



FOIP Discussion Paper: School Video Production

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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 or hosted at the school or at other venues.

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.

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

The *FOIP Act* defines 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 32 of the *FOIP Act* states:

- 32** 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 32(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 32(b) does not apply.

Section 32(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 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 32(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 33(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 33(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 37 of the *FOIP Act* sets out how personal information may be used. In section 37(1)(a) and (b), information may be used:

37(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 personal information on the videotape was collected for the specific purpose of creating the videotape, then section 37(1)(a) applies. If the use is consistent as described in section 39 of the *FOIP Act* with the purpose for which it was collected, then section 37(1)(a) also applies. If the use is for an entirely different purpose, then section 37(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 38 of the FOIP Act defines how personal information may be disclosed. Section 38(1) states:

- 38(1)** A public body may disclose personal information only
- (b) for the purpose for which the information was collected or compiled or for a use consistent with that purpose
 - (c) 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 38(1)(b) 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 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 34(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 36 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.

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.

Taping may also take place at public events. The personal information captured on tape 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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