

ALBERTA
OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER

INVESTIGATION REPORT
F2003-IR-005

August 6, 2003

EDMONTON POLICE SERVICE

Investigation Number 2777

I. BACKGROUND

[para 1] Under section 53(1)(f) of the *Freedom of Information and Protection of Privacy Act* (the “FOIP Act”), I have the authority, as Information and Privacy Commissioner, to comment on the implications for freedom of information or for protection of personal privacy of proposed legislative schemes or programs of public bodies.

[para 2] On May 22, 2003, the Edmonton Police Service (the “Public Body”) submitted, for comment, a privacy impact assessment (PIA) for a project entitled “The Old Strathcona Closed Circuit Television Camera Project (the “Project”).

[para 3] A PIA is not mandatory under the FOIP Act, but is recommended for major projects that involve the collection, use and disclosure of personal information. The purpose of a PIA is to assess the impact a new project may have on individual privacy. In a PIA, a public body evaluates the project or scheme to ensure compliance with the FOIP Act. As such, the PIA is a due diligence exercise.

[para 4] The Project involves video surveillance of the Whyte Avenue corridor between 99-109 Streets and 80-85 Avenues in Edmonton, Alberta (the “Monitored Area”). The Project is a pilot program that was to run for a trial period over the Canada Day Long Weekend (June 27-July 2, 2003) and for the “Fringe” festival (August 13-25, 2003). The Project resulted from the Canada Day “riot” along Whyte Avenue on July 1, 2001.

[para 5] Along with the PIA, the Public Body provided statistics showing that the Monitored Area is a zone of increased calls for service, particularly during Canada Day celebrations. The Public Body also provided the results of its own public opinion surveys concerning video surveillance of the Monitored Area.

[para 6] I accepted the Public Body's PIA. My acceptance was not an approval, but merely reflected that the Public Body had made reasonable efforts to protect privacy, as required by the FOIP Act.

[para 7] On July 2, 2003, my Office received a complaint about the collection of personal information by the video cameras along Whyte Avenue on July 1, 2003. The complainant objected to the surveillance cameras on the ground that they violate an individual's right to privacy. Among other things, the complainant requested an explanation of why his image was collected, for what it would be used, who has had and will have access to it, for how long it will be retained, and if it was collected in accordance with the FOIP Act.

[para 8] Because of the complaint, I decided to conduct an investigation on my own initiative under section 53(1)(a) of the FOIP Act, which reads:

53(1) In addition to the Commissioner's powers and duties under Part 5 with respect to reviews, the Commissioner is generally responsible for monitoring how this Act is administered to ensure that its purposes are achieved, and may

(a) conduct investigations to ensure compliance with any provision of this Act...

[para 9] The findings in my investigation are based on the Public Body's PIA.

II. ISSUES

[para 10] The issues in this investigation are:

A. Does the Public Body have the authority under the FOIP Act to collect, use and disclose the personal information in the manner set out in the PIA?

B. Has the Public Body made reasonable security arrangements for the personal information it collects?

C. Has the Public Body otherwise met the requirements of Part 2 of the FOIP Act?

III. DISCUSSION OF THE ISSUES

A. Does the Public Body have the authority under the FOIP Act to collect, use and disclose personal information in the manner set out in the PIA?

1. Collection of personal information

[para 11] “Personal information” is defined in section 1(n) of the FOIP Act to mean recorded information about an identifiable individual. A “record” is defined in section 1(q) to mean “a record of information in any form and includes...images...and any other information that is...photographed...” I conclude that an individual’s image that is photographed using a video camera is recorded information about an identifiable individual and therefore personal information.

[para 12] The Public Body says that it has the authority under section 33(b) of the FOIP Act to collect personal information as set out in the PIA. Section 33(b) reads:

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

...

(b) that information is collected for the purposes of law enforcement,...

[para 13] “Law enforcement” is defined in section 1(h) of the FOIP Act, which reads:

1 In this Act,

(h) “law enforcement” means

(i) policing, including criminal intelligence operations,

(ii) a police, security or administrative investigation, including the complaint giving rise to the investigation, that leads or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the investigation or by another body to which the results of the investigation are referred, or

(iii) proceedings that lead or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the proceedings or by another body to which the results of the proceedings are referred;...

[para 14] In Order 2000-027, the former Commissioner said that the term “policing” should be defined as “those activities carried out, under the authority of a statute,

regarding the maintenance of public order, detection and prevention of crime, or the enforcement of law”.

