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MEMORANDUM

ATTENTION Kar On Lee, Learning Technology Specialist,
Teaching and Learning Centre

DATE April 15, 2015

FROM Ian Forsyth, Coordinator of Information and
Privacy

PAGES 12

RE: Protection of privacy compliance when using iClicker and other student response systems in the classroom

Introduction

The Teaching and Learning Centre asked my opinion whether the use of iClicker and other similar student response systems in SFU classrooms would comply with the protection of privacy requirements and restrictions under Part 3 of the BC *Freedom of Information and Protection of Privacy Act* (the Act or FIPPA).

I reviewed and considered the following information:

1. Information about iClicker that you provided me during our discussion on February 26, 2015
2. Information you forwarded to me in an email message dated March 5, 2015, in which an iClicker representative answered questions you asked
3. The iClicker *Terms of Use* (dated July 1, 2014) accessed on the iClicker.com website April 14, 2015
4. The iClicker *Privacy Policy* (dated July 1, 2014) accessed on the iClicker.com website April 14, 2015
5. The iClicker *FAQ* (dated January 25, 2015), describing how iClicker's national registration site complies with the US Family Educational Record Privacy Act (FERPA), accessed on the iClicker.com website April 14, 2015
6. The Top Hat Monocle *Privacy and Security* information bulletin (no date) you provided to me
7. The REEF Education *Terms of Use* (dated July 1, 2014) accessed on the reef-education.com website April 2, 2015
8. The REEF Education *Privacy Policy* (dated July 1, 2014) accessed on the reef-education.com website April 2, 2015

Opinion

In my opinion, SFU's compliance with FIPPA when using student response systems varies depending on which product is used. Below is a table summarizing my findings, conclusions and recommendations. There are strong similarities in the FIPPA compliance issues and solutions between the use of student response systems supplied by service providers and the Pearson Education online learning applications.

See pages 7-9 for my conclusions and recommendations. The remainder of this memo is analysis and detailed reasons for my opinion.

Analysis – Findings, Conclusions and Recommendations

In the table below, SP means service provider.

Privacy Rule Question	Student Response System (SRS)				
	Hardware iClicker – no Canvas integration	Hardware iClicker – Canvas integration	Mobile iClicker using iClicker>GO	Mobile iClicker using REEF	Top Hat Monocle
Is student information collected?	<ul style="list-style-type: none"> SFU: Yes SP: Yes 	<ul style="list-style-type: none"> SFU: Yes SP: Yes 	<ul style="list-style-type: none"> SFU: Yes SP: Yes 	<ul style="list-style-type: none"> SFU: Yes SP: Yes 	<ul style="list-style-type: none"> SFU: unknown SP: Yes
What types of student information is collected?	<ul style="list-style-type: none"> SFU: student identity; attendance; answers to questions & quizzes; scores SP: name; student #; email address; iClicker ID; attendance; answers to questions & quizzes; scores 	<ul style="list-style-type: none"> SFU: student identity; scores SP: name; student #; course ID; URL; attendance; answers to questions & quizzes; scores 	<ul style="list-style-type: none"> SFU: student identity; attendance; answers to questions & quizzes; scores SP: name; student #; email address; attendance; answers to questions & quizzes; scores; credit card payment information by third party partner 	<ul style="list-style-type: none"> SFU: student identity; attendance; answers to questions & quizzes; scores SP: name; student #; email address; attendance; answers to questions & quizzes; scores; IP address & domain name; user analytics; credit card payment information by third party partner (except if SFU has purchased a site license) 	<ul style="list-style-type: none"> SFU: unknown SP: name; phone #, student #; email address; name of university; attendance; answers to questions & quizzes; scores; credit card payment information by third party partner
Who collects personal information directly & indirectly from students? i.e., data is in its custody	<ul style="list-style-type: none"> SFU (indirectly): student identity; attendance; answers to questions & quizzes; scores SP (directly): name; student #; email 	<ul style="list-style-type: none"> SFU (indirectly): student identity; scores SP (directly): name; student #; course ID; URL; attendance; answers to 	<ul style="list-style-type: none"> SFU (indirectly): student identity; attendance; answers to questions & quizzes; scores SP (directly): name; student #; email 	<ul style="list-style-type: none"> SFU (indirectly): student identity; attendance; answers to questions & quizzes; scores SP (directly): name; student #; email 	<ul style="list-style-type: none"> SFU: unknown SP (directly): name; phone #, student #; email address; name of university; attendance; answers to questions &

