

**INVESTIGATION REPORT  
INVESTIGATION P95-004**

**A complaint by KF MEDIA INC.  
against the  
VANCOUVER POLICE DEPARTMENT  
concerning the television series  
"TO SERVE AND PROTECT"**

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**A. THE COMPLAINT**

***1. Background***

In December 1994 the Office of the Information and Privacy Commissioner received a complaint from KF Media Inc. of Vancouver, B.C. (the complainant) about a decision by the Vancouver Police Department to block out the faces of persons interviewed by police on the television program "To Serve and Protect." KF Media Inc. is the producer of "To Serve and Protect" and, with the cooperation of certain police departments in British Columbia, it uses videotape shot during "ride-alongs" with police officers to produce its television program. The purpose of ride-alongs is to permit camera crews to capture the reality of police work as officers encounter and manage the wide range of criminal and non-criminal activities that are part of their daily patrols.

In response to KF Media's complaint and a number of similar complaints from members of the public, the Office of the Information and Privacy Commissioner for British Columbia began an investigation to review the Vancouver Police Department's rationale for its new ride-along policy. The Office of the Information and Privacy Commissioner also wished to evaluate the privacy and access to information issues raised by the new policy in the context of the *Freedom of Information and Protection of Privacy Act* (the Act).

***2. The Complainant's Case***

According to the complainant, KF Media Inc., the Vancouver Police Department decided that KF Media could no longer reveal the identities of persons videotaped in public during the course of a Vancouver Police Department ride-along, as KF Media had done before. KF Media complains that its inability to reveal the identities of persons shown in the ride-along videotapes will seriously hurt the popularity of its television program. KF Media also notes that when it uses

videotape shot during ride-alongs with police officers of the Royal Canadian Mounted Police (RCMP), its policy does not require KF Media to conceal the identities of persons shown in the videotapes.

KF Media also complained that there has been an apparent inconsistent application of the Vancouver Police Department's new ride-along policy. On December 16, 1994 British Columbia Television (BCTV) broadcast videotape made during a police raid by the Vancouver Police Department's Narcotics Squad and Emergency Response Team as they assisted the RCMP in executing two search warrants. BCTV camera crews captured some of the police action and broadcast the videotape without concealing the identities of those under arrest.

**3. *The Vancouver Police Department's Response to the Complaint*** As requested, the Vancouver Police Department provided the Office of the Information and Privacy Commissioner with a written explanation of its decision to require KF Media to conceal the identities of persons shown on ride-along videotapes. The Vancouver Police Department stated that from the time it became subject to the *Freedom of Information and Protection of Privacy Act* in the Fall of 1994, it had reviewed its media policy to ensure that it complied with the *Freedom of Information and Protection of Privacy Act*. The Vancouver Police Department review had considered:

1. The recommendations in the B.C. Police Commission's paper, "Show and Tell: Police on Television;"
2. The privacy provisions in the *Freedom of Information and Protection of Privacy Act*; and
3. What is fair to the citizens whom the police serve.

The Vancouver Police Department stated that it is often "disadvantaged people" who are depicted in police ride-along programs, and that its new media policy to obscure the portions of a videotape which specifically reveal the identities of suspects, victims, or witnesses is consistent with the protection of privacy principles in the Act.

The Vancouver Police Department concluded that even if the Office of the Information and Privacy Commissioner were to find that the new media policy was more stringent than required under the Act, the Vancouver Police Department still was not in any actual breach of the Act, since section 33 sets out when disclosure *may* be made, not when it must be made.

In an internal memorandum submitted to the Office of the Information and Privacy Commissioner, the Vancouver Police Department's Information and Privacy Coordinator discussed the reasons for obscuring the identities of suspects, victims, or witnesses in ride-along videotapes:

It is likely that allowing a camera to accompany police and record personal information, such as people's faces, and put this footage on television is an unauthorized collection and disclosure of personal information by our Department. I believe that our Department should set consistent policies in the area of protection of privacy. The basic rule for protecting privacy under the Act is

that you do not release someone's personal information unless the person has consented to its release or it is necessary for a legitimate law enforcement purpose. I believe this principle should be used to set parameters in this situation.

The Coordinator's memorandum went on to set rules for camera crews and police officers to observe during ride-alongs that would protect an individual's personal privacy:

1. Blank out people's faces. A person's face is personal information; all citizens filmed should have their faces obscured.
2. Ensure that no personal information is released verbally or by displaying written documents. Names of persons in conversation or over the radio should be blanked out. Criminal records or other background information of persons should not be disclosed.
3. There shall be no entry to a residence or other private location. Cameras should only be permitted in "public places" where people do not have an expectation of privacy.

The Coordinator concluded by noting that Vancouver Police Department police officers who have a film crew accompanying them for ride-alongs should be aware of the general need to protect privacy and should be instructed to take steps to assist suspects, victims, or witnesses to protect their privacy.