[para 15] The PIA says that the stated purpose of the Project is to “deter, detect and assist in the investigation of crime, thereby decreasing the fear of crime in, and providing a safer and less intimidating atmosphere for, the public”. The Public Body says that monitoring and recording of images or activity will occur only in public places or places the public is ordinarily entitled or permitted to use.

[para 16] Provided that the Public Body collects the personal information for the purposes set out in the PIA, I conclude that the Public Body, which is carrying out its activities under the authority of the *Police Act*, has the authority under section 33(b) of the FOIP Act to collect the personal information in the particular circumstances pertaining to Whyte Avenue.

[para 17] Under section 34(1) of the FOIP Act, personal information must be collected directly from the individual the information is about, unless a public body meets the requirements for indirect collection. I accept that videotaping is a collection of personal information directly from the individual the information is about, and that the Public Body meets the requirements of section 34(1). Even if videotaping were somehow an indirect collection, it would meet the requirements for the indirect collection of personal information, as set out in section 34(1)(g) (collection for the purposes of law enforcement).

[para 18] The Public Body says that it also meets the requirements of section 34(2), which reads:

34(2) A public body that collects personal information that is required by subsection (1) to be collected directly from the individual the information is about must inform the individual of

(a) the purpose for which the information is collected,

(b) the specific legal authority for the collection, and

(c) the title, business address and business telephone number of an officer or employee of the public body who can answer the individual’s questions about the collection.

[para 19] The Public Body included in the PIA a sample of the signs that were to be posted around the perimeter of the Monitored Area. The Public Body subsequently provided a copy of the amended wording of the signage. Provided that the signs are visible so as to “inform” individuals, I agree that those signs would meet the requirements of section 34(2).

[para 20] I do not agree with the Public Body's statement that the notice given by these signs is implicit consent by individuals frequenting the area to having their image recorded (collected). A public body must meet the requirements for collection as set out in section 33 and section 34 of the FOIP Act. Those requirements do not contain a provision for implicit consent to the collection of an individual's personal information.

2. Use of personal information

[para 21] The Public Body says it intends to use the personal information for investigative purposes. The Public Body is authorized to use the personal information by section 39(1)(a) of the FOIP Act, which reads:

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,...

[para 22] The personal information is collected under the law enforcement provision of the FOIP Act, which includes investigations. Provided that the Public Body uses the personal information for the purpose for which the information is collected, the Public Body has the authority under the FOIP Act to use the personal information. I do not find it necessary to also consider whether the Public Body has the authority to use the personal information for a use consistent with the purpose for which the information was collected.

3. Disclosure of personal information

[para 23] The Public Body says that it is possible and probable that it will disclose the personal information to the following: the Crown, other police agencies, other "law enforcement" agencies, and to certain administrative tribunals (e.g., the Law Enforcement Review Board, or any inquiry judge). The Public Body says that such disclosures are authorized by section 40(1)(q) and section 40(1)(r) of the FOIP Act, which read:

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

...

(q) to a public body or a law enforcement agency in Canada to assist in an investigation

(i) undertaken with a view to a law enforcement proceeding, or

(ii) from which a law enforcement proceeding is likely to result,

(r) if the public body is a law enforcement agency and the information is disclosed

(i) to another law enforcement agency in Canada, or

(ii) to a law enforcement agency in a foreign country under an arrangement, written agreement, treaty or legislative authority,...

[para 24] To those provisions authorizing disclosure I would add section 40(1)(v), which reads:

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

...

(v) for use in a proceeding before a court or quasi-judicial body to which the Government of Alberta or a public body is a party,...

[para 25] Provided that the Public Body discloses the personal information as set out in the PIA, the Public Body has the authority under the FOIP Act to disclose the personal information.

B. Has the Public Body made reasonable security arrangements for the personal information it collects?

[para 26] Section 38 of the FOIP Act reads:

38 The head of a public body must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or destruction.

[para 27] In the PIA and attached Operational Guidelines provided to my Office, the Public Body gives detailed information about its security arrangements, including:

- need-to know policies and procedures for personal information access
- physical security and access controls
- information technology security and access controls
- waste management controls for personal information
- records management and disposition schedules

[para 28] Upon request, the Public Body also provided additional information about such matters as personnel who will monitor the equipment and type of equipment used.

[para 29] I find that the Public Body has made reasonable security arrangements for the personal information it collects.