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	address; iClicker ID; attendance; answers to questions & quizzes; scores	questions & quizzes; scores	address; attendance; answers to questions & quizzes; scores <ul style="list-style-type: none"> SP third party partner (directly): credit card payment information 	address; attendance; answers to questions & quizzes; scores; IP address & domain name; user analytics <ul style="list-style-type: none"> SP third party partner (directly): credit card payment information (except if SFU has purchased a site license) 	quizzes; scores <ul style="list-style-type: none"> SP third party partner (directly): credit card payment information
Who stores and retains students' personal information? Where?	<ul style="list-style-type: none"> SFU: Instructor's storage device in BC, Canada SP: Third party partner providing hosting service in ON, Canada 	<ul style="list-style-type: none"> SFU: Burnaby campus data centre SP: Third party partner providing hosting service in ON, Canada 	<ul style="list-style-type: none"> SFU: Instructor's storage device in BC, Canada SP: Third party partner providing hosting service in ON, Canada 	<ul style="list-style-type: none"> SFU: Instructor's storage device in BC, Canada SP: Third party partner providing hosting service in Ireland 	<ul style="list-style-type: none"> SFU: unknown SP: Third party partner providing hosting service in ON, Canada; third party partner processing credit card payments in the US
Who is responsible to protect students' information?	<ul style="list-style-type: none"> SFU: Instructor SP: SP and its third party partner providing hosting service in ON, Canada 	<ul style="list-style-type: none"> SFU: Instructor & IT Services SP: SP and its third party partner providing hosting service in ON, Canada 	<ul style="list-style-type: none"> SFU: Instructor SP: SP and its third party partner providing hosting service in ON, Canada 	<ul style="list-style-type: none"> SFU: Instructor SP: SP and its third party partner providing hosting service in Ireland 	<ul style="list-style-type: none"> SFU: unknown SP: SP and its third party partner providing hosting service in ON, Canada
How is student information used?	<ul style="list-style-type: none"> SFU: For a teaching purpose (i.e., to operate its academic 	<ul style="list-style-type: none"> SFU: For a teaching purpose (i.e., to operate its academic 	<ul style="list-style-type: none"> SFU: For a teaching purpose (i.e., to operate its academic 	<ul style="list-style-type: none"> SFU: For a teaching purpose (i.e., to operate its academic 	<ul style="list-style-type: none"> SFU: For a teaching purpose (i.e., to operate its academic

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	programs & activities) • SP: To provide SFU with an automated SRS; user analytics; market research	programs & activities) • SP: To provide SFU with an automated SRS; user analytics; market research	programs & activities) • SP: To provide SFU with an automated SRS; user analytics; market research	programs & activities) • SP: To provide SFU with an automated SRS; user analytics; market research	programs & activities) • SP: To provide SFU with an automated SRS
Is student information disclosed?	• By SFU: No • By SP: Yes, to SFU & its third party partner providing hosting service in ON, Canada	• By SFU: No • By SP: Yes, to SFU & its third party partner providing hosting service in ON, Canada	• By SFU: No • By SP: Yes, to SFU & its third party partner providing hosting service in ON, Canada	• By SFU: No • By SP: Yes, to SFU; its third party partners retained to provide services (e.g., hosting service in Ireland); company affiliates	• By SFU: No • By SP: Yes, to SFU & its third party partners providing hosting service in ON, Canada and credit card payment service
Who owns and controls students' information?	• SFU: student identity; attendance; answers to questions & quizzes; scores • SP: name; student #; email address; iClicker ID; attendance; answers to questions & quizzes; scores	• SFU: student identity; scores • SP: name; student #; email address; attendance; answers to questions & quizzes; scores	• SFU: student identity; attendance; answers to questions & quizzes; scores • SP: name; student #; email address; attendance; answers to questions & quizzes; scores	• SFU: student identity; attendance; answers to questions & quizzes; scores • ss: name; student #; email address; attendance; answers to questions & quizzes; scores; IP address & domain name; user analytics • SP third party partner: credit card payment information (except if SFU has purchased a site)	• SFU: unknown • SP: name; phone #, student #; email address; name of university; attendance; answers to questions & quizzes; scores

