make pertinent recommendations.

This, our first report on the matter (Report), examines the evidence that we compelled under the *Ombudsman Act*. By comparing it with the conclusions reached in the Rogers Report, we are able to provide fairness-focused observations.

Since the Department accepted all the Rogers Report recommendations by creating what is now known as the *Safer Schools Action Plan*, the focus of our second report, to be issued in the late fall of 2023, will be a review of that plan. It is by means of this post-investigation evaluation that we will be able to determine if the Department has put in place appropriate measures to avoid a reoccurrence of the actions and inactions that resulted in unfairness.

This Report deals with three issues. The first is an examination of why the Department, after becoming aware of an allegation in November of 2019 of the sexualized abuse of a School student, did not inform the Parents until more than 19 months had passed. The Ombudsman concludes that this delay was unwarranted and unfairly denied the Parents any opportunity to take immediate and appropriate steps to help their children.

The second issue is an examination of why the Department did an about-face and began sharing information about the sexualized abuse of a School student with the Parents in August of 2021.

The Ombudsman concludes that the Department made this decision because this matter became public through the media and the Department found itself having unexpectedly to respond.

The third issue is an examination of whether the Department had an obligation to communicate with the Parents in November of 2019 about allegations of sexualized abuse of a student or was prohibited from doing so by law. The Ombudsman concludes that the Department had a legal and policy obligation to report the matter to the Parents and that neither the *Access to Information and Protection of Privacy Act*, both old and new, nor the publication ban to protect the identity of the child victim, prevented the Department from informing the Parents at any point.

This Report finds that the complaint about the *communications failure* is substantiated. However, it makes no recommendations because any forthcoming will depend on the findings of the second Ombudsman report on this matter, when later issued.

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Complaint

[1] On October 6, 2021, an individual (Complainant) complained to the Ombudsman that officials and employees of the Department of Education (Department), including the Hidden Valley Elementary School (School), took more than 19 months to inform parents, guardians, caregivers (Parents) and students of the School about allegations of sexualized abuse of a student by educational assistant 'William Auclair-Bellemare' (WAB). The Complainant alleged that this delay aggrieved the Parents and students of the School because Parents had no critical opportunity to talk to their children and provide or seek any necessary supports in a timely manner.

[2] The Complainant also believed that this delay resulted in other students, allegedly victims of sexualized abuse by WAB, not receiving the supports they needed in a timely manner.

[3] These two aspects of this complaint comprise the ***communications failure*** that the Department was accused of, for purposes of this investigation.

Investigation

[4] Once the issue of sexualized abuse came to the public's attention through a media story on July 16, 2021, it led to four independent investigations: one by the RCMP, one by BC lawyer Amanda Rogers on behalf of the Yukon government (YG), one by the Child & Youth Advocate and one by our office.

[5] On receipt and consideration of the complaint, the former Ombudsman, Diane McLeod-McKay, made the initial decision to investigate it. This process duly unfolded, during which time she accepted a new position as the Alberta Information and Privacy Commissioner. In the fall of 2022, Jason Pedlar became the successor Ombudsman and continued the investigation. He decided to divide it into two components, each with its own focus and report.

- 1) This first report (Report) will identify any unfairness that may have resulted from or contributed to a ***communications failure*** by the Department, as supplemented by a report by Amanda Rogers (Rogers Report).
- 2) The second report, to be released in the late Fall of 2023, will examine whether the *Safer Schools Action Plan* adequately addresses the fairness issues identified in this Report and whether it mitigates those issues. After YG accepted the Rogers Report recommendations, the Department developed the *Safer Schools Action Plan* to mitigate any future occurrences of sexualized abuse in the school system.

About Fairness

[6] The 2022 Canadian Council of Parliamentary Ombudsman publication 'Fairness by Design: An Administrative Fairness Assessment Guide' (Fairness by Design) is used by Ombudsman entities across the country. It is a fairness assessment tool used to determine whether a program's decision-making process is administratively fair in design and delivery.

[https://www.yukonombudsman.ca/uploads/media/6335f1c3286ce/Fairness by Design-June17-900_2022.pdf?v1](https://www.yukonombudsman.ca/uploads/media/6335f1c3286ce/Fairness_by_Design-June17-900_2022.pdf?v1).

[7] 'Fairness' is comprised of three facets: fair process, fair decisions and fair service. In many cases, these components overlap. Fairness by Design provides the following public administrative context and standard for each component.

- Fair Process

Public organizations must follow fair decision-making processes when making decisions that directly impact a person, group of people or organization. This includes meeting the duty of procedural fairness owed to those impacted by a decision.

- Fair Decisions

Public organizations must make fair decisions. Fair decisions follow the applicable rules, consider the individual circumstances and case, are equitable and reflect a fair exercise of discretion. [An] organization should ensure it has policies and processes that support making fair decisions.

- Fair Service

Public organizations must treat people fairly. Fair service is about how people are treated when they access public programs and services. It includes ensuring [the] organization provides respectful, accessible and responsive service and is accountable to the public it serves.

[8] Although the Fairness by Design tool is intended to be used by government to evaluate programs and services that it provides to citizens, many of the underlying concepts are relevant to the broader analysis contained in this report and may help to clarify any unfairness that occurred in this situation.

Methodology

[9] On November 5, 2021, the Ombudsman issued a 'Notice to Produce Records' (NTPR) to the Department, compelling records in the custody or under the control of the Department in respect of the alleged sexualized abuse of a student by WAB. NTPRs are legal documents that flow from the Ombudsman's statutory power to obtain information and documents from any person.

[10] In 2022, the Ombudsman issued several additional NTPRs for similar records. We sent a second NTPR to the Department of Health & Social Services and the Public Service Commission (PSC) on February 16, one to the Executive Council Office on February 23 and one to the Department of Justice (Justice) on April 7.

[11] In response to the NTPRs, we received various responsive records, including communications from or involving the Parents. We then examined all these records to determine their relevance and whether any gaps existed that could be addressed by issuing additional NTPRs. In some cases, the authorities did not have responsive records or, if they did, they duplicated what the Department of Education had provided. The records received were sufficient for investigation purposes and underpin this Report.

[12] When the Ombudsman originally launched an investigation into the WAB matter, we were aware that multiple overlaps would likely occur amongst the various (non-criminal) investigations underway. While Amanda Rogers, the Child & Youth Advocate and the Ombudsman were all addressing the WAB matter from a base of similar or identical facts, the respective investigations were driven by different mandates.

[13] As such, we used the Rogers Report as a resource in addition to our own evidentiary and independent evaluation of the *communications failure* because its terms of reference align closely with issues that would result in unfairness. In making this decision, our Report is not designed to criticize or support the findings and recommendations of the Rogers Report but only to determine if they raise or miss any unanswered issues of fairness.

[14] We believe this decision best reflects our intent to minimize any overlap or duplication, especially in view of the Department's acknowledgement of its failings in managing the WAB matter. It also allows us, through a lens of fairness, to provide additional comments or expand on issues raised in the Rogers Report.

[15] To those ends, the purpose of an Ombudsman investigation is to identify issues of unfairness and provide remedies or recommendations for preventing unfairness from

reoccurring. That means we can examine the *communications failure* from our unique perspective and, to the extent possible, help the Department understand the fairness considerations that must inform decision-making about communication in the context of alleged sexualized abuse of a student.