The Vancouver Police Department also responded to KF Media's secondary complaint of an apparent inconsistent application of its new media policy that occurred on December 16, 1994. The Department noted that BCTV cameras had not been invited for a ride-along with the Vancouver Police, but rather the media "were able to find and follow the [police] units to the scene of the warrant execution."

As Information and Privacy Commissioner, I am satisfied with the Vancouver Police Department's explanation of why the identities of persons shown in the December 16, 1994 broadcast were not obscured. Thus, the December 16, 1994 videotape falls outside the scope of this investigation because the BCTV camera crew was not participating in a ride-along with police officers from the Vancouver Police Department.

## **B. RELEVANT SUPPLEMENTARY INFORMATION**

*1. The British Columbia Police Commission's Discussion Paper* In June 1994, the British Columbia Police Commission released a discussion paper on police reality-based television shows, entitled "Show And Tell: Police On Duty, Police On Television -- A Discussion Paper On Police Policy and Videotaping Police Operations for Public Viewing." The paper provides a comprehensive examination of the privacy and other related issues that arise when television camera crews accompany police officers on patrol. In February 1995, the Chair of the Police Commission advised the Office of the Information and Privacy Commissioner that the Police Commission stands by the discussion paper as it is written.

At the beginning of its discussion paper, the Police Commission described the rationale and procedures for ride-along videotaping. The paper stated that programs such as "To Serve and Protect," "Cops," and "Battle Against Crime" are produced through individual arrangements with police departments, which permit a camera operator to accompany a police officer on duty and to film or videotape that officer in his or her interactions with members of the public. The resulting film or video footage is then edited and portions are chosen for television viewing. Since there is little interest in the more mundane side of police work, the segments usually chosen show police "chases and arrests, crisis situations, and interactions with `odd characters.'"

The Police Commission's paper then discussed a survey that the Commission conducted of the twelve municipal police departments in British Columbia and the RCMP to determine the level of involvement of the departments in ride-along filming or videotaping. Eleven of the twelve municipal departments responded; only four had been involved with ride-along television programs. One of the four stated that, because of legal problems, it would not be involved again, and another had discontinued involvement for other reasons. Two departments stated that not only had they never been involved in ride-along filming or videotaping, but that they would never contemplate involvement in the future. Only one of the eleven municipal police departments that did respond, the Vancouver Police Department, stated that it had official policy regarding the filming of police officers on duty. That section of its media relations policy reads:

Although the news media have no more right to enter a crime scene than any other citizen, members must be aware that the news media have the right to film or photograph anyone or any event within a public place, including police officers and their actions. Where a concern exists about a suspect's identity, the suspect's face should be obscured before being brought into a public place. [Vancouver Police Department, Regulations and Procedures Manual, s. 162(3)]

The Vancouver Police Department's policy, however, does not deal specifically with media camera crews that accompany police officers on ride-alongs during their patrols. Rather, it focuses on media coverage of police interactions with the public in public places. Media presence during police interactions with the public in public places, where the media arrive unescorted by police, is a separate issue that is *not* under review in this investigation.

The Commission's discussion paper also contains a response by the complainant in the current case, KF Media, to questions posed by the Police Commission about media coverage of police interactions with the public during ride-alongs. KF Media's response provides a media perspective of the rationale for, and limitations to, filming or videotaping police interaction with the public during ride-alongs:

...In the matter of obscuring identities we follow existing law that governs all broadcasters. We are certainly not immune to legal action should we violate someone's privacy. Out of several hundred persons that have appeared on the program, only two contemplated legal action but neither party chose to proceed. Police departments are given the opportunity to screen segments in advance of airing to ensure that we do not inadvertently reveal information that may be of use to the criminal element or reveal the identity of undercover officers. [p. 5]

This statement by the complainant shows consideration for the needs of law enforcement. However, it does not adequately consider the protection of the privacy of persons who are featured in the videotapes.

The Commission's discussion paper then considered what the appropriate policy should be for police participation in reality-based television programs. The Commission noted that just because an incident occurs in public does not mean it automatically should be broadcast in public. It further argued that people filmed by shows like "To Serve and Protect" are not public figures, such as politicians, who are taken to have implicitly chosen to relinquish their privacy rights. Rather, "[t]hey are ordinary citizens in whose interactions with the police, in our opinion, the public has no interest." The Commission concluded that:

[T]he privacy interests of these 'ordinary citizens' should be protected as a matter of policy, even if they may have little legal right to privacy and are unlikely to exercise such a right even if they had one and were aware of it. In our opinion their identities should be obscured. It is not necessary, in our opinion, for people to be recognizable for the public interest to be served. [p. 18]

The Commission then made several recommendations which set out what it considers to be appropriate policy for police departments participating in ride-along television programs:

. A department that allows a film crew to accompany its officers on duty should require the production company to agree in writing that all members of the public with whom the officers interact will have their identities obscured before broadcast on television and that any names and addresses by which such people could be identified are similarly deleted or obscured; .

