



Yukon  
Information  
and Privacy  
Commissioner

**INVESTIGATION REPORT**

**File ATP-ADJ-2022-02-044**

**Pursuant to section 94(1) of the  
*Access to Information and Protection of Privacy Act***

**Diane McLeod-McKay**

**Information and Privacy Commissioner (IPC)**

**Department of Education**

**June 14, 2022**

## Summary

As a result of a complaint about the use of video surveillance technology (VST) in a Yukon school made to the Information and Privacy Commissioner (IPC) in February of 2022, the IPC learned that video surveillance technology is being used in several of Yukon's schools. Considering the privacy sensitive nature of information collected using VST, the vulnerability of the population subject to surveillance (children) and, the precedents of incidents harmful to privacy involving video surveillance, the IPC decided to exercise her own motion under the *Access to Information and Protection of Privacy Act* (ATIPPA) to investigate whether the Department has authority under the ATIPPA to collect, use and disclose personal information through its use of VST in Yukon schools.

In its submissions, the Department identified that it is using VST in seven Yukon schools.

After reviewing the Department's submissions and supporting documents, the IPC found that the Department is not authorized to collect the personal information that it is collecting through the use of VST in the seven schools. The IPC further determined that the Department has not properly limited the amount of personal information collected through the use of VST to the minimum amount that is reasonably necessary for the purpose of the collection as required under the ATIPPA and under the Department's own video surveillance policy.

The IPC recommended that the Department immediately cease collecting personal information using VST and that it securely destroys any personal information that it has collected through the use of VST. The IPC also recommended that if the Department intends to recommence using VST in any of the seven schools, that it submits a privacy impact assessment to the Office of the IPC for review and comment prior to such use.



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## Statutes Cited

*Access to Information and Protection of Privacy Act*, SY 2018, C.15.

*Education Act*, RSY 2002, c.61.

*Interpretation Act*, RSY 2002, c125.

## Cases Cited

### Courts

*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, 1998 CanLII 837 (SCC).

*MacDonald Communities Limited v. Alberta Utilities Commission*, 2019 ABCA 353 (Can LII).

### Information and Privacy Commissioners

Order F07-10 Board of Education School District No. 75 (Mission) June 26, 2007 at para. 49 (BC IPC).

Investigation Report P98-012, Video surveillance by public bodies: a discussion, March 31, 1998 (BC IPC).

## Explanatory Note

All sections, subsections, paragraphs and the like referenced in this Inquiry Report are to the *Access to Information and Protection of Privacy Act* (ATIPPA)<sup>1</sup> unless otherwise stated.

References to the 'VS Policy' are to the Department of Education's video surveillance policy unless otherwise stated.<sup>2</sup>

## I INVESTIGATION

[1] The Information and Privacy Commissioner (IPC) learned in early February 2022 that video surveillance technology (VST) is being used in some Yukon schools by the Department of Education (Department). The Department is a public body under the ATIPPA.

[2] Considering

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<sup>1</sup> SY 2018, c.15.

<sup>2</sup> Yukon Dept. of Education, Video Surveillance Policy, dated: Feb 6, 2017. Submitted Feb 2022.

1. the privacy sensitive nature of information collected via VST;
2. the vulnerability of the population subject to surveillance (children); and
3. the precedents of incidents harmful to privacy involving video surveillance<sup>3</sup>

the IPC decided to investigate the use of VST in schools by the Department.

[3] For the purpose of this investigation:

“School” means all premises used for the purposes of education under the authority of the *Education Act*<sup>4</sup> including locations under contract or otherwise part of regular school activities.

“Video Surveillance Technology” or “VST” means any electronic surveillance device, hardware, or software that is capable of collecting, capturing, recording, retaining, processing, intercepting, analyzing, monitoring, or sharing audio, visual, digital, location, thermal, biometric, or similar information or communications specifically associated with, or capable of being associated with, any specific individual or group.<sup>5</sup>

[4] It is unclear if VST is the only form of surveillance technology deployed by the Department as the Department redefined our broad request for a report on the use of surveillance technology as a request solely for the use of VST. For the purpose of limiting the scope of this investigation, I am satisfied with the supplied submissions and their focus on VST.

## II ISSUES

[5] The issues in this Investigation are as follows.

**Issue one:** At any time after the start of the 2021/22 school year, did the Department use VST in any schools located in the Yukon and if so which schools?

**Issue two:** If the answer to issue one is yes, then is the Department collecting the personal information of students, or other persons, through the use of VST in Yukon schools and if so, what personal information?