[16] In our second report, to be issued in the late Fall of 2023, we will focus on and evaluate the Department's *Safer Schools Action Plan* issued in its response to the Rogers Report recommendations, so that we can determine whether the Department adequately addresses any circumstances in the *communications failure* that resulted in unfairness. Our second report will continue where the other investigations leave off, working to ensure that any unfairness that occurred in the WAB matter is properly corrected to avoid a recurrence.

Issues for Investigation

[17] This Report investigates three issues.

- 1) Why did the Department not inform the Parents until more than 19 months had passed after it became aware in November of 2019 of an allegation of sexualized abuse of a student by WAB?
- 2) In August of 2021, the Department did an about-face and began sharing information about the sexualized abuse of a School student. Why did it communicate with the Parents at this point, having previously remained silent?
- 3) The Department stated that it was unable to share information due to various legal obligations that included a publication ban and privacy constraints under the *Access to Information and Protection of Privacy Act* (ATIPPA). Did the Department have any legal obligations to communicate with the Parents about sexualized abuse allegations or was it prohibited from doing so by law?

Background

[18] The Department hired WAB as a School Educational Assistant (EA) in 2014.

[19] During the time period beginning on November 17, 2019 and ending January 18, 2021, a number of things occurred. A Parent informed the School principal about an alleged incident of sexualized abuse by WAB; a subsequent RCMP investigation was begun; WAB was removed immediately from the School and later fired. He pled guilty to the criminal charge of sexual interference in late 2020 and was sentenced in January 2021.

[20] During this period, the Department did not communicate with families about these events, something that Ms. Rogers states, importantly in our view, is at the ‘heart’ of her review. The same *communication failure* complaint that we received is also at the centre of this Report.

[21] It was only on July 16, 2021 that the Parents learned through the media about the allegation against WAB or his conviction, because of a related lawsuit launched against YG. The evidence indicates that they were very angry over the sexualized abuse, as well as not being told about it. They also wanted supports for the School community.

[22] The next day, the RCMP learned about other students who said they were victims of WAB.

[23] It was not until August 11, 2021 that the Department finally sent out a formal communication to the Parents assuring them of the School’s safety, offering some facts concerning the WAB matter and providing supports. It did not, however, offer an apology or acknowledge at the time that the matter could have been managed better.

[24] On September 9, 2021, the RCMP arrested WAB on a series of allegations involving two additional children between 2014 and 2018. One charge was later stayed and judgement on the others is expected in October of 2023.

[25] Between September 22, 2021 and November 24, 2021, the Department and other entities, including the RCMP, met with the Parents, sent Ministerial letters to them, conveyed apologies, and acknowledged independent investigations of the matter including this one.

[26] In October of 2021, YG commissioned BC lawyer Amanda Rogers to conduct an independent review of the Department’s handling of the first allegation that WAB had sexually abused a student.

[27] On January 31, 2022, Ms. Rogers issued her 30-page Rogers Report.

Issue 1

Why did the Department not inform the Parents until more than 19 months had passed after it became aware in November of 2019 of an allegation of sexualized abuse of a student by WAB?

[28] The evidence, corroborated by the Rogers Report, shows that the Department quickly contemplated sending a communication from the School principal to the Parents when it first

learned about the WAB matter. It began drafting one as early as December 13, 2019. The December 18 version, the last we have in evidence, states as follows.

This is to inform you that today, the RCMP have brought forward charges against a Hidden Valley Elementary School staff member. Due to the RCMP investigation, the staff member is not currently on duty at the school.

The health and safety of students is our first priority. As the incident is under investigation by the RCMP, we are not able to provide any further details at this time. However, we felt it important to notify parents.

If parents have any questions or concerns at this time, please contact me...

[targeted letter]

[29] However, the Department never sent the *targeted letter* to the Parents; instead, it sent the draft to the Public Service Commission, after which the Yukon Department of Justice and the RCMP became involved. Concerns were amplified by input from these stakeholders of having to protect the victim's identity, the complexity of WAB being innocent at that time until proven guilty in court, and the integrity of the criminal investigation. This unfairly left the Parents uninformed about the WAB matter for more than 19 months.

Fair Process

[30] A government makes countless decisions every day through those who administer its programs and services. Sometimes these decisions directly affect a stakeholder, such as in the case of accepting or denying a permit application. Others may have a broader and less significant impact, but both have one thing in common from a fairness standpoint: the process used must be procedurally fair. A discussion on how the decision itself must be fair follows later in this Report.

[31] Procedural fairness has many elements but of relevance in these circumstances is the ability for those affected by a decision to be able to participate in a fair and established process and to be afforded the opportunity to be heard. As well, any decisions that affect them must be made in a timely manner.

[32] This is why governments should have policies and procedures in place to be followed by employees. This is also why it is important that those responsible for making decisions are empowered to make them, inclusive of clear authority on what they can and cannot decide. When a decision cannot be made at a particular level, then it must be swiftly escalated to the

appropriate senior level of leadership for quick and decisive action. Having policies and procedures in place is therefore imperative, particularly when an urgent matter arises, as they provide a pre-defined blueprint for what to do, when to do it, who is authorized to do it and how to do it. This planning is indispensable and is at the root of procedural fairness.

Crisis Communications Manual

[33] The Department had such a decision-making model and included it in the records we received. It is entitled the 'Crisis Communications Manual for Yukon Department of Education' and consists of 64 main pages, as well as 358 addenda pages (Crisis Communications Manual). It is a detailed document and comprehensive in scope.

[34] Page 1 contains the document title and the name of the company that created the document, 'Braud Communications 2014, Diversified Media LLC'. Of particular importance is the following licencing information contained in a footnote.

This Crisis Communications Plan is licensed to Yukon Department of Education. It is unlawful to distribute this document to outside organizations. This document was last updated: Date MARCH 13, 2014.

[35] This shows that the Crisis Communications Manual was available to the Department in early 2014, coincidentally the same year WAB was first hired as an EA. It also shows that the Department, as of March 13, 2014, had turned its attention to developing a detailed procedure for responding to crisis situations, including the delegation of tasks, timelines and actions.

[36] The preface and purpose sections of the Crisis Communications Manual identify a 'crisis procedure diagram' setting out 10 key steps that range from gathering initial information and notifying the crisis management team, to holding a news conference and reviewing media coverage.

[37] These pages include several statements, such as the following:

If you have discovered a potential crisis, no matter your job title, you should begin following each page in this manual until a superior relieves you of this responsibility.

...Ultimately, a member of the communications team should serve as lead communicator to execute this plan. You should contact that department now at 867-[XXX-XXXX]. If there is no answer, dial 867-[XXX-XXXX]. Until the communications team can take control of this manual, you should proceed in reading this document and doing what it tells you to do. Do not guess or deviate from the directions on each page. Do not attempt major rewrites to any

news release document. Trust the plan. [Emphasis in original but telephone redactions added]

...Whether this is a sudden crisis or a smoldering crisis, proceed by reading each page and doing what this plan instructs you to do. Time is of the essence. If this is a sudden crisis, you have a critical window of 1 hour in which you are able to control the flow of accurate information about any situation. If this is a smoldering crisis, you may have more time before you have to make a public statement, but you should still proceed in following the plan.