	Student Response System (SRS)				
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				license)	
Does SFU expect students to buy the SRS product used in the course and use it to disclose information about themselves to a third party SP?	<ul style="list-style-type: none"> • Yes 	<ul style="list-style-type: none"> • Yes 	<ul style="list-style-type: none"> • Yes 	<ul style="list-style-type: none"> • Yes, when implemented in fall 2015 	<ul style="list-style-type: none"> • Yes
Is student information and privacy protected in accordance with the Act or by the SP in accordance with its Terms of Use and Privacy Policy?	<ul style="list-style-type: none"> • SFU: The Act • SP: Its Terms of Use and Privacy Policy 	<ul style="list-style-type: none"> • SFU: The Act • SP: Its Terms of Use and Privacy Policy 	<ul style="list-style-type: none"> • SFU: The Act • SP: Its Terms of Use and Privacy Policy 	<ul style="list-style-type: none"> • SFU: The Act • SP: Its Terms of Use and Privacy Policy • SP’s third party partners: Their Terms of Use and Privacy Policy 	<ul style="list-style-type: none"> • SFU: The Act • SP: Unknown

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Conclusions	<ol style="list-style-type: none"> 1. SFU does not disclose student information to the SP; students disclose their information directly to the SP; however, they need to do so because SFU makes SRS use mandatory, therefore, disclosure is not voluntary 2. SFU collects student information indirectly through the SP, which requires student consent 3. The SP owns, controls, stores, retains, protects, uses and discloses the information it collects directly from SFU students according to its Terms of Use and Privacy Policy, which students must accept to use the product 4. I am informed that iClicker was integrated with Canvas on or about January 2014 and that no Privacy Protection Schedule was signed between the parties; consequently, SFU has been technically non-compliant with the Act by collecting student information without authority 	<ol style="list-style-type: none"> 5. SFU does not disclose student information to the SP; students disclose their information directly to the SP; however, they need to do so because SFU makes SRS use mandatory, therefore, disclosure is not voluntary 6. The SP owns, controls, stores, retains, protects, uses and discloses the information it collects directly from SFU students according to its Terms of Use and Privacy Policy, which students must accept to use the product 7. I have insufficient information about this SRS to know if SFU collects student information indirectly through the SP, which would require student consent

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Recommendations	<ol style="list-style-type: none"> 1. SFU and the SP should sign a Privacy Protection Schedule, either as a standalone agreement or as an addendum to an existing Services Agreement, to ensure that the SP complies with the same protection of privacy requirements and restrictions that SFU must follow 2. SFU and the SP should also explore the campus hosted registration option offered by the SP 3. In the alternative, SFU must obtain prior written student consent 	<ol style="list-style-type: none"> 4. SFU should not use this SRS because student information is stored outside Canada and it seems improbable that the SP would agree to locate servers in Canada; therefore, a Privacy Protection Schedule is not an option 5. If SFU wishes to use this SRS, the only alternative is for SFU to obtain prior written student consent 	<ol style="list-style-type: none"> 6. I have insufficient information about this SRS to know if SFU collects student information indirectly through the SP, which would require student consent

SFU may use SRS applications when:

1. Students register directly with the SRS service provider to use its tool,
2. They accept the SRS service provider’s Terms of Use and Privacy Policy thereby giving consent for the service provider to collect, store, access, retain, use and disclose their personal information inside or outside Canada, and
3. A Privacy Protection Schedule is part of the Agreement signed between SFU and the SRS service provider, which requires the latter to follow the same privacy rules as SFU, or
4. Students give prior written consent for SFU to collect their personal information indirectly from the SRS service provider.

