



FOIP Discussion Paper: Video-conferencing in Schools

FOIP Discussion Papers are intended to highlight how the Freedom of Information and Protection of Privacy Act may apply to a particular issue or situation, for the purpose of promoting discussion within interested public bodies. They are not a substitute for legal advice.

Video-conferencing in Schools

Video-conferencing is a live, interactive electronic means of communication. It involves the transmission of audio and video between two or more parties.

Video-conferencing offers another way to deliver education and enrich learning experiences for students. For small, rural or remote schools, this technology increases their ability to expand learning opportunities and program choices, such as second language learning or teacher professional development.

Student learning is supported through video-conferencing by:

- connecting several classrooms to each other or to a single teaching location;
- expanding access to outside experts and learning opportunities beyond the traditional classroom environment or making interactive virtual fieldtrips possible;
- enabling access to international learning experiences and events which develop cultural awareness and global perspectives; or
- providing unique educational services to students with special needs.

Video-conferencing supports teachers and school administration by:

- offering professional development directly to teachers in the field;
- creating mentoring opportunities between educators in different locations; and
- saving the time and expense of travel to meetings.

With an estimated 800 video-conferencing units in schools across the province, a growing number of jurisdictions are using video-conferencing for full-course delivery, improving access and flexibility for students. Teachers are also using other technologies – such as laptops and electronic whiteboards – to enhance the experience of students taking classes by video-conference.

Alberta Education has provided more than \$13.5 million to support video-conferencing capacity in the K-12 education system. This includes providing funding directly to jurisdictions to purchase video-conferencing equipment and supporting implementation programs to help

teachers get the most of this technology. Alberta Education also worked with other government departments to create a centralized video-conference network using the SuperNet, making video-conference sessions more accessible.

School jurisdiction FOIP Coordinators have requested guidance on what their school jurisdiction may need to consider when applying the requirements of the *Freedom of Information and the Protection of Privacy Act* (the FOIP Act) to this activity.

Does the FOIP Act apply when a school does or participates in a video-conferencing activity?

If a video-conferencing session **is** being recorded, the FOIP Act would apply as the Act defines a record as "a record of information in any form and includes...audiovisual recordings..."

If a video-conferencing session **is not being recorded**, then the FOIP Act does not apply to the video-conferencing session, itself; however, if records are being created by school staff during or as a result of the session, then the FOIP Act would apply to those records. For example, if a teacher of the school makes written notes of events that happened during the video-conferencing session, these notes could be requested under the FOIP Act, and considerations should be given to protecting personal information that may be contained in the notes.

B.C.'s Information and Privacy Commissioner, in Order 02-46, concluded that live webcam feeds, unless otherwise recorded or stored in or on any medium, do not meet the definition of a record under B.C.'s FOIP Act. He stated, "the live webcam Internet feeds are just that, live transmission of image data."

Is "personal information" being recorded during a video-conference session?

The FOIP Act defines personal information as "recorded information about an identifiable individual."

In *Investigation Report 2000-IR-007*, the Office of the Information and Privacy Commissioner describes how a photograph is a record of a student's facial image and reveals individual characteristics of the student such as hair, eye, skin color, national or ethnic origin, and gender. Images and other personal information captured in a recording of a video-conference session would also be personal information.

In addition, the recording of a video-conferencing session may capture comments, opinions, and gestures.

A recorded session may capture an individual performing an entire action or activity which could be considered to be hundreds of images capturing personal information.

What is the authority to collect personal information?

If recording the session, or creating records as a result of the session, includes an individual's "personal information," a school must determine its legal authority for the collection of the personal information under section 33 of the FOIP Act.

Section 33 of the FOIP Act states:

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

- (a) the collection of that information is expressly authorized by an enactment of Alberta or Canada,
- (b) that information is collected for the purposes of law enforcement, or
- (c) that information relates directly to and is necessary for an operating program or activity of the public body.