PURPOSE [Emphasis in original]

This manual is to serve as a step-by-step, pro-active plan for our organization, for any occurrence that may reflect negatively on the function, revenues or reputation of it. The individual or manager who first encounters the potential crisis should fill in the blanks of the questions on the next page.

The manual will tell you when to forward more detailed information to the members of the Crisis Management Team, which include:

- *Assistant Deputy Minister (ADM) of Public Schools Branch*
- *Director of Community Relations & Engagement*
- *Director of Student Support Services*
- *Director of Finance*

This manual will give you detailed contact information for each person as needed. First, the information in Step 1 must be gathered to submit to the crisis communications team, 867-[XXX-XXXX]. [Telephone redaction added]

...PROCEED TO THE NEXT PAGE [Emphasis in original]

[38] The intention of the Crisis Communications Manual is clear. It is designed to assist any Department employee in how to respond in a step-by-step manner to a crisis and includes critical information, such as the existence of a ‘Crisis Management Team’ for such matters.

[39] The document also contemplates the importance of communicating with all stakeholders, including the Parents, as outlined below.

If you are a member of the Communications Team, you are designated as the lead communicator for this crisis. It is your responsibility to execute this crisis communications plan, with your primary emphasis on media communications. You should share your news release with the Deputy Minister's office, who is responsible to share with employees. You should share public information with the affected superintendent, who will share it with parents. You should designate a second communications team member to handle all internal communications to employees. All audiences are equally important. [Emphasis in original]

[40] As part of the 10 steps, the Department employee who discovers the crisis is required to work through several components. The first is to immediately put certain information into writing, such as a description of the problem, when and where it occurred, whether it is unfolding or concluded, whether employees and students [including past students] are affected, whether any school operations are affected, whether the problem was detected internally, whether there was harm to human life, whether the media is involved and so forth.

[41] The 10 addenda are also illustrative. They refer to items such as call logs, a crisis clock, key messages, Q&As, stakeholders and constituents, and staff contact information. A keyword search reveals a number of context-specific communication templates including 'Sexual Assault in School', 'Sexual Assault by an Outsider', 'Sexually Intrusive Behaviours involving Students', 'Staff to Staff Violence' (including sexual abuse), 'Staff-to-Student Violence' (including sexual abuse) and 'Student-to-Student Violence' (including sexual abuse).

[42] Staff to Student Violence

[43] This four-page addendum sets out key message templates intended to be adjusted to fit a given scenario. They include, for example, confirming that a violent incident occurred between a staff member and student at a time and place involving sexual abuse allegedly inflicted on the student.

[44] The addendum also includes a description of how the accusation was brought forth (e.g., by a student or employee), to whom the accusation was reported (e.g., staff member, RCMP), any ongoing law enforcement matters, and so forth.

In addition, it provides template messaging to address the current status of the employee (e.g., suspended, not suspended, pending), as well as wording to communicate that the Department has specific guidelines that it follows when accusations of this nature are made and proven against an employee, that these are only allegations at this point and remain subject to a legal investigation, and that not only is a person presumed innocent until proven guilty in a court of law but that everyone should allow for due process to occur.

[45] Finally, there is template messaging, some of which is identified as 'optional,' to confirm as follows.

The event is over. We do not feel that staff or students are in danger, ... We will provide counselling for those who need it. We will do our best to accommodate those who may be traumatized by the event or the news of the event.

[46] Although there is evidence that the Department drafted the *targeted letter* with a view to advise the Parents about the WAB matter so they could address their children's health and safety, we are of the view that the Crisis Communications Manual and this particular addendum could have been of significant assistance in any WAB communication considerations because it was specifically designed for such a purpose.

[47] It is unclear from the evidence, however, if the Crisis Communications Manual was in operational use between 2014 and 2017 at the time the incidents of alleged sexualized abuse involving WAB allegedly occurred.

[48] A search of the YG contract registry reveals the existence of two contracts between the Department and Diversified Media LLC in 2014.

[49] The first is a \$12,995 direct award service contract entitled 'Crisis Communications Plan Licensing' [C00021847], although the total amount as adjusted is \$10,182.72. The 'work community/goods delivery location' was Whitehorse.

[50] The second is a \$4,000 direct award service contract entitled 'Crisis communication drill' [C00022667], although the total amount as adjusted is \$2,734.08. The 'work community/goods delivery location' was Whitehorse.

[51] There is no evidence, however, of what became of these contracts or what the Department did with the products of them. All we know is that an alleged sexual assault in the School had been duly reported but, despite having paid for specific and professional guidance on how to communicate about the crisis presented by the WAB matter, the Department kept silent.

[52] In this silence, no crisis teams were set up, no *targeted letter* was sent, no one ever asked whether the Department could send a communication to the Parents after WAB's conviction and no one acted on the possibility that there may have been other victims.

[53] We also note that the Rogers Report makes no mention of this document and, as such, it is not clear whether Ms. Rogers received a copy as part of her investigation.

General Administration Manual (GAM) 1.3

[54] According to the Rogers Report, the Department lacked a clear policy and procedure for incidents of this nature. While this is debatable in view of the Crisis Communications Manual, the Rogers Report also refers to the YG General Administration Manual Policy 1.3 'Communications Policy' (GAM 1.3) [2012-01-24].

[55] GAM 1.3 is a corporate-wide communications policy that binds the Department. All officials are deemed to know about and subscribe to it.

[56] Its purpose is to promote effective communications in accordance with certain specified principles. Since the Department is bound by this YG policy, it is our view that it had this additional guidance at its disposal to help address the communication complexities presented by the WAB matter, especially whether it should notify the Parents.

[57] Section 2 of GAM 1.3 sets out, for example, the various roles and responsibilities of Ministers, the Cabinet Communications Advisor, DMs and Departments [pages 3-5]. They are paraphrased as follows.

2.2 Ministers are the principal spokespersons of YG. They are supported by the Cabinet Communications Advisor, departmental communications staff and senior management.

2.2.1. The Cabinet Communications Advisor, on behalf of the Premier and Ministers, manages media and public relations by taking a coordinated approach to communications.

2.3 Deputy Ministers (DMs) are generally responsible for establishing communications processes and procedures.

2.4 Departments are responsible for developing and carrying out communications initiatives consistent with government and departmental goals, as well as corporate communications policies.

[58] The descriptions of these roles and responsibilities demonstrate that YG has a network of senior leaders and support imbedded in a corporate-wide governing policy that guides who should be called on to participate in a decision-making process or make decisions about a serious communications issue.

[59] However, the evidence shows that those responding to the WAB matter failed to recognize the significance of these roles and responsibilities. Rogers suggests that the Department did not know what to do, leaving important decision-making in respect of managing the WAB matter to 'lower-level individuals'. As such, none of the Ministers

responsible for the Department, Public Service Commission or Department of Justice were kept informed and information about the decision not to inform the Parents never reached Cabinet.

[60] The Department did, however, create two briefing notes for the Minister of Education in November of 2019 and an updated version in March of 2020 but these documents did not alert her that a decision had been made not to communicate with the Parents or why this decision was made. The information the Minister did receive was limited to statements that the RCMP was investigating a School staff member and that the School was cooperating.

