



FOIP Discussion Paper: Video Yearbooks

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.

Production of Video Yearbooks by Schools

Many schools have a long-standing practice of publishing a school yearbook containing posed and candid photographs of individuals, teams, groups and performances. The yearbooks commemorate the school year, celebrate student achievement, and serve as a keepsake.

Some schools have begun producing a video yearbook containing recordings of students made throughout the year by staff, parents or students, and compiled into a show. The video recording may be shown at a school assembly, graduation ceremony, or other school event, and copies may be made available to students and parents.

In applying the FOIP Act, is this simply a change in media from still photographs to video? Or does it raise additional privacy issues, because of the characteristics of videotape?

This question has not yet been discussed in Alberta, British Columbia, or Ontario Commissioners' Orders.

This paper refers to videotape, but the same principles apply whether the information is stored on tape, CD, DVD or other digital formats.

Is a video recording a "record" under the FOIP Act?

The FOIP Act defines a record as "a record of information in any form and includes ... audiovisual recordings..."

Do video recordings capture personal information?

The FOIP Act defines personal information as "recorded information about an identifiable individual", including the individual's name, race, national or ethnic origin, colour, age, sex, etc.

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. The same could be applied to video recorded images.

Is a video recording different than a photograph?

In addition to capturing images, video recordings may also capture comments, opinions, and gestures. As well, a video recording may capture an individual performing an entire action or activity which could be considered to be hundreds of images that could later be isolated to individual images, whereas a photograph would only capture a particular image of the same action or activity. Another issue to consider is the ability to alter an event or activity by manipulating the video recording using the editing features of the video player. For example, video recordings can be shown at a faster or slower speed without tampering with the image.

What is the authority to collect personal information?

As the video recording activity may capture personal information, a school must determine the authority for the collection of the personal information. 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 on video recording for the purpose of creating a yearbook video recording. Section 33(b) does not apply.

Section 33(c) could apply if the school determines the personal information being collected on the video recording *relates directly to and is necessary for an operating program or activity of the school*.

If a privacy complaint is made, the school should be prepared to demonstrate how the creation of video yearbooks 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 captured when video recording?

Video recording an individual with that individual's knowledge would be considered a direct collection of personal information. Section 34(2) of the FOIP Act requires a notice of collection be given when personal information is being collected directly from an individual. This notice should explain the purpose for the collection, along with the other necessary elements of the notice set out in section 34(2), and could be included in the general notice of collection provided at the time of registration.

It should be acknowledged that an individual could challenge a notice of collection. A school needs to consider the implications in the event an individual requests that they not be video recorded for this purpose.

Recording an image that identifies an individual without proper authority may result in a breach of privacy complaint to the Alberta Information and Privacy Commissioner.

How can a school use the personal information captured on video recording?

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 7 of the FOIP Regulation)

If the personal information on the videotape was collected for the specific purpose of creating the videotape, then section 39(1)(a) applies. 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 would be required prior to the use of the information.

Can a school disclose the personal information captured on video recording?

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 the collection activity (e.g. the video recording) was for the purpose of showing the video recording at a school assembly, graduation ceremony or distributing copies upon request, then the disclosure is permitted under section 40(1)(c) of the FOIP Act.

If a school decided to use the video recording to promote the school at recruitment events, incorporate clips of the recording on the organization's web site, or distribute copies as part of a community information package, then it would need to consider whether the disclosure is in accordance with the stated purpose for the collection in the notice.

What happens to the videotape footage that is not used?

In creating a video yearbook, a certain amount of video footage will be taken but not used. Once the final version is made, the excess raw footage may be destroyed. As it was not used to make a decision about an individual, it would not need to be retained in accordance with section 35(b) of the FOIP Act.

If the raw footage is to be retained, the school should address uses and disclosures of the unused portions of the tape in the future. Also, reasonable security arrangements are needed against such risks as unauthorized access, use, and disclosure in order to meet the obligations set out in section 38 of the FOIP Act.

Who can be responsible for conducting the video recording?

The individuals involved in making the video recording may include students, staff, parents, volunteers or even a contractor. Everyone involved in the making of the video yearbook should be advised they need to follow the FOIP Act. If an outside contractor is retained to produce the video recording, then privacy protection provisions should be incorporated in the contract governing the relationship between the public body and the contractor.

If there is no authority to collect the personal information can the school obtain consent instead?

Even with the consent of individuals, a school would still need authority under section 33 of the FOIP Act to collection personal information. If a school does not have the authority for collection of 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.)

The validity of the consent could be challenged. For an individual to provide a true informed consent, they would have to view the footage and provide consent for the specific disclosure purposes. It may be impractical to obtain such consents. The consent to disclose must be in writing unless a school board has established "rules" to accept consent electronically or orally in accordance with section 7 of the FOIP Regulation. For more information about the requirements for obtaining consent in writing, in electronic form and orally, see *Bulletin No. 7 on Consent and Authentication*. Students could lodge a breach of privacy complaint even if their parents had provided consent to the disclosure. The Information and Privacy Commissioner has not yet ruled on such a case or addressed this issue.

Other Considerations

Allowing individuals to video record anytime and anywhere, puts the parents and students in the position of having to place a lot of trust in the judgment of the people compiling the video recording. Schools could establish guidelines on what activities could be video recorded and set up a review process to ensure the footage used in the final version is not offensive.

Any student or parent could lodge a breach of privacy compliant to the Information and Privacy Commissioner. If the complaint is investigated, the application of the FOIP Act will be reviewed section by section.

Many students, especially adolescents, are sensitive about their appearance or how their behaviour is scrutinized, and video recording could capture them in activities that they would not wish to be recorded, such as gym class. Video recording may also record students "hanging out" with individuals their parents have said they should not see, in the foreground or background settings in they should not be in (such as the smoking area), or being silly or playing around when they are expected to be working.

When taping is conducted in the classroom during regular classes, students may be seen as not having a choice about participating in the video. For example, a student may be able to avoid being taped in the lunch room, but may not have the same freedom to walk out of a math class.

Video recording may also capture an individual making a candid comment or action that normally would be forgotten but now it could be preserved and replayed to a wider audience.

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