In a school setting, section 33(a) does not apply, as neither the *School Act* nor the *Student Record Regulation* expressly authorizes the collection of personal information by way of recording a video-conferencing session.

Section 33(b) does not apply as the collection of personal information is not for a purpose of law enforcement.

Section 33(c) could apply if the school determines the personal information being collected on the recording of the video-conferencing session relates directly to and is necessary for an operating program or activity of the school board or a school. For example, a school may decide to record a video-conferencing session involving a special guest speaker as part of the delivery of a particular course.

Consent is **not** one of the collection authorities recognized in section 33 of the FOIP Act. Even with the consent of individuals, a school would still need authority under section 33 of the FOIP Act to collect personal information.

If a school does not have authority to collect personal information but has the consent of individuals, it may be considered that the school is contracting out of the FOIP Act. A school cannot contract out of the FOIP Act (see *IPC Order 2000-029*).

Recording an image that identifies an individual without proper authority may result in a complaint to the Alberta Information and Privacy Commissioner regarding a public body's unauthorized collection of personal information.

If a complaint is made, the school board and the school should be prepared to demonstrate how the recording of a video-conferencing session relates directly to and is necessary for an operating program or activity of the school. If a school believes that the collection is authorized under section 33(c), then other sections of the FOIP Act must be considered.

Is the school required to give notice when personal information is being recorded during a video-conferencing session?

Recording an individual by way of video-conferencing would be considered a direct collection of personal information.

If the video-conferencing session is being recorded, or other records containing personal information are made of the session, then section 34(2) of the FOIP Act requires that a notice of collection be given when personal information is being collected directly from an individual. This notice should explain the purpose for the video-conferencing session, along with the other necessary elements of the notice set out in section 34(2).

If the video-conferencing session includes other parties, such as health care providers who are subject to the *Health Information Act*, there may be additional requirements for participant notification of the video-conference. This may be the case regardless of whether the video-conferencing session is being recorded or not.

Any required collection notification should be given at the time the video-conferencing session is to take place. It can be included with other information that participants may receive regarding the session.

A school may also need to consider how it will address the concerns of individuals or their guardians who do not wish to be recorded.

Are schools required to obtain consent from each participant involved in a video-conferencing session?

Alberta Education encourages school boards to have a policy that requires all participants to consent to participate in a video-conferencing session.

Obtaining consent from participants to participate in a video-conferencing session is not the same thing as providing participants with a notice outlining the purposes for which their personal information is being collected, as required under section 34(2) of the FOIP Act.

A school should provide participants with information about the session so participants are informed about the activity. The school may decide to provide a general information sheet to participants so they have an understanding of what to expect in the session.

A school may need to comply with any limitations in the event that a video-conferencing session includes a 'custodian' under the *Health Information Act* as that Act requires custodians to obtain written consent of the individual in order to collect health information when using a recording device or camera or any other device that may not be obvious to the individual.

How can the school use the personal information that was recorded?

Section 39 of the FOIP Act sets out how personal information may be used. This section of the FOIP Act states:

39(1) A public body may use personal information only

- (a) for the purpose for which the information was collected or compiled or for a use consistent with that purpose,
- (b) if the individual the information is about identified the information and consented, in the prescribed manner, to the use (see section 6 of the FOIP Regulation)

If the recording is used for the purpose for which it was collected, then section 39(1)(a) applies. For example, a school may inform students and parents it will be recording a video-conferencing session so that students who are absent on that particular day can review the recording at a later date. The school may then use the recording for that purpose.

If the use is consistent, as described in section 41 of the FOIP Act, with the purpose for which it was collected, then section 39(1)(a) also applies.

If the use is for an entirely different purpose, then section 39(1)(b) would apply and consent for the new purpose would be required prior to the use of the information.