[61] Although the DM remained involved with developments in the WAB matter, including its HR issues, at no time was GAM 1.3 engaged. As such, it is not possible to determine what effect the roles and responsibilities in section 2 might have had in how best to navigate the legal and public interests at play. What did occur was the *communications failure*.

[62] Principle 1.4.9 – ‘Emergency communications’ [GAM 1.3 page 2]

Information that is accurate, timely and relevant is essential in times of crisis in order to protect the health, safety, security and property of Yukoners.

[63] While this applies, at first glance, to major emergencies where YG staff are responsible for notifying and involving affected departments and external agencies, it can apply, in our view, to events such as the WAB matter because the required communication responses are similar in the context of situational awareness, communicating in real time and being relevant to a specific audience.

[64] The purpose of the emergency communications principle, akin to fairness in this respect, is to provide key information so that affected individuals, such as the Parents, can make the most appropriate decisions about what to do in response. The principle is generally met by keeping the information simple and credible, as well as expressing empathy in its delivery. In addition, emergency communications require an understanding of the various audiences and a dynamic ability to adjust the information to meet the needs of each segment. In the WAB matter, this could have meant providing pertinent information that may have differed in content depending on whether it was intended for the Parents or the general public.

School Emergency Response Plan

[65] Additionally, the Department also has a ‘School Emergency Response Plan’ (SERP). This plan sets out procedures to help protect the health and safety of students should an emergency arise. This includes not only how staff should respond to such things as fires, earthquakes,

threats, medical incidents or issues with the school building, but what communications protocols they should follow in respect of the RCMP, other emergency services and parents.

[66] The Rogers Report states that responding to an allegation of criminal behaviour by an employee is different from the emergencies contemplated by the SERP. That is a correct statement in that the SERP does not include any procedure on how to respond to the emergent situation presented by allegations of sexual abuse towards a student, but the Rogers Report makes the following important observation.

[The SERP] includes ... guidance on who the principal should be communicating with, who will assist in drafting communications, and crisis communications samples and templates, as well as provisions pertaining to the establishment of a School Crisis team to support the physical, mental and emotional health of staff and students.

[67] From the evidence, we know that the SERP guidance was not followed and that none of these steps occurred. In addition, the Department crucially did not recognize that there may have been other victims and the initial focus of the RCMP investigation remained on only one child.

Record Keeping

[68] This failure to recognize the possibility of other victims was due in part to deficiencies in School-level record-keeping processes regarding the identity of former students and a lack of records concerning EA assignments. This impeded the timely identification of other potential victims of WAB. In our view, it was foreseeable that one case of alleged sexualized assault might mean there could be other such cases, both in the past and in the present. Not having any such School registries on hand to facilitate critical information searches that might significantly aid in a criminal investigation made an already serious situation even worse.

Fair Process Conclusion

[69] Despite having multiple processes, communication templates, guidance documents, and corporate-wide emergency communications principles outlined in the GAM, as well as the SERP at its disposal, the evidence shows that the Department did not engage any of these policies or procedures. There is no evidence that the Department employed any rigorous standards or applied any established processes to address the WAB matter. In our view, the Department's failure in this respect was unfair to the Parents and students of HVES and does not meet standards of procedural fairness.

Fair Service

[70] A government department is expected to provide responsive and people-centred service. In doing so, that service should support respectful treatment and fair consideration of the needs and circumstances of the people who place their trust in that department regarding its mandate.

[71] The mechanics of providing this service are not exhaustive but include, for example, developing service delivery standards that incorporate reasonable timelines and responsive decision-making, processes to be followed in serving people with skill and dexterity, staff training and education about the service standards, and the need to avoid unnecessary delay. In the case of delay, responsive service means explaining to those affected why the delay occurred and when a decision or service can be expected. It also means explaining what steps have been or are being made to minimize any potential hardship resulting from the delay.

[72] Policies and procedures must also support the delivery of services not only in a trauma-informed manner, but infused with appropriate cultural humility.

[73] Principle 1.4.3 – ‘A responsible public service’ [GAM 1.3 page 1]

Communications is a critical component of all government activities and an integral part of planning and delivering programs and services. [YG] is committed to accessible, impartial, accurate, responsible and timely public communications.

[74] This principle is clear in its purpose and methodology. Put in the context of the Parents, it is reasonable to expect that a responsible public service, especially in the emergent situation of child sexualized abuse, would coordinate its applicable communication resources and inform the Parents in an accurate and timely manner. This coordination would include, in our view, a communications staff that fully understands and acts on its internal responsibilities in support of that public interest.

[75] In our view, the Department’s inaction in respect of informing the Parents when the WAB matter first arose compromised the Department’s duty of fairness that underpins both the GAM principle and the ‘responsive service’ fairness standard. It left the Parents uninformed at a critical time and without immediate support where required. The Department’s decision not to inform the Parents because it wanted to protect the privacy of the victim and the integrity of the RCMP investigation had the unintended effect of reducing the special interests of the Parents to the general interests of the public. In doing so, it failed to serve the indisputable needs of the Parents and their children.

[76] In the WAB matter, the Department was presented with a volatile mix of considerations, some of which supported a specific communication and others a broader approach. However, the Rogers Report states that, in reviewing these considerations, the Department could have sent the Parents a *targeted letter* in the circumstances. In choosing not to do so, it had the effect of forsaking the trust and respect that the Parents had previously extended to the Department as parents of children in the school system.

[77] We are of the same view. The Department did not provide a responsive and people-centred service. As a result, the evidence shows that the Parents were outraged at the Department's lack of communication with them. It left them feeling that the Department was not taking the WAB matter seriously or had other motives. One Parent wrote the following in August of 2021. [email]

The fact you didn't tell all the parents in the school that this happened when this happened has destroyed much of the trust that you and your superiors had from families (including mine). It no longer seems you folks actually care about the wellbeing of these children more than hushing things up for your employer, the [Department]...

...The [Department has] skirted around the fact that [it] made a serious error in dealing with this incident then and now when we were finally notified by the case before the courts a few weeks ago.

[78] At the centre of the 'responsible public service' principle is a commitment to communicate. In the absence of such communication, it is not surprising that Parents felt angry at not being treated fairly. This is why the 'Fair Service' standard informs policies and procedures that empower staff to respond adeptly to inquiries, requests and complaints. It is an essential element of a stable society. In turn, this depends on the extent to which individuals in that society feel they are being justly treated, especially by a public organization. If they feel they are not being treated fairly, then this undermines their trust in that organization.

[79] The Department's failure to embrace this service standard had consequences. The evidence shows that, despite the initial plan to send the *targeted letter* to the Parents, caution intervened to the extent that not only did the communication focus change from the Parents to the general public, but also that no Parents were provided with any information about the WAB matter for more than 19 months, a period that might have continued but for the media story reporting on an associated lawsuit. That caution about what could be put into the *targeted letter* without compromising both the identity of the child victim and the employment rights of WAB was not informed, in our view, by the tenets of this principle.

[80] Principle 1.4.1 'Duty to inform' [GAM 1.3]

[YG] has a responsibility to inform citizens of its plans, programs, services and activities and to respond to questions about government decisions on matters of public interest.