**Issue three:** If the answer to issue two is yes, then:

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<sup>4</sup> RSY 2002, c. 61.

<sup>5</sup> Law insider, *Definition of surveillance technology*, visited May 1, 2022.  
<https://www.lawinsider.com/dictionary/surveillance-technology>.

- (a) does the Department have authority to collect this personal information in accordance with sections 12, 15, and 16 or any other relevant provisions of the ATIPPA?
- (b) has the Department provided notice of this collection in accordance with section 17 of the ATIPPA?
- (c) is the Department using this personal information?
- (d) if the answer to Issue three (c) is yes, then does the Department have authority to use this personal information in accordance with sections 19 and 21 or any other relevant provisions of the ATIPPA and have the requirements of section 21 been met?
- (e) is the Department disclosing this personal information?
- (f) if the answer to Issue three (e) is yes, then does the Department have authority to disclose this personal information in accordance with sections 23 and 25 or any other relevant provision of the ATIPPA?

### III RECORDS AT ISSUE

[6] As this investigation is about compliance with the privacy provisions of the ATIPPA, there are no records at issue for this investigation.

### IV JURISDICTION

[7] My authority to conduct this investigation is under subsection 94 (1) of ATIPPA.

### V BURDEN OF PROOF

[8] Divisions 3, 4 and 5 of Part 2 establish the rules that a public body must follow to collect, use or disclose personal information and prohibits the collection, use or disclosure of this information unless authorized to do so. Consequently, while there is no burden of proof set out in ATIPPA as it relates to these requirements, in my view it is up to the public body to establish that they are authorized by these provisions to collect, use and disclose the personal information being captured by VST in Yukon schools.

### VI SUBMISSION OF THE PUBLIC BODY

[9] The Department's submissions will be addressed herein as they are relevant to the discussion of the issues.

## VII DISCUSSION OF THE ISSUES

### Issue one

**At any time after the start of the 2021/22 school year, did the Department use VST in any schools located in the Yukon and if so which schools?**

### Department submissions and analyses

[10] The Department submitted the following for this issue.

*“Yes, surveillance technology is being used in the following schools:*

- *Operated by the Schools and Student Services Branch of the Department of Education*
  - *F. H Collins Secondary School*
  - *Vanier Catholic Secondary School*
  - *Ghùch Tlà Community School*
  - *Porter Creek Secondary school*
  - *École Whitehorse Elementary School*
- *Operated by the commission scolaire francophone du Yukon*
  - *Centre scolaire secondaire communautaire Paul-Émile Mercier (CSSC Mercier)*
  - *École Émilie Tremblay”*

[11] The evidence about the use of VST in schools was set out in an email<sup>6</sup> from a Department employee, wherein the employee requested that all schools in Yukon report whether or not they are using VST in their school. The information received is summarized below.

- Of 28 schools in Yukon, seven reported that they are using VST in their school.
- All schools using VST are located in Whitehorse.
- The schools using VST offer a mix of grades with K12, K9 and K8-12 being provided.

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<sup>6</sup> Filename 0786\_001, email from Ryan.Sikkes@yukon.ca to [REDACTED] subject ACTION ITEMS: Video surveillance systems – information required. Dated January 15, 2022, 2:29PM.

[12] It is clear that for the schools operated by the Department, that the 'Department' is using VST in these schools and that the Department has custody or control of any personal information collected as a result of its use.

[13] In submissions received by both *the commission scolaire francophone du Yukon* (CSFY) and the Department, they both submitted that the Department has custody or control of any personal information collected as a result of using VST in the two schools operated CSFY.

[14] Based on these submissions and additional documentation produced by the Department, I am satisfied that the Department has custody or control of any personal information collected as a result of using VST in the above noted seven schools.

### Finding - Issue One

[15] I find that the Department is using VST in seven schools that it identified in its submissions and that it has custody or control of any personal information collected as a result of using VST in these schools.

### Issue two

**If the answer to issue one is yes, then is the Department collecting the personal information of students, or other persons, through the use of VST in Yukon schools and if so, what personal information?**

### Department's submissions

[16] The Department submitted the following for this issue.

*Yes, surveillance technology is being used in Yukon schools to collect the personal information of students, or other persons, as defined by the ATIPPA.*

*This surveillance consists solely of visually recorded information (e.g., photo or video of an individual or individuals), but no recorded audio. This visually recorded information may generally be used to identify an individual through personal characteristics such as age, gender, skin colour, and mannerisms. This visually recorded information may also contain evidence of other information listed in the ATIPPA definition of "personal information".*

[17] As part of its submission package, the Department produced the VS Policy, which identifies that it applies to VST used in any Yukon school, including those operated by a School Board.<sup>7</sup>

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<sup>7</sup> VS Policy, at p.5.



