



FOIP Discussion Paper: School Promotional Video Production

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 Promotional Videos by Schools

Some schools may produce a video to promote the school or certain activities of the school. The video is retained by the school but may be shown at school events hosted at the school, at other venues such as trade shows, or made available for viewing on the school web site.

How does the FOIP Act apply to the production of a promotional video? This discussion paper reviews the FOIP considerations in producing a promotional video.

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.

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 promotional video recording. Section 33(b) does not apply.

Section 33(c) applies when 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*. The operating program or activity of the school should be identified. For example, a high school with a special arts or sports program may create a video to use in its program to recruit students. A school with a partnership program with a community group or company may create a video to recruit support to continue the activity.

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 in a 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 and consent 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. In section 39(1)(a) and (b), information may be used:

- 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 on the video?

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
- (d) if the individual the information is about has identified the information and consented, in the prescribed manner, to the disclosure

If the notice states that the purpose of the collection activity is for purposes of creating and showing the organization's promotional video, then the disclosure is permitted under section 40(1)(c) of the FOIP Act.

The school can also disclose personal information when it has consent from the individuals involved.

In the case of a videotape, the distinction between use and disclosure of personal information is not clear cut. A video may be "used" by showing it to an audience, which also results in a disclosure of personal information. A videotape may also be disclosed when a copy is given to an individual or another organization.

What happens to the videotape footage that is not used?

In creating a promotional video, 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 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.

Other Considerations

Normally a promotional video would be created with a specific message in mind. It would be scripted, so the kind of footage needed for the video would be known from the outset. This would allow for appropriate planning to obtain the necessary footage, and should therefore facilitate the obtaining consent from participants where required.

Individuals may be interviewed specifically for the promotional videotape. Their consent can be easily obtained.

Events that are videotaped may be staged. For example, a few students can be selected to work with a teacher in an activity. This kind of taping allows schools to obtain informed consent from parents to allow their children to participate in the taping, with the knowledge that the video will be used by the school for promotional purposes. It also provides greater control over the outcome of the taping session.

If copies of the videotape are to be distributed or sold, ensure that this fact is known to those who are giving consent. For example, if the recording can be viewed on a web site or will be sold commercially, individuals should be advised so they can provide their informed consent.

If the videotape does not identify individuals, then consent is not required. For example, individuals taped at a distance or from behind may not be identifiable.

Consent must be received 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*.

Taping may also take place at public events. The personal information captured on tape at the public event may be disclosed, as it would not be an unreasonable invasion of personal privacy. Notice is optional, but in some circumstances could be given. For example, at the beginning of a school concert the master of ceremonies could inform the audience that portions of the performance are being taped for use in a promotional videotape. This is not necessary, but would increase transparency and would explain why the camera operator is in place.

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