[81] At first glance, this seems quite broad. Citizens can be construed as vague members of the general public; 'plans, programs, services and activities' seem to describe most of what government offers to them; and officials must answer questions about any decisions they make concerning the welfare of society at large. It can also apply to a more specific group in a particular situation.

[82] In this case, the citizens comprised a group identified as the Parents. As initially contemplated, when the Department first became aware of the WAB matter, its plan was to notify the RCMP, remove WAB from the School and inform the Parents about the issue so that they could take appropriate steps on behalf of their children.

[83] The context of November 17, 2019 was clear. An emergency had arisen. A child had said they had been sexually abused in the School. The alleged offender had been removed. Other students may have been similarly abused. The Parents needed to be informed so they could ask for help and provide critical support to their children. The sooner they were informed, the sooner they could act.

[84] The result of this cross-departmental and external agency involvement was, according to the Rogers Report, a misguided and acute focus shift from a communication written specifically for the Parents about their children to a general response about what the Department could say 'publicly' about the WAB matter, if anything.

[85] At the root of 'fair service' is the notion that government departments operate first and foremost through the lens of public service. As such, their decisions must not only fulfill a purpose but also uphold the dignity and respect of the public they serve. That means fair service is as much about the way individuals are left *feeling* after an interaction as it is about the outcome of the interaction itself.

[86] From this perspective, it is understandable that the Parents felt an acute sense of betrayal and unfairness in the way the Department treated them. Not only were they left unaware that their children could possibly have been exposed to sexualized abuse, but the Department's initial communications about the WAB matter on August 11, 2021 included no apology or acknowledgement of how it handled the matter. In our view, this directly contributed to the Parents' sense of feeling 'dismissed' along with their concerns. For example, the evidence

shows that they believed their children's wellbeing was seen by the Department as being somehow less important than WAB's employment status.

Fair Service Conclusion

[87] In our view, immediately issuing the *targeted letter* would have gone a considerable distance in demonstrating the Department's commitment to fair service because the purpose of such commitment is to increase public confidence in the system, especially in such a serious situation as this one. Not issuing it had the opposite effect. Similarly, not apologizing or acknowledging what it did amplified this effect.

[88] The correspondence we reviewed between the Parents and the Department indicates that the Parents believed that the Department wanted to calm the WAB matter politically rather than offer them and their children the supports they required at the time. In their opinion, this put the Department's needs above those of the students. In our view, the Department's subsequent communications, including letters and meetings with the Parents, did little to dispel that belief and its attendant anger.

Fair Decision

A government's decision-making processes must be people-centric. Not all decisions are created equally; those that have a substantial and long-term impact on individuals must be made with careful consideration and must always focus on the needs of those most impacted by the decision. The significance and impact of a decision directly relates to the urgency in which a decision must be made. As such, delays or inaction are inherently unfair. In the case of the WAB matter, this should have meant keeping the focus on the students and the Parents from the start.

[89] When the Department first became aware of the WAB matter in November of 2019, the evidence shows that it struggled with what it considered to be competing interests. On the one hand, there was the issue of whether to notify the Parents. On the other hand, there was the issue of protecting the victim's identity. In our view, this was not a binary option of one choice at the expense of the other, but all the same, the effect of this consideration caused the Department to lose its people-centric focus. This had the tangible outcome of failing to provide support to the Parents and students alike.

[90] In fact, the Department had several choices, including the choice of informing the Parents immediately or as soon as practicable, the choice of informing the general public in the same timeframe, and the choice to do neither. In our view, having a duty to inform the Parents and their children but not exercising it was an unfair decision.

[91] The evidence shows that, on November 17, 2019, a Parent informed the School principal that their child had allegedly been sexually abused by WAB. This was a Sunday. This information was immediately reported to Family and Children's Services (FCS) and the RCMP. From Monday November 18 to Thursday November 21, the RCMP worked closely with School administration and FCS to investigate the allegation. It is our view, therefore, that an emergency suddenly existed at the School and required a timely response, as contemplated by this principle.

[92] In the days that followed, Department communications staff prepared the draft *targeted letter*. The Parents needed to know about the allegation, the RCMP investigation, the removal of the staff member and the possibility that the RCMP might contact them as part of its investigation. By becoming so informed, they could immediately take appropriate steps concerning the health and safety of their children. Instead, the Department merged the specific interests of the Parents into the broader interests of the public and left both uninformed for more than 19 months.

[93] For many individuals, the WAB matter was one of huge significance with extensive and serious consequences. The Rogers Report states, and we agree, that it required both highly complex decision-making across YG and appropriate leadership oversight to ensure that its communications response was adequate.

[94] At no point did the Department appear to take into account the urgency needed to make a decision about the *targeted letter*, the optimum time for that decision, or the timeframe in which to evaluate the decision once made. What did ensue was a reliance on the Department's communications branch as the only conduit for disseminating advice from Justice and the RCMP to the Department's Assistant Deputy Minister. This meant that neither the Department DM, Minister nor Cabinet had sufficient oversight, if any, on the decision not to communicate with Parents about the WAB matter.

Fair Decision Conclusion

[95] After quickly drafting the *targeted letter* to the Parents, who had a specific stake in the WAB matter, the Department soon shifted its focus from what it should tell them to what, if anything, it could tell the public, a formless entity that only had a general stake in matters of student safety. The Department also mistakenly believed that it had no responsibility to communicate with the Parents because the RCMP would likely notify them in the course of its investigation.

[96] As such, the Department failed to engage both the Crisis Communications Manual, however its status, and a corporate-wide, binding GAM 1.3. This resulted in a situation in which

important decision-making in respect of managing the WAB matter was not escalated to the appropriate level of senior leadership for quick and decisive action, nor was the benefit of inter-departmental ministerial or Cabinet involvement considered. There is no evidence to suggest that the Department knowingly and intentionally arrived at a clear decision that it would not communicate with the Parents on the WAB matter as originally contemplated. However, simply failing to communicate (or failing to make a decision to communicate) becomes a de facto decision of its own.

Issue 1 Conclusion

[97] Based on the evidence, we are of the view that the more than 19-month delay in informing the Parents was unfair, for the following reasons.

- The Department did not follow any structured policy or process for communicating with the Parents about the sexualized abuse allegation, despite having such policies in place. This was a failure to meet the “fair process” component of fairness in public administration. (All three components of fairness are discussed earlier in this report.)
- Those most directly impacted by the WAB matter, the Parents and students, did not receive the responsive people-centred service that underpins fairness. Instead, they were left feeling disrespected, dismissed and angry. The Department did not give fair consideration to their needs and did not live up to the Parents’ expectations that the Department would keep them informed so that they could make informed decisions for their children. Simply put, they had lost their trust that the Department was acting in the best interest of their children. This was a failure to meet the “fair service” component of administrative fairness.
- Finally, the decision not to communicate with the Parents about the WAB matter (or the failure to make a decision) did not focus on the needs of those it served, the children. This was a failure to meet the “fair decision” component of administrative fairness.

Issue 2

In August of 2021, the Department did an about-face and began sharing information about the sexualized abuse of a School student. Why did it communicate with the Parents at this point, having previously remained silent?