### Relevant law

[18] The ATIPPA governs the collection of recorded personal information by a public body and its subsequent use, and disclosure of personal information that is held<sup>8</sup> by the public body.

[19] Section 1 provides a non-exhaustive definition of personal information as

*“... recorded information about an identifiable individual, including ...*

*(a) their name,*

*(b) their home, mailing or email address or phone number,*

*(c) their age, sex, gender identity or expression, or sexual orientation,*

*(d) their skin colour, fingerprints, blood type or any other genetic characteristic or biometric information,*

*(e) marital, family, education or employment status or history,*

*(h) information about their current or past,*

*their race, ethnicity or nationality,*

*(f) information about their current and past or mental health, including their personal information,*

*(g) information about their*

*(i) political or religious beliefs, associations or activities,...*

### **Analysis**

[20] As indicated, the Department submitted that it is using VST to collect recorded personal information including photos, videos of individuals that may identify personal characteristics such as age, gender, skin colour, and mannerisms.

[21] In the same email mentioned above, the following information was included about the collection of this personal information.<sup>9</sup>

(a) The location of the use of VST varies per school. To illustrate, CSFY only conducts surveillance of outside areas, whereas F.H. Collins Secondary School (FHC) uses VST

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<sup>8</sup> The meaning of “hold” is defined in section 1 as “in respect of information, means to have custody or control of the information”.

<sup>9</sup> Filename 0786\_001, email from Ryan.Sikkes@yukon.ca to [REDACTED] subject ACTION ITEMS: Video surveillance systems – information required. Dated January 15, 2022, 2:29PM.

in both outdoor and indoor locations. FHC deploys 67 cameras for this purpose, whereas CSFY deploys 14.<sup>10</sup>

(b) As part of the VST program, some schools keep incident logs that include additional information regarding the students including location information, timestamped behaviour and actions, names, identifiers such as clothing characteristics used to identify individuals.<sup>11</sup>

[22] The Department also provided some information about the retention of the recordings that range from seven to 14 days.<sup>12</sup> Having access to recordings of a student going about their daily activities while at school over a period of time captures more information about an individual than would otherwise be captured in, for example, a one-day period.

[23] Video and still frame footage contains meta data (e.g., time, date, location or camera number).

[24] Video and still frame footage contains information that can be inferred from the images themselves such as identifying characteristics, behaviours and expressions from those on the captured video footage and still frames. Inferred personal information from video material or still frames can include but are not limited to medical conditions, emotional state, sexual orientation, and religious affiliation.

[25] Manual logs provided show that additional personal information about the individuals who are being recorded is being indirectly collected. This includes names and other identifiers assigned<sup>13</sup> to individuals in particular situations as a substitute for names if unknown at the time of the documentation (i.e., blue hoody or other assigned identifiers).<sup>14</sup>

[26] Based on the submissions and preceding paragraphs, I have determined that the VST captures a significant amount of personal information about students, staff, community users, and any other individual that enters the premise on which VST is active. This includes locations in and around the schools.

[27] For reasons that follow, I have determined that the personal information that is being collected by the Department using VST is highly sensitive:

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<sup>10</sup> A more comprehensive overview of which school collects uses and discloses personal information is included in Appendix A that is attached to this Report.

<sup>11</sup> *Ibid* – section on logs.

<sup>12</sup> *Ibid* – section on retention.

<sup>13</sup> This information qualifies personal information about an identifiable individual if the information is used together with other personal information to identify an individual.

<sup>14</sup> Log.pdf, folder School info/PCSS, submitted Feb 2022.

- (a) the personal information includes information about children;
- (b) the collection is open-ended:
  - i. the personal information is being captured over time which captures patterns of behaviour and other personal attributes associated with one going about their everyday lives in a public setting;
  - ii. VST captures physical aspects about an individual including their gait and can reveal medical conditions, for example, a student walking with a crutch creates a record about a medical condition; and
  - iii. there are other unforeseen types of personal information that may be captured;
- (c) the personal information is collected in an institutional setting that students are required by law to attend.

### Finding - Issue two

[28] I find that the Department collects personal information about students and other persons who may be captured using VST including but not limited to teachers, school custodians, parents, and visitors, and that this information is highly sensitive.