A school needs to be aware that section 39(4) sets some limits on the extent to which the school can use the recording. The school can use the recording only to the extent necessary to carry out the purpose in a reasonable manner. This limitation applies to both the amount and type of personal information being used. Depending on the circumstances, schools may need to edit the recording and use only limited portions of the recording.

Can the school disclose personal information that was recorded during a video-conferencing session?

Section 40 of the FOIP Act defines how personal information may be disclosed. Section 40(1) states:

40(1) A public body may disclose personal information only

(c) for the purpose for which the information was collected or compiled or for a use consistent with that purpose

If the notice stated that the purpose of recording the session was to show the recording, for example, at a school assembly, at a particular school board meeting, for evaluation purposes or for instructional purposes, then the disclosure would be permitted under section 40(1)(c) of the FOIP Act.

If a school wants to disclose the recording for a purpose other than what was stated on the collection notice, then it would need to consider whether other provisions under Section 40 would permit the disclosure of the recording.

Schools need to be aware of the limiting provision in Section 40(4) which states that a school may disclose the recording only to the extent necessary to enable it to carry out the purposes described in Section 40 (1), (2) and (3). Depending on the circumstances, a school may need to edit the recording and disclose only limited portions of the recording.

Other Considerations

- If the personal information in the recording will be used to make a decision that directly affects an individual, the recording must be retained in accordance with section 35(b) of the FOIP Act. For example, if a school uses a recording of a debate between students to evaluate a student's performance then, under the FOIP Act, the recording must be retained for a minimum of one year.
- Reasonable security arrangements are needed against such risks as unauthorized access, use, and disclosure of personal information resulting from a video-conferencing session in order to meet the obligations set out in section 38 of the FOIP Act.
- The ability for someone to alter an event or activity by manipulating the recording is another issue to consider.

- Know the purpose or the planned use of a video-conference recording. This will assist a school in determining:
 - why there is a need to record the session;
 - whether consent is required;
 - what kind of collection notification is required,
 - what the anticipated future uses of the recording may be;
 - whether the recording requires editing;
 - whether the recording is going to be disclosed to other people and for what purpose;
 - how the recording will be secured;
 - how long the recording will be kept;
 - how will the recording be destroyed once it is no longer required;
 - how access requests for the recording will be dealt with.
- Allowing individuals to be recorded puts the parents and students in the position of having to place a lot of trust in the judgment of the people conducting video recording. A school may establish guidelines on what activities would be recorded.
- Many students, especially adolescents, are sensitive about their appearance or how their behaviour is scrutinized. Recording of a video-conferencing session may capture them doing activities that they would not wish to be recorded.
- When recording a classroom during regular classes, students may be seen as not having a choice about participating in the recording of the session. Recording a video-conferencing session may also capture an individual making a candid comment or action that normally would be forgotten but now could be preserved and may be replayed to a wider audience.
- If an individual does not want to be seen as a participant in a video-conferencing session, schools may want to consider other options. For example, an individual has expressed that he or she is not comfortable with being seen on camera. A school may decide to have an area within the video-conferencing room out of the field of view of the camera.
- A student or parent could challenge the activities of the school board and/or school as it pertains to the collection, use and disclosure of personal information and lodge a complaint with the Information and Privacy Commissioner. If the complaint is investigated, the application of the FOIP Act will be reviewed section by section.
- When there are multi-sites involved, other viewers may have the ability to record the video-conferencing session. What have teachers, students, other viewers and participants, for example, been told about the recording of the session? Who has custody or control over the recording?
- There may be copyright or intellectual property issues in the recording and rebroadcasting/re-use of video-conferencing sessions. For example, the content of a teacher's lecture may require a school to review the types of policies or procedures it may have regarding intellectual property issues.

- Technical and other administrative requirements for video-conferencing sessions can be obtained through Alberta Education. For example, VCAAlberta.ca provides advice and answers questions related to video-conferencing in Alberta.
- A school board may want to contact the Alberta School Board Association (ASBA) or their legal counsel for further legal advice and direction.

For more information contact:

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