[98] The Department’s decision not to send the *targeted letter* to the Parents when the WAB matter first arose abruptly changed more than 19 months later on July 16, 2021. A CBC North

story entitled, 'Lawsuit filed against Whitehorse educational assistant who sexually abused student', reported that a student at the School had filed a civil action on July 14 alleging that WAB had sexually abused them during the 2019-20 school year. It also reported that YG was named as a defendant. The story did not identify the victim due to a publication ban, nor did it name WAB.

[99] The evidence shows that the day after the CBC story was broadcast, the School principal and another person discussed the possibility of additional WAB victims.

[Person]: ... *I hope if this EA worked with any other children that the parents are also informed because this is a serious serious issue.*

[Principal]: *I agree that it is a very serious issue and the police would have been in contact with anyone if there were further concern. It is out of our hands at the school level.*

[Person]: *Ok thanks. I just wanted assurance that this EA never worked with my [students] who are very vulnerable as you know. I had one sketchy experience with one of [student's] EAs when [they were] younger that was addressed but if it was the same EA then I would need to know.*

... My heart is broken.

[Principal]: *I know. Mine is too.*

[100] Shortly afterwards, the RCMP received an unsolicited disclosure involving alleged sexualized abuse by WAB sometime in 2014-18. The Department's DM wrote as follows.

...on July 17, 2021, RCMP received a report from a parent, that the incident the teacher spoke of in November of 2019, actually took place with their child during the 2015/16 school year—not the same victim that was reported to police by the school. At the time of that incident, the parent advised that they met with the school who informed the parent that the incident had been handled internally by the school. It was as a result of this new information, police realized other victims were involved and confirmed the identification of a new victim, not the same victim as the first victim. [DM hand-written notes]

[101] Internal RCMP discussions ensued about the need to communicate with the public and that it was in touch with the Department about a communications plan. [email] As part of this process, the Department reviewed several records including a briefing note, last revised for the Department Minister on March 3, 2020, that contained the following message for public dissemination. [email]

Due to privacy obligations, we are not able to disclose personnel information.

Due to the serious nature of this case, and in order to protect the identity of the victim, a publication ban is in force.

[102] On July 21, 2021, Department officials discussed an email sent from a Parent to the Premier [copied to the Department Minister, School principal, CBC] setting out a number of concerns related to the WAB matter and its discovery due to the CBC story. The School principal wanted to know if there was a communication plan moving forward. Discussion followed about the need to consider sending a letter to the School community confirming the facts, as well as the protocols involving the RCMP taking charge of the investigation once the allegation was substantiated. Department officials also checked WAB's employment file for his 'vulnerable sector' check and found that it was valid at the time of hire in 2014. The outcome of the discussion was to contact Justice about sending a letter to the School community.

[103] On July 22, 2021, the School principal learned about another unsolicited disclosure concerning WAB. This prompted more Department discussion the next day about the need to develop 'communications' for the School community, although with the expressed hope that they would come from the RCMP. The content, from the Department's perspective, would likely focus on "helping families have conversations with their kids about this issue (and to encourage disclosure if necessary) rather than commenting on or justifying past actions." [email]

[104] On July 28, 2021, the Department learned about the formation of a group of Parents called 'The Concerned Parents of Hidden Valley' who were apparently 'furious' about the Department's handling of the WAB matter. This added more tension to the situation. A conversation between the School principal and another person states the following. [text message]

[Person]: ... *It's all too much. Why hasn't the [Department] offered to dispatch counselling services to the parents and students and staff of [the School]? Or even sent out a media release to them?...*

[Principal]: ... *We feel for all of the students and parents... I am working on trying to get services for the school. Let me know if I can support your family or any other family that comes out to you.*

[105] On the same day, some internal RCMP discussion ensued about a Parent who only learned about the WAB matter from the CBC story.

... [The Parent is] *advocating for the [Department], Social Services, and [the] School to reach out to the families of the School, to offer counselling services, and other support services assisting with appropriately communicating to the children about sexual assault... so far [they have] not received much of a response, which has caused further frustrations.*

[106] On July 29, 2021, ‘The Concerned Parents of Hidden Valley’ sent an email to the Department Minister, media outlets and others requesting an explanation for why the Parents were not informed about the WAB matter.

[107] On August 11, 2021, the Department sent a letter to the Parents entitled ‘Returning to school – supports are available’ (*Aug/21 Letter*) and signed by the Department’s Assistant Deputy Minister of Schools and Student Services (ADM). The ADM acknowledged the Parents’ concerns about the safety and wellbeing of School students, families and staff, as well as assuring them that the School will be a safe environment when the new school year begins shortly. It then stated as follows.

Unfortunately, in 2019 an employee chose to abuse their position of authority and trust with a student while in the school. This individual was criminally charged, convicted, and sentenced for his actions. We recognize that you and other families have many questions about recent reports concerning this former employee. We take all concerns involving the safety of our students very seriously. While protecting the safety of students we are also obligated to respect a victim’s privacy rights.

When this matter came to the attention of Hidden Valley’s school administration in 2019, they informed the RCMP, who commenced an investigation (and it is our understanding the RCMP have opened further investigations). In addition, as soon as the school administration and department officials became aware of the allegation, they immediately ensured that the individual was no longer allowed to work with students at Hidden Valley or in any Yukon school. This was an important step to ensure the safety of our students and protect them from this individual.

[108] In addition, it spoke to the provision of supports that the Parents could access, the curriculum measures in place to help prevent inappropriate situations from occurring, and what to do if the child of a parent discloses ‘concerning information about harm’ coming from a School staff member. It also set out the Department’s duty of care to uphold the safety of all students and provided a comprehensive list of applicable legislation, policies and procedures to that effect.

[109] On November 9, 2021, the Department met with the Parents on 'Zoom' and acknowledged its decision not to inform them about the WAB matter when it first arose. It also stated, amongst other things, the following.

We need to learn more about when and how to best communicate with the school community while upholding privacy legislation and the publication ban. We have apologized for not sharing more targeted information. We believed the RCMP would have then been best positioned to communicate to parents directly involved. As we have since learned, that was a mistake and we are sorry for how families found out about this situation. We acknowledge the anguish this has caused families.

We're taking a hard look at our communication practices and have drafted a tool that will guide communications moving forward.

[110] What is significant about these events is that the Department went from a position of not informing the Parents about the WAB matter for more than 19 months to one of quickly deciding to reverse its position without any legal consequences. Had the Department first turned to the Crisis Communications Manual or GAM 1.3 on November 17, 2019 and the applicable principles already discussed, it is reasonable to believe that a more focused discussion may have ensued about why it should immediately have been necessary to inform the Parents in their context of a special interest group distinct from the general public, as well as what could have been said to them within the appropriate legal constraints.

[111] It is also reasonable to believe that the new disclosures which followed the CBC story might have arisen much sooner than they did and that the Parents of other victims could have obtained the services they needed at that time. This did not occur because, according to the Rogers Report, the School principal, on first learning about the allegation against WAB on November 17, lacked any background information that could have assisted the RCMP in the timely identification of additional victims.

[112] The evidence shows that the School principal's predecessor did not report or document an earlier incident, reported to that principal by a teacher, about a possible occurrence of sexualized abuse by WAB against a student sometime in the 2014/15 school year. Although they both spoke with WAB about the incident, the then-principal accepted WAB's explanation and closed the matter. This amounted to a subjective decision not to proceed despite their legal obligations to the contrary.