### Issue three

**If the answer to Issue No. 2 is yes, then:**

**(a) does the Department have authority to collect this personal information in accordance with sections 12, 15, and 16 or any other relevant provisions of the ATIPPA?**

### Department's submissions

[29] The Department submitted the following for this issue.

*"Response: The Department has the authority to collect this information under section 15(c)(i) of the ATTIPA, as the collection directly relates to, and is necessary for, the purposes of carrying out an activity of the public body. The activity is enacting and enforcing provisions of the Education Act, department policies, and school rules that deal with ensuring student and staff safety and security in schools, as well as for the care and maintenance of school property. The Education Act gives the Minister, school boards, and councils powers and duties related to creating and enforcing, these provisions, policies and rules. Whether the use of video surveillance technology is considered a necessary tool for enacting and enforcing the provisions is decided by individual school*

*communities, and is to be implemented and managed in accordance with the department's Video Surveillance policy, and the ATIPPA."*

[30] For the purpose of this investigation, classroom means

*"A room in which a class of pupils or students is taught."*<sup>15</sup>

Relevant law

[31] Section 12 sets limitations on what personal information a public body can collect.

*A public body must not collect personal information*

*(a) except as provided under this Division; and*

*(b) beyond the amount that is reasonably necessary to carry out the purpose for which the personal information is collected.*

[32] Section 15 provides authority for collection.

*15 A public body may collect the personal information of an individual only if*

*(a) the collection is authorized or required under an Act of the Legislature or of Parliament;*

*(b) the collection is for a law enforcement purpose;*

*(c) the collection directly relates to, and is necessary for the purposes of*

*(i) carrying out or evaluating a program or activity of the public body, or a data linking activity in respect of which the public body is a partner,*

*(ii) providing or evaluating a specialized service in respect of which the public body is the personal identity manager or a partner, or*

*(iii) planning*

*(A) a proposed program or activity of the public body,*

*(B) a proposed specialized service in respect of which the public body is the personal identity manager or a partner, or*

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<sup>15</sup> Online Oxford Dictionary, <https://www.lexico.com/definition/classroom>.

*(C) a proposed data-linking activity in respect of which the public body is a partner; or*

*(d) the collection is for a prescribed purpose other than a purpose referred to in paragraphs (a) to (c) and the individual consents, in the prescribed manner, to that collection.<sup>16</sup>*

[33] Section 16 establishes the need for direct collection unless otherwise authorized.

*16(1) A public body authorized under section 15 to collect the personal information of an individual must collect it directly from the individual except if authorized under subsection (2) to collect it from another source.*

### Analyses – Section 15, 16 and subsection 12 (b)

[34] For the Department to have authority to collect the personal information identified above, it must have authority under section 15 for the collection, section 16 for the manner of collection, and it must limit the amount that is collected in accordance with subsection 12 (b).

### Paragraph 15 (c)(i)

[35] The Department indicated in its submissions that its authority to collect the personal information using VST is in accordance with paragraph 15(c)(i), specifically that it is collecting this information for a program or activity of the Department. As such, the wording of this paragraph that is relevant to the matter before me is as follows.

*15 A public body may collect the personal information of an individual only if*

*(c) the collection directly relates to, and is necessary for the purposes of*

*(i) carrying out... a program or activity of the public body...*

[36] Before deciding whether it has authority to collect personal information under this provision, the Department must first identify the specific program or activity for which the collection of personal information is required. It must then establish that the personal information being collected for the program or activity is necessary to carry out the program or activity. Lastly, it must ensure that the personal information that it identified as necessary “relates to” the program or activity.

### Program or activity of the public body

[37] As indicated, the Department identified the following in its submissions.

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<sup>16</sup> There are no prescribed purposes.

*...The activity is enacting and enforcing provisions of the Education Act, department policies, and school rules that deal with ensuring student and staff safety and security in schools, as well as for the care and maintenance of school property. The Education Act gives the Minister, school boards, and councils powers and duties related to creating and enforcing, these provisions, policies and rules. Whether the use of video surveillance technology is considered a necessary tool for enacting and enforcing the provisions is decided by individual school communities, and is to be implemented and managed in accordance with the department's Video Surveillance policy, and the ATIPPA.*

[38] From this evidence, I can determine that the program or activity identified by the Department in the VS Policy is its obligation to ensure student and staff safety and security in schools, and to ensure the care and maintenance of school property, which obligations, it asserts, stem from the *Education Act*, and existing policies and “school rules”.