C. Does the Public Body otherwise meet the requirements of Part 2 of the FOIP Act?

[para 30] Under this issue, I have considered the provisions for correction and retention of personal information.

1. Correction of personal information

[para 31] Section 36 of the FOIP Act permits an individual to request a correction of the individual's personal information. A public body may correct or annotate. The Public Body's PIA indicates that personal information correction or annotation is available (to the extent that personal information collected in this manner may be corrected or annotated). This meets the requirements of section 36.

2. Retention of personal information

[para 32] Section 35(b) of the FOIP Act says that if an individual's personal information will be used by a public body to make a decision that directly affects the individual, the public body must retain the personal information for at least one year after using it.

[para 33] The Public Body proposes a 21-day retention period after collecting the personal information. It will then destroy all the images recorded, unless needed for investigative purposes.

[para 34] The Public Body has the authority to set a 21-day retention period before destroying the personal information, if it does not use the individual's personal information to make a decision that directly affects the individual. If the Public Body uses the individual's personal information to make a decision that directly affects the individual, the Public Body will meet the requirements of Part 2 of the FOIP Act if it retains that personal information for at least one year after using it. The Public Body's Records Retention Schedule implies a one-year minimum retention period, in that files are reviewed each year and destroyed when the reasons for retention no longer exist.

IV. SUMMARY OF MY FINDINGS

[para 35] The Public Body submitted an especially thorough PIA. The Public Body has done its due diligence.

[para 36] Provided that the Public Body collects, uses and discloses the personal information in the manner set out in the PIA, the Public Body has the authority under the FOIP Act to collect the personal information in the particular circumstances pertaining to Whyte Avenue, and to use and disclose the personal information.

[para 37] The Public Body has made reasonable security arrangements for the personal information it collects.

[para 38] The Public Body has otherwise met the requirements of Part 2 of the FOIP Act.

[para 39] This investigation is now concluded.

Frank Work, Q.C.
Information and Privacy Commissioner

POSTSCRIPT

The issue of the use of surveillance cameras in public places has been controversial, as it should be. We want a safe society; we want to feel secure. The fact that the rate of violent crime continues to decrease does not seem to be of much comfort. We are left to continue to strive for some balance between our wish for safety and security and our social values as a free and democratic society. I remember the repugnance I felt when I saw images of theft and vandalism on Whyte Avenue on Canada Day two years ago. I remember the revulsion I felt earlier this year when I read the accounts of Western reporters entering the vaults of the Iraqi secret police agency (“Fashioned along the lines of the Soviet, East German and Cuban systems, the omnipresent security apparatus kept records on anyone who came to the regime’s attention, from drunken cops to political dissidents.” – Knight Ridder Newspapers, Monday, April 21, 2003). We continue to struggle to balance security and democratic ideals.

On May 22, 2003, the Edmonton Police Service submitted the privacy impact assessment (“PIA”) regarding surveillance cameras on Whyte Avenue. As previously stated, PIAs are not required under the *Freedom of Information and Protection of Privacy Act* (“FOIP Act”). The PIA submitted by the Police was very well done: it was thorough; it made the special case for cameras on parts of Whyte Avenue as a law enforcement tool. The approach developed by the Police was sensitive to the civil liberty issue insofar as the cameras would only be operated during the periods of highest risk and under strict conditions. I formed the impression that the Police realize that surveillance cameras in public places are an extraordinary measure for our society and should only be used where the need for and the effectiveness of the cameras are clear. As I said, PIAs are informal documents with no status under the FOIP Act. This investigation report is the formal, legal conclusion to the process. I have read the PIA into this investigation report.

This investigation report says that I have found that the Police have the authority under the FOIP Act to collect personal information via the cameras for the purposes of law enforcement under the circumstances and conditions set out in the PIA.

Surveillance cameras and general public surveillance must not be seen as the common solution to every crime or security problem. They may help solve crimes but their effectiveness in preventing crime is uncertain. The prevention of incidents like the “riot” of July 1, 2001 on Whyte Avenue is the joint responsibility of The City of Edmonton, which regulates the number of drinking establishments and special events; the Provincial Government, which inspects licensed premises for compliance with the law, such as not serving alcohol to inebriated persons; business owners on Whyte Avenue, who sell alcohol; and, yes, the Police. It is not reasonable to create a problem, and then expect the Police to solve it at the expense of the rights of the general law-abiding public who simply want to enjoy Whyte Avenue.