[113] When a Parent learned about this earlier incident following the CBC story, they wrote as follows.

...I was under the impression that this incident was fully documented and written up, something that I have recently found to be untrue...

[114] In addition, this Parent felt that the alleged incident was quietly dismissed by the Department and added that, although the teacher claimed to have provided the RCMP with a statement, the RCMP claimed never to have received it. [email]

[115] The then-School principal made a subjective and flawed decision not to report or document the alleged 2014-15 incident. Because of this decision, this information was also kept from the Parents and only became known after the WAB matter went public in July of 2021. As such, its effect on the Parents, by conveying that other children may have been earlier victims of WAB, was understandably shattering.

[116] In our view, this is another instance in which the Parents were not treated fairly. They initially placed their trust in the Department only to have it eroded by learning of the original case of sexualized abuse and then further eroded when they learned that the Department had not reported or documented earlier alleged criminal transgressions by WAB. Not only had the Department failed to inform Parents about this most recent allegation, it had in fact failed to inform Parents about allegations of sexualized abuse dating back to 2014-2015. Although the reasons for not being informed were different, the end result was the same: the *communication failure* was not an isolated incident.

[117] The Parents should not have had to learn about the WAB matter and earlier incidents much later and in the media. They should have learned about these matters promptly and from the Department. In addition, they should not have had to wait from November of 2019 to August of 2021 for the provision of counselling and other resources to help them talk with their children about sexualized abuse.

Issue 2 Conclusion

[118] The Department did an about-face and began sharing information about the sexualized abuse of a School student because the WAB matter went public in the media and the Department found itself unexpectedly having to react to the result.

[119] It was through the CBC story about a civil action being filed against the Department concerning the WAB matter that the Parents learned for the first time about the allegation of sexualized assault in the School. In turn, this led to the RCMP receiving new information that other victims had allegedly been sexually abused by WAB in the School, prior to the victim in

the initial disclosure. It also led to mounting Parental pressure on the Department to provide them with vital information.

[120] If it were not for the media story, we are of the view that the Department would likely have maintained its silence about the WAB matter, thus perpetuating the unfairness of depriving the Parents from taking any timely action concerning their children and also withholding information that, once released, directly led to two more disclosures of criminal behaviour.

Issue 3

The Department stated that it was unable to share information about the WAB matter due to various legal obligations that included a publication ban and privacy constraints under ATIPPA. Did the Department have any legal obligations to communicate with the Parents about sexualized abuse allegations or was it prohibited from doing so by law?

[121] Fair decisions must follow the law and meet any legal requirements. As such, a public organization must ensure compliance with its governing legislation and any other laws, policies and procedures that might apply in a given situation. If there were legal impediments that prevented the Department from not informing Parents, then its silence may be justified. Alternatively, if the Department was obligated by law to inform the Parents and did not do so, then this would be unfair. It is important, therefore, to analyse what legal obligations the Department had, if any, to notify the Parents.

Legal Obligations

[122] There were three allegations of sexualized abuse by WAB. The first involved the victim of the November 17, 2019 disclosure. The others involved two additional victims sometime between 2014 and 2018.

Child and Family Services Act (CFSA)

[123] Section 22 of the CFSA requires a person, where they have reason to believe that a child needs protective intervention, to report the information based on that belief to the police or the director of Family and Children's Services (FCS), even when they may be unsure about the alleged abuse, but other indicators are present. This duty is not discharged if a person, such as a teacher, reports their belief to a colleague or principal. It is also not discharged if the information was supposedly disclosed in confidence. To emphasize the importance of that duty, the provision protects a person from liability when they report this information in good faith and without malice.

Education Act

[124] Paragraphs 168(i) and 169(n) of the Education Act respectively require a teacher to report to the principal and a principal to report to “the proper government official responsible for child welfare” any conditions or circumstances that could reasonably affect the health or safety of students.

Department Policy 9.11

[125] This policy requires Department employees to report suspected abuse or neglect to the Department of Health and Social Services. It also places an annual responsibility on principals to review the procedure with staff.

[126] These statutory and policy obligations clearly require teachers and principals, in addition to others, to report allegations such as those raised by the WAB matter even where there may only be signs of possible sexualized abuse. While the Department complied in respect of the November 2019 incident, it did not comply in respect of the alleged 2014-15 incident(s). (We note that there are no other facts before us concerning the other additional incident that allegedly occurred between 2014 and 2018.)

[127] Although the Rogers Report states that the breach of the then-School principal’s duty to report was not found to be intentional due to a mistaken exercise of discretion, and no record was kept of the incident [page 27], the Department nevertheless fell short of its legal and policy responsibilities. For the Parents, this meant that the promise the Department made to protect their children in the School was broken and, in our view, directly contributed to the overall anger Parents felt about the *communications failure*. When the Parents finally found out about the WAB matter, their reaction was immediate, emotional and lasting because, in part, the failure to notify Parents embodied a clear connection to the Department’s duty to report.

Legal Prohibitions

[128] The Department stated that it was legally prevented from sending the *targeted letter* to the Parents because of the *Access to Information and Protection of Privacy Act* (ATIPPA) and the publication ban. The Rogers Report disagreed with this position and the Parents believed the Department’s statement to be self-serving.

[129] We examined the ATIPPA and the publication ban in coming to our own conclusions.

ATIPPA

[130] ATIPPA RSY 2002, c.1 (Old ATIPPA) was repealed and replaced by ATIPPA SY 2018, c.9 on April 1, 2021 (New ATIPPA). The Rogers Report correctly identifies the Old ATIPPA in place on November 17, 2019 regarding the *targeted letter* but it then applies the New ATIPPA to its analysis. For purposes of this Report, both ATIPPA enactments will be discussed as applicable.

[131] *Old ATIPPA*

[132] One of the purposes of the Old ATIPPA was to prevent the unauthorized collection, use, or disclosure of personal information by public bodies [paragraph 6(d)]. Disclosure of personal information was only authorized in certain circumstances, such as in the case of compelling circumstances affecting anyone's health or safety... [paragraph 25(2)(b)].

[133] Although the Department knew the identity of the victim and their Parents in the initial WAB matter, the December 18, 2019 version of the *targeted letter* did not contain their personal information. However, it did state the following about WAB.

...the RCMP have brought forward charges against a Hidden Valley Elementary School staff member. Due to the RCMP investigation, the staff member is not currently on duty at the school.

[134] The definition of 'personal information' in the Old ATIPPA was defined as "recorded information about an **identifiable individual**, including information about..." (Emphasis added)

[135] Given the above text in the *targeted letter* about the staff member, it is our view that there is no precise connection between this 'staff member' reference and the identity of WAB. In addition, the text is not about any particular staff member. As such, if the above excerpt in the *targeted letter* is not personal information about WAB, then ATIPPA does not apply to it.

[136] However, the evidence shows that the Department believed the *targeted letter* contained WAB's personal information that could not be disclosed. From that perspective, we are still of the view that the Department had a duty under the Old ATIPPA to disclose the contents of the *targeted letter* as contemplated. Subsection 28(1) stated that despite any other Old ATIPPA provisions, a public body must disclose information to the public or an affected group of people if the public body has reasonable grounds to believe that the information would reveal the existence of a serious ... health or safety hazard to the public or group of people. When the WAB matter first arose, this provision required the Department to inform the Parents because it was plausible that there were other WAB victims than just the child in question.