[39] The VS Policy states the following under the heading “General Information”.

*The Department of Education is responsible for ensuring student and staff safety and security in schools, as well as for the care and maintenance of school property...*

[40] The Department did not identify in its submissions which provisions of the *Education Act* are applicable or which policies and rules, or a combination of the three, create these obligations.

[41] Despite this, I am satisfied that the Department is obligated to ensure student and staff safety in schools and for the care and maintenance of school property based on the following provisions of the *Education Act*:

- I. paragraph 6 (1)(a) authorizes the Minister to establish schools;
- II. paragraph 6 (1)(h) authorizes the Minister to provide for any other matter considered advisable to effectively administer the Act and the Yukon education system;
- III. section 38 sets out the duties of students, including observing the rules of the school and refraining from damaging or mutilating school property;
- IV. section 39 allows a school council or a superintendent to establish and enforce rules developed by the school administration;
- V. section 114 sets out the responsibility of the Minister to operate and manage any school in an attendance area;

- VI. section 126 sets out the responsibility of a superintendent for schools in an attendance area to carry out the duties of a director under section 124 that includes the general supervision of schools;
- VII. section 168 sets out the responsibilities of teachers including reporting on behaviour, maintaining order and discipline among students while they are in school or on school grounds, and reporting any condition that threatens the health or safety of students or employees of the school; and
- VIII. section 169 sets out the responsibilities of principals including to maintain order and discipline in the school and on school grounds, as being responsible for ensuring proper maintenance and care of school property, and to report any condition in the school that is dangerous or unsafe.

Necessary threshold

[42] As indicated, the Department is collecting a significant amount personal information about students, teachers, administrators, parents and others that is highly sensitive because it is using VST in the schools to record the personal information.

[43] The Department submitted the following about the necessary threshold.

*...Whether the use of video surveillance technology is considered a necessary tool for enacting and enforcing the provisions<sup>[17]</sup> is decided by individual school communities, and is to be implemented and managed in accordance with the department's Video Surveillance policy, and the ATIPPA.*

[44] It follows from this submission, and the fact that VST is being used to record personal information in the seven schools, that a decision was made that its use is necessary in these schools for the reasons identified in the Department's submission.

[45] The VST policy states on page 2 and 3 that:

*For the purposes of enhancing the safety of students, staff and others on school premises and deterring destructive acts, the Department of Education may authorize the use of video surveillance equipment on school property....*

*Placing video cameras in and around schools can act as an effective deterrent against unsafe and illegal activities while providing an objective source of information when such activities do occur....*

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<sup>17</sup> Referring to the *Education Act*.

*the School Board or Council must approve any requests for permanent video surveillance camera installation and proposed locations before authorization by the building administrator **AND** the Assistant Deputy Minister of Public Schools may be granted.*

[Bolding in original.]

[46] The Department also produced two privacy impact assessments (PIAs) for the investigation.<sup>18</sup> One of the submitted PIAs states:<sup>19</sup>

*The School community requires video surveillance for the following reasons:*

- *To capture incidents of bullying or threatening behavior in less supervised areas of the school;*
- *To deter and identify forced entry to the building / property, and provide opportunity to identify individuals involved in those incidents;*
- *To deter vandalism and provide an opportunity to identify persons involved with this behaviour.*

*To date, there are multiple schools that use video surveillance equipment for the purpose of protecting students and school property. All existing school video surveillance systems follow the department's Video Surveillance Policy.*

[47] Concerns regarding necessity have been noted by YTA members according to one of the submitted emails.

*...YTA, and its members, should not have to play a guessing game regarding the necessity for intrusive surveillance.*<sup>20</sup>

[48] To meet the *necessary* part of the paragraph 15 (c)(i) test, the Department will need to establish on the balance of probabilities that it is *necessary* to use VST for carrying out its responsibility in these schools to ensure staff and student safety and the care and maintenance of school property.

[49] The use of video surveillance has become pervasive in our society. It is being used in many settings, including in the public, private and health care sectors. Now it is being used in Yukon's public schools.

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<sup>18</sup> PIAs were provided for the use of VST at CSSC Mercier, dated Jan/21 (unsigned) and École Émilie-Tremblay, dated Aug 3/20 (unsigned).

<sup>19</sup> Yukon Dept. of Education, PIA\_CSSC Mercier video surveillance R1\_20210408, dated: Jan 28, 2021. Submitted Feb 2022, p. 3.

<sup>20</sup> Department of Education email. Subject line, "Video surveillance camera's msg. Dated: October 22, 2015. Submitted Feb 2022.