Notwithstanding that a department has reached agreement with a production company covering the issues set out above, when a non-police person with a video camera accompanies police on their routine patrol, constables responsible shall be apprised of the following rules:

· Under no circumstances should the camera operator accompany the constable into a private residence, the cell block area or a hospital; · Where a person is arrested and expresses a desire not to be filmed, police will assist the person to shield his face from view; · Constables should refrain from expressing any comments about a person's background gained from police information; That is, if a CPIC check is done, constables must ensure they do not disclose the results of that check for media consumption. · Constables should refrain from expressing opinions about whether or not they believe a person has committed a criminal offence.

## **C. ANALYSIS**

***1. The Code of Fair Information Practices*** All public bodies in British Columbia are governed by a "Code of Fair Information Practices" that is found in Part 3 of the Act. The Code governs the collection, use, disclosure, retention, and disposal of "personal information." Personal information means recorded information about an *identifiable* individual (Schedule 1 of the Act). The twelve municipal police departments in British Columbia must follow this Code, meaning that no personal information can be collected by the police unless that collection falls within the scope of the Code.

Section 26 establishes the rules for collection of personal information:

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

- (a) the collection of that information is expressly authorized by or under an Act,
- (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.

Police departments therefore must demonstrate that the collection of personal information during ride-along videotaping falls within one or more of these sections.

The best way to avoid the restrictions of section 26 on the collection of personal information is to avoid collecting and retaining *personal* information in the first place. If the ride-along camera crew is required to obscure the identities of persons shown in the ride-along videos, then the video, as shown on television, no longer falls within the definition of "personal information."

If police departments continue their participation in the ride-along program, an agreement between the police and the television producers can regulate the custody and security of the unedited videotape that, until the identities are obscured, contains personal information. It is arguable that personal information collected during the videotaping is collected pursuant to section 26(c) because the collection is "necessary for an operating program or activity" of police departments (i.e., the public relations duties of police departments). However, police departments can comply with the requirements of section 26 by requiring the identities of persons shown in the videotapes to be obscured.

**2. Consent: can it be voluntary and informed?** It would not be appropriate to seek the "consent" of persons under arrest before broadcasting their identities on television shows such as "To Serve and Protect." In my opinion, persons under arrest or in contact with the police cannot give informed and voluntary consent to the disclosure of their identities when they are under great stress and when they may be incapacitated or intoxicated. The presence of police and ride-along camera crews eliminates any possibility that informed and voluntary consent can be given by the persons shown in the videotapes.

**3. Legal action for invasion of privacy: an unrealistic remedy** KF Media's explanation that only two persons have contemplated legal action against it is not an adequate justification for the general invasion of personal privacy that occurs when identities of persons under arrest are shown to the public. The presumption of innocence in our criminal law system, and the privacy of personal information principles in the *Freedom of Information and Protection of Privacy Act*, cannot be set aside in favour of the interests of broadcasters.

It may well be that only two of the several hundreds of people videotaped were aggrieved by the disclosure of their identities. However, it is my role as Information and Privacy Commissioner to ensure that protection of personal privacy is given a front seat in such disputes. Even if some members of the public are not concerned about the disclosure of their identities resulting from

such broadcasts, I will take all reasonable steps to safeguard the personal privacy of all members of the public.

**4. *Balancing the right to know with the right to privacy*** KF Media's complaint highlights the conflict between the public's right to know and an individual's right to privacy. In my role as Information and Privacy Commissioner, it is essential, where public bodies are involved, to encourage them to strike the appropriate balance between the right of access to information that is of public interest and the protection of an individual's right to be left alone.

In the case of police "reality television" shows, the public's right to know about the daily operations of its local police department competes with the right to privacy of the individuals in contact with police. These individuals may not yet have been charged with an offence, let alone convicted, when their faces are broadcast on television for an entire community to see. Thus, for the individual, the possibility of a mistaken identity, a withdrawn complaint, an unfortunate moment, or one of the simple misunderstandings that are a part of everyday life loom large as a serious threat to the privacy rights of each person.

Police reality television shows serve an interested public. I agree with the rationale expressed by some of the municipal police departments (documented in the B.C. Police Commission discussion paper at p. 3) that,

...the tax paying public have a right to see what their police departments are facing on a day to day basis. This not only affords the public the opportunity to make more informed decisions with respect to what is really happening, but also provide a positive public relations tool for the police departments. ... [B]y providing a realistic insight into policing [the programs] educate the public; and by portraying the police in a positive light, they enhance the image of policing.