[137] For these reasons, regardless of whether it contained WAB's personal information, the Old ATIPPA did not prevent the Department from sending a *targeted letter* to the Parents, such as the one contemplated in the December 18 draft; rather, it obligated the Department to do so.

[138] *New ATIPPA*

[139] When the WAB matter became public after the CBC story was broadcast, the New ATIPPA was in effect.

[140] The Rogers Report states that paragraph 21(d) recognizes that a public body may disclose personal information without authorization when the use is necessary for the public body (i) to prevent or reduce a serious threat to public health or safety, or (ii) to protect the health or safety of an individual. In addition, the definition of 'personal information' in the New ATIPPA is very similar to the definition in the Old ATIPPA. For the same reasons stated above, the text in the *targeted letter* about the staff member was not, at that time, personal information about WAB, an identifiable individual. As such, paragraph 21(d) is irrelevant.

[141] The Rogers Report also states that section 83 of the New ATIPPA specifically authorizes disclosure of information, including personal information, in the absence of an access request in cases where significant harm may result if information is not disclosed. This is considered the 'public interest override' provision because it supersedes all other sections of the New ATIPPA and recognizes that an individual's right to privacy is not absolute. In such circumstances, disclosure must occur without delay. In addition, where the information relates to a specific group, such as the Parents, the public body head must ensure that they choose effective ways to reach this group, including steps to keep only them informed. As such, section 83 enabled the Department to disclose the information to the Parents, as contemplated by the content of the *targeted letter* and the *Aug/21 Letter*.

[142] In our view, neither the Old nor New ATIPPA prevented the Department from informing the Parents about the WAB matter through the *targeted letter*.

[143] The Department also admitted that it could have done more to contact the Parents, especially those whose children came into direct contact with WAB. In a September 23, 2021 media briefing, it stated the following.

...we deeply regret that we didn't find a way with the RCMP to communicate in a targeted and discreet way to other families that also upheld privacy legislation and later the publication ban. ... We need to learn more about when and how to best communicate with the school community while upholding privacy legislation and the publication ban.

Publication Ban

[144] On December 16, 2019, three days after the first draft of the *targeted letter* to the Parents had been prepared, the PSC advised the Department that, according to the RCMP, there could be a publication ban in effect and there might not be anything it could say. [email] The concern, however, seemed to be about what the Department could state about WAB's employment status rather than what it could generally convey to the Parents about the WAB matter concerning their children.

[145] The evidence shows that the Court did put a publication ban in place on December 18, 2019 to the effect that "any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way..." [*Criminal Code of Canada* subsection 486.5(1)].

[146] Publication bans are taken very seriously. It is common knowledge that court proceedings are based on the 'open court' principle because, in a democracy, justice should be seen to unfold in public. This allows citizens to make up their own minds and voice their own opinions about court practices and the administration of justice. To restrict this openness in the form of a publication ban, the Supreme Court of Canada stated that there must be a serious risk to the core aspects of an individual's personal life that bear on their dignity if that highly sensitive information were publicly disseminated [*Sherman Estate v Donovan*, 2021 SCC 25 at para 33].

[147] The evidence shows that the last version of the draft *targeted letter* coincided with the date of the publication ban and that the Department decided not to send it to the Parents. As previously stated, its sole purpose was to inform the Parents that the RCMP had charged a School staff member and that, due to the investigation, the individual was not currently on duty. It added that the health and safety of students was the School's first priority but, given the investigation, it could provide no other information.

[148] It is difficult to determine how such content would have offended the publication ban unless a resulting mosaic of information existed that could have compromised the child victim's identity. However, there is no evidence to that effect. In our view, the Department could have sent it so that the Parents would have had the critical opportunity to speak with their own children and seek support if it was revealed something untoward had happened to them. The Rogers Report came to a similar conclusion [page 14].

While a publication ban was certainly an important and valid consideration in respect of what the Government could say about the WAB matter publicly, it did not, in my view, restrict

Government from informing the [School] community that an allegation of criminal conduct had been made against a staff member and that the staff member was no longer working at the school while the investigation was ongoing. Nor, did the publication ban prohibit [the Department] from working in conjunction with the RCMP to send a targeted communication to parents and guardians of children who would be contacted as part of the RCMP's criminal investigation.

[149] The evidence shows that the Department did send the Parents the *Aug/21 Letter* and then met with them via Zoom on November 9, 2021. In our view, the Department provided them with essentially the same information contained in the *targeted letter* despite the publication ban still being in place.

[150] For the record, the Rogers Report states that the publication ban was not in place when the Department initially contemplated sending the *targeted letter* in November of 2019 and that the publication ban was rescinded after WAB pled guilty in 2020. This latter statement is incorrect as the publication ban continues to remain in effect at the time of this Report. Justice also noted this error. However, it took the view that the conclusion in the Rogers Report about the Department being able to inform the Parents without offending the publication ban was a very narrow interpretation.

[151] We are of the view that the Department could have sent the *targeted letter* despite the publication ban, especially given the fact that it finally provided the Parents with this information in the form of the *Aug/21 Letter* once the WAB matter became public on July 16, 2021.

Issue 3 Conclusion

[152] It is our view that the Department and its staff did meet its obligations under the *Education Act* and under the CFSA to inform the CFS and the RCMP though failed to follow its own policies on responding to situations of suspected student harm.

[153] Regarding the Department's position that it was prevented from notifying Parents of the WAB matter by ATIPPA (Old or New), it is our opinion that ATIPPA did not prevent the Department from informing the Parents about the WAB matter in the manner contemplated by the *targeted letter*. In addition, the Department could have sent the *targeted letter* despite the publication ban, noting that ultimately it provided the Parents with this information once the WAB matter became public as a result of the CBC lawsuit story.

Conclusion

[154] In summary, we are of the opinion that the complaint about the Department's *communications failure* is substantiated. In treating the Parents the same as the general public, the Department misconstrued its obligations to the Parents. Despite its concerns about victim identity and WAB's employment rights, there remained a need to notify the Parents about an allegation of sexualized abuse that may have affected their children. The Department should have informed them about the WAB matter immediately after it came to the Department's attention on November 17, 2019. Parents would then have had the critical opportunity to talk to their children about the issue and provide or seek any necessary support in a timely manner. In addition, it likely would have prompted disclosures from additional child victims.

Recommendations

[155] Given our findings, we would normally make recommendations. However, the Department accepted the recommendations of the Rogers Report and we will be issuing a second Ombudsman report in the late Fall of 2023. That report will examine whether the *Safer Schools Action Plan*, developed by the Department in response to the Rogers Report, adequately addresses the issues identified in this Report and whether it mitigates those issues. As such, it will contain recommendations depending on its findings.

Report regarding investigation of Complaint

[156] As per section 23, we are providing this Report to the Deputy Minister in their capacity as the chief executive of the affected Department.

[157] If the Department wishes to make comments about any of the recommendations, then please provide comments in writing to the Ombudsman's office no later than **September 5, 2023**.

Original Signed

Jason Pedlar, BA, MA,
Ombudsman

Original Signed

Rick Smith, BA, MCP, LLB
Investigator

Distribution:

- Department
- Complainant



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