[50] The reasons often cited for using video surveillance are to reduce or deter criminal activity or to address other safety issues. The cost of acquiring a VST system is relatively low, and they are fairly easy to install. The technical capability of VST has increased over time (availability of e.g., HD video revealing more details, cheaper storage, cameras that can be remotely controlled and change field of view and zoom). These factors make using VST tempting to address these issues. However, there is little evidence that video surveillance works in any deterring capacity.

[51] In 2001, David Loukidelis, then the Information and Privacy Commissioner for British Columbia, reported that pervasive use of video surveillance had little or no effect on reducing crime.<sup>21</sup> It has also been reported that despite massive adoption of such technology in some countries, including the United Kingdom, there has been almost no evidence published showing that surveillance cameras have had an overall deterrent effect. In fact, surveillance may only serve to displace crime.<sup>22</sup>

[52] Former Information and Privacy Commissioner for British Columbia, David H. Flaherty, had the following to say in an investigation report about the use of video surveillance by public bodies in BC.

*Serious thought needs to be given to the real value of video surveillance. Public bodies should demonstrate its effectiveness for crime prevention or public safety and weigh it against the costs to individual privacy and freedom before they decide to implement surveillance. In other words, the first questions to be answered when speaking to these issues are whether and why, not how...*<sup>23</sup>

*... "Function creep" is the well-intentioned extension of the original purpose of video surveillance into a broader public order role, and the use of the camera as an instrument of social control.*<sup>24</sup>

*...[use of] video surveillance, unlike more traditional forms of surveillance, is random and indiscriminate in its gaze. Video surveillance involves the collection of personal information without the consent of those under surveillance:*

*Everyone coming into view -- shoppers, children, lovers, and the socially disadvantaged -- is captured by the cameras recording the movements of daily life without regard to*

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<sup>21</sup> Use of video surveillance by local governments, Office of the Information and Privacy Commissioner for British Columbia, February 7, 2018: <https://www.oipc.bc.ca/public-comments/2128>, p. 1.

<sup>22</sup> Investigation P98-12, Video surveillance by public bodies: a discussion, March 31, 1998, at p. 6: <https://www.oipc.bc.ca/investigation-reports/1259>.

<sup>23</sup> *Ibid*, at p. 5.

<sup>24</sup> *Ibid*, at p.6.

*whether a crime is being or is likely to be committed and with no grounds for suspicion because most cameras cannot be made simply to record particular incidents or serious crimes. Everyone suffers the infringement of their privacy and of the right to go about their daily lives free from surveillance.*<sup>25</sup>

[53] In a 2007 article in the Alberta Law Review, Public Video Surveillance by the State: Policy, Privacy Legislation, and the Charter, the author, Dereck Lai, discussed the effect of ‘dragnet monitoring’ using VST.<sup>26</sup>

*[Public video surveillance] means that for the most part, cameras will indiscriminately capture innocent people engaged in completely legal activity and only occasionally detect or record illegal behavior. In other words, general surveillance engages in "dragnet" monitoring and recording, and does not proceed on the basis of any individualized suspicion or belief that those being watched have or will commit an offence. Indeed, the main goal of these CCTV systems is to cast a wide surveillance net over an area so as to deter crime before it happens. One scholar has argued that this essentially presumes that everyone is guilty until proven innocent.*<sup>27</sup>

[54] In the same article, Lai added that using VST can have a ‘chilling effect’ on social behaviour. He identified that using VST can result in social behaviour modification such that “when people feel they are continually being observed, they will consciously or unconsciously modify their behavior...”<sup>28</sup>

[55] He added that “the chilling effect may come from a realization that cameras are more than just another set of eyes of because of their technological capabilities”, namely

- video images have become sharper and clearer;
- the cameras themselves are smaller and can pan and tilt;
- monitors can zoom-in across great distances to read a person's newspaper over their shoulder, and can use infra-red imaging to see in the dark;
- digitization of video images now makes it easier to reproduce, transfer, and store the footage;
- computer storage is replacing bulky videotapes, making it possible to index, catalogue, and cross-reference an enormous volume of data;

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<sup>25</sup> *Ibid.*, at p. 7.

<sup>26</sup> Derek Lai, Public Video Surveillance by the State: Policy, Privacy Legislation, and the Charter, 2007 45-1 *Alberta Law Review* 43, 2007 CanLIIDocs 168.

<sup>27</sup> *ibid.*, at p. 54.