I also believe that individuals interacting with, or in contact with, police in reality television shows are "disadvantaged," regardless of their age, race, income, or education. Their disadvantaged status arises from the stigma of being involved with the police before the eyes of the camera, even as witnesses. Having those moments broadcast on television, when there is still reasonable doubt as to the nature of their involvement or their guilt, is an unjust invasion of their privacy.

Thus, in my opinion, obscuring the identities of individuals interacting with the police is a reasonable way to protect the privacy of disadvantaged individuals. Concealing the identities of these individuals does not unreasonably reduce the capacity of these shows to observe police activity and/or ensure police accountability for their actions. The visibility of the identities of persons in police videos does not enhance the public's right to know; however, visibility of the identities may appeal to the voyeurism of the public.

In my opinion, the recommendations in the Police Commission's discussion paper form the basis for a well-balanced police policy that protects the privacy interests and privacy rights of ordinary citizens who find themselves in conflict with the law.

Finally, several of the police reality television shows produced in the United States customarily obscure the identities of persons who are interacting with police officers. Most of these shows use a video editing technique that superimposes blurred squares over the faces of persons shown in the videos. In the case of "To Serve And Protect," KF Media chose to superimpose a moving black disk that completely blocked out the persons' faces.

***5. Federal and provincial policing jurisdictions in British Columbia*** I am concerned about the possible uneven application of the "no-identity" videotape and film policy for police departments across British Columbia. The twelve municipal police departments in British Columbia fall within the jurisdiction of my office. Therefore, the recommendations that I have adopted in this investigation report apply to all twelve police departments, which include: Abbotsford, Central Saanich, Delta, Esquimalt, Matsqui, Nelson, New Westminster, Oak Bay, Saanich, Vancouver, Victoria, and West Vancouver.

However, the RCMP is responsible for policing all other cities and rural areas in British Columbia. KF Media told my office that it intends to use videotape shot during ride-alongs with RCMP officers, without obscuring the identities of persons shown interacting with police officers. This creates an uneven standard of privacy protection for persons in British Columbia: if you are arrested and videotaped by a ride-along camera crew in the City of Vancouver (policed by a municipal police department), your identity will be obscured before broadcast; if you are arrested and videotaped in the City of Richmond or the City of Kelowna, your identity may be revealed on television (both cities are policed by the RCMP).

I acknowledge that the RCMP in its provincial and municipal policing activities is not subject to the Act and my jurisdiction. However, I encourage the RCMP to adopt a videotape ride-along policy that closely parallels that of the twelve municipal police departments.

It is my intent, wherever possible, to ensure that people in British Columbia enjoy the highest possible protection for their personal information, regardless of jurisdictional and constitutional divisions of authority in the law enforcement field. Where I do not have jurisdiction to regulate by way of orders, I will make recommendations, as I do in the present case. I also urge the Privacy Commissioner of Canada to take the issue of ride-alongs under advisement for the policing activities of the RCMP in the Province of British Columbia.

I understand that the RCMP in British Columbia is presently reviewing its involvement in any part of the ride-along program, and not just the narrower issue of requiring media camera crews to obscure the identities of persons before broadcast. It is my hope that this review will address my concerns about the uneven application of privacy rights in British Columbia.

## **D. RECOMMENDATIONS**

**1. A police department that allows a film crew to accompany its officers on duty should require the production company to agree in writing that all members of the public with whom the officers interact will have their identities obscured before broadcast on television, and that any identifiable names and addresses will be similarly deleted or obscured.**



**2. When a non-police person with a video camera accompanies police on their routine patrol, participating police officers shall be notified of the following rules:**

**(a) Under no circumstances should a camera operator accompany a police officer into a private residence, a cell block area, or a hospital;**

**(b) Where a person is arrested and expresses a desire not to be filmed, police should assist the person to shield his or her face from view;**

**(c) Police officers should not express any comments to the media about a person's background gained from police information. If police conduct a CPIC check, police officers should not disclose the results of that check to the media.**

**(d) Police officers should not express opinions to the media about whether or not they believe a person has committed a criminal offence.**

**These recommended rules only apply to media contacts with the public during police ride-alongs.**

## **E. CONCLUSION**

In this case, the protection of privacy for ordinary citizens outweighs the public's interest to know the identities of persons who interact with the police, at least during police-authorized ride-alongs. Therefore, the complaint brought by KF Media is not substantiated. Further, the recommendations made by the Police Commission and the Vancouver Police Department's decision to require KF Media to obscure the identities of persons interacting with police are sound, reasonable, and consistent with the obligations for privacy protection established by the *Freedom of Information and Protection of Privacy Act*.

Nothing in this investigation report concerns the media's right to broadcast the identities of persons who interact or are in contact with the police when the media are not participating in a police-authorized ride-along.

David H. Flaherty Commissioner

Investigation conducted by R. Kyle Friesen Investigation Report drafted by R. Kyle Friesen and P.E. Smith