The above applies to integration of SRS applications with SFU’s learning management system at the course level and at the full system level or when using a mobile digital device.

In the current regulatory environment, SFU has four options:

1. Collect, store and retain personal data on digital storage devices controlled by SFU and located in its Burnaby campus data centre (i.e., personal data is in the custody and under the control of SFU),
2. Contract with a service provider to use its online learning application and collect personal data on behalf of SFU, storing and retaining it on the service provider's digital storage device inside Canada according to the terms and conditions of the Privacy Protection Schedule (i.e., personal data is in the custody of the service provider but remains under the control of SFU),
3. Obtain student prior consent to collect their personal information indirectly through a service provider who will store, access, protect, retain, use and disclose it, inside or outside Canada, according to the service provider's terms of use and privacy policy (i.e., personal data is exclusively in the custody and under the control of the service provider), or
4. Notify students at the time of course registration that a particular course uses a service provider's platform and the instructor requires students who enroll to register with the service provider and agree to its Terms of Use and Privacy Policy. The service provider collects, stores, accesses, protects, retains, uses and discloses student information inside or outside Canada (i.e., personal data is exclusively in the custody and under the control of the service provider).

I recommend that:

1. The most practical solution to comply with SFU's legal obligation to protect personal information under its control is option 2 above:
 - a. Negotiate an Agreement with the SRS service provider that includes the Privacy Protection Schedule (which would need to be amended to fit the circumstances of this case), and
 - b. Structure the Agreement to apply university-wide to all versions of that service provider's SRS application that may now or in future be used with SFU's learning management system, whether at the course level or the full system level.

I do not recommend:

2. Option 3 above because students could refuse SFU consent to collect their personal information indirectly from the SRS service provider, who would store, access, protect, retain, use and disclose it, inside or outside Canada, according to the SP's terms of use and privacy policy. Moreover, it would be complicated and burdensome to administer.
3. Option 4 above because:
 - a. SFU would compel students enrolled in a course that uses the service provider's SRS application to agree to the its Terms of Use and Privacy Policy, thereby relinquishing control over how personal information about themselves is stored, accessed, protected, retained, used and disclosed inside or outside Canada,
 - b. It would set a policy precedent that is a slippery slope towards additional situations in which more and more personal information is outside the custody and control of SFU in order to avoid the public sector privacy protection standards of the Act, and
 - c. The tasks connected with this approach would be complicated and burdensome to administer (see list under "Reasons for Opinion", point B.1.1).

Reasons for Opinion

Facts

A. Relevant provisions and definitions in the Act

1. Relevant provisions are:

- a. Part 1, Sections 1, 2 and 3(1) (first line only)
- b. Part 3, Sections 26, 27, 30, 30.1, 30.4, 30.5, 31, 31.1, 32, 33, 33.2(a) and (c)
- c. Part 6, Section 74.1(1) to (5)

2. Relevant definitions are:

- a. **"public body"** means ... (c) a local public body
- b. **"local public body"** means ... c) an educational body
- c. **"educational body"** means (a) a university as defined in the *University Act* (i.e., SFU)
- d. **"personal information"** means recorded information about an identifiable individual other than contact information
- e. **"contact information"** means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual
- f. **"access"** means, for the purposes of Part 3, disclosure of personal information by the provision of access to personal information
- g. **"unauthorized disclosure of personal information"** means disclosure of, production of or the provision of access to personal information to which this Act applies, if that disclosure, production or access is not authorized by this Act
- h. **"employee"**, in relation to a public body, includes (a) a volunteer, and (b) a service provider
- i. **"service provider"** means a person retained under a contract to perform services for a public body
- j. **"privacy impact assessment"** means an assessment that is conducted by a public body to determine if a current or proposed enactment, system, project, program or activity meets or will meet the requirements of Part 3 of this Act

B. Analysis of the SRS service provider's business model

█ [REDACTED]

- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]