<sup>28</sup> *Ibid.*

- digital technology also makes it easier to alter the images, leading to fears that the footage can be "doctored";<sup>29</sup> and
- the ability to make permanent recordings might also chill behavior.

[56] On the last point, Lai stated:

*...Unlike human memory, the recording will not fade with time but is potentially permanent. Emotions associated with past events also fade with memory, but can be revived upon watching the footage. The permanence of the recording means that it is forever associated with the person portrayed. The freedom to escape from the consequences of past behavior is more limited when those acts are recorded for posterity. As well, the footage can be played repeatedly or freeze-framed, revealing more detail than a casual glance.<sup>30</sup>*

*Recorded video also means that the potential exposure is limitless. An audience beyond the initial monitor can now view the footage. And there are consequences beyond merely multiplying the number of watchers. Actions that are appropriate for one setting will often appear inappropriate when viewed outside of that situation. Video allows those actions to be exported out of their original context... Moreover, when video takes those actions outside of their original context, the subject of the footage may find it difficult to justify his actions.<sup>31</sup>*

*And while "a picture says more than a thousand words," it might only provide part of the story and can easily lead to incorrect inferences...<sup>32</sup>*

[57] In addition, there is evidence that using VST in schools may have a negative effect on the perception of student safety where there is high surveillance in schools (particularly camera usage inside school buildings).

*"... a higher number of security cameras inside the school building was negatively associated with students' perceptions of safety, equity, and support; this suggests potential iatrogenic [33] effects of cameras within the school. In contrast, outside cameras produced mixed*

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<sup>29</sup> *Ibid.*, at p. 51.

<sup>30</sup> *Ibid.*, at p. 52.

<sup>31</sup> *Ibid.*, at p. 53.

<sup>32</sup> *Ibid.*

<sup>33</sup> Side effects and risks associated with (medical) intervention. Although this term has originally been used within the medical world to describe damage done by the healer, it has in the last decade found wider use in social sciences. See e.g., Taleb, N. N. *Antifragile: Things that gain from disorder*. Random House, 2016. For a more extensive description.

*findings, including null effects for safety and equity and positive associations with perceptions of support at moderate levels.”<sup>34</sup>*

[58] The foregoing risks to privacy and the other adverse effects associated with using VST to record personal information in Yukon’s schools suggests that:

1. the use of VST should only be used as a last resort after exhausting less privacy-invasive alternatives;
2. whenever possible, the goal should be to preserve the rights and freedoms of students and other citizens, including the right to be free from unwarranted surveillance in schools, and that using this technology should only be resorted to when the benefit to the school community outweighs, to a substantial degree, other competing social interests and individual rights, especially the preservation of personal privacy;<sup>35</sup> and
3. before resorting to the use of VST to record personal information, the Department together with the school community should:
  - i. consider whether video surveillance will achieve the intended purpose and whether the concerns are significant and serious enough to warrant implementing this highly invasive technology;<sup>36</sup>
  - ii. investigate problem-solving measures such as increased human monitoring, opening up lines of sight, increased lighting in darker areas, and removing the incentive for vandalism or other undesirable behaviour; and
  - iii. only after no demonstrable benefit is realized following the implementation of the problem-solving measures, adopt the least intrusive measure to address the problem.

[59] For example, if the key objective for using VST is deterrence, then the following measures may suffice.

The Department could:

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<sup>34</sup> Journal of Adolescent Health 63, *Surveillance or Safekeeping? How School Security Officer and Camera Presence Influence Students’ Perceptions of Safety, Equity, and Support*. September 2018.

<sup>35</sup> Investigation P98-12, Video surveillance by public bodies: a discussion, March 31, 1998, at p. 13: <https://www.oipc.bc.ca/investigation-reports/1259>.

<sup>36</sup> Using Overt Video Surveillance, Office of the Information and Privacy Commissioner for British Columbia, October 2017, at p.1: <https://www.oipc.bc.ca/guidance-documents/2006>.

1. install cameras, post public notification signs about their existence, but not turn the cameras on; or
2. install cameras, post public notification signs about their existence, but only monitoring occurs and no recording.

[60] If the Department determines that it is necessary to record video in a Yukon school and it is authorized to do so under the ATIPPA, it can reduce the impact on privacy by doing the following:

1. recording activity only in high-incidence areas;
2. recording activity only during high-incident or high-risk time periods i.e., certain times of the day and limited to a certain period (say a couple of months) after a qualifying incident occurs; or
3. have cameras that can be switched on randomly.

[61] To determine the meaning of ‘necessary’ in this provision requires a purposive interpretation of its meaning.

[62] When interpreting the provisions of the ATIPPA, I must consider the words therein, together with its purposes and its scheme and intention of Parliament.<sup>37</sup> I must also interpret them in such a manner that best insures the attainment of its objects.<sup>38</sup>

[63] Section 6 sets out the purposes of the ATIPPA. The purpose relevant to interpreting the meaning of ‘necessary’ in paragraph 15 (c)(i) is as follows.

*The purposes of this Act are*

*(a) to protect the privacy of individuals by controlling and limiting the collection, use and disclosure of personal information by public bodies;*

[64] “Necessary” is not a defined term in the ATIPPA. Its ordinary meaning is as follows.

*“Needed to be done, achieved, or present; essential.”<sup>39</sup>*

[65] Given the highly intrusive nature of using VST to record students, and any other person whose activities are captured through the recording, together with:

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<sup>37</sup> *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, 1998 CanLII 837 (SCC), at para. 21 and *Macdonald Communities Limited v Alberta Utilities Commission*, 2019 ABCA 353.

<sup>38</sup> *Interpretation Act*, RSY 2002, c125, at section 10.

<sup>39</sup> Necessary definition, [lexico.com, https://www.lexico.com/definition/necessary](https://www.lexico.com/definition/necessary) . 15 April 2022.

1. the amount of sensitive personal information captured through this recording;
2. the negative impacts, including the chilling effect, that recording has on an individual's right to be free from unwarranted surveillance by the Department while attending a public school in the Yukon; and
3. the fact that the surveillance is done in a public school that mandates students' attendance,

it is my view that to meet the 'necessary' threshold in paragraph 15 (c)(i) when using VST to collect personal information, the Department will need to establish that the use of VST to record personal information is needed or essential by demonstrating that:

1. there is history of incidents involving the specific school that creates significant risks to the health or safety of students in the school or the risk of significant damage to school property (Identified Risks);
2. less intrusive means of mitigating the Identified Risks were tried and were determined to be unworkable, noting that cost cannot be the only factor in making this determination;
3. it considered whether recording personal information using VST would be effective in dealing with or preventing the Identified Risks;
4. it assessed the effects that using VST to record personal information will have on personal privacy and any other adverse effects of its use and the ways in which such adverse effects may be mitigated;
5. the school community, including the school council or board, parents of students in the school, the school's principal and superintendent, were consulted about using VST to address the Identified Risks and as part of this consultation the assessment of privacy risks and other adverse effects associated with the use of VST in a school were shared and evaluated;
6. there is a need to for the cameras to record, rather than using less intrusive means to deter the behaviour that creates the risks including:
  - (a) installing cameras and posting public notification signs about their existence, but not turning the cameras on; or
  - (b) installing cameras for monitoring but not recording along with public notification signs about the monitoring; and

7. the proposed design and operation of the VST minimizes privacy intrusion to that which is necessary to achieve the purpose of its use, for example, by:
  - (a) recording activity only in high-incidence areas;
  - (b) recording activity only during high-incident or high-risk time periods;  
or
  - (c) have cameras that can be switched on randomly.

[66] In my view, the foregoing interpretation of the meaning of the word ‘necessary’ in paragraph 15 (c)(i) for the use of VST by the Department in a Yukon school accords with the purpose in section 6 (a) of the ATIPPA, its scheme and intention of Parliament, and insures the attainment of its objects.

[67] In its submissions, the Department did not provide any evidence about why it is ‘necessary’ to use VST to record the personal information other than to assert that it is “a necessary tool for enacting and enforcing the provisions [of the *Education Act*]”.

#### VS Policy

[68] In the VS Policy, it states as follows.

[69] Under the heading “General Information” it states:

*The Department of Education is responsible for ensuring student and staff safety and security in schools, as well as for the care and maintenance of school property.*

*The Department of Education is also responsible for ensuring the protection of student and staff privacy in accordance with the requirements of the Access to Information and Protection of Privacy Act (ATIPPA).*

*The ATIPPA and the Education Act provide that a public body such as the Department of Education may collect, use and disclose personal information that is necessary for managing the Yukon education system, and must protect such information by making reasonable security arrangements against risks such as accidental loss and unauthorized access, use or disclosure of the information.<sup>40</sup>*

[70] Under the heading “Purpose” it states:

*The purpose of this policy is to provide direction that ensures the effective and appropriate use of video surveillance by the Department of Education while protecting*

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<sup>40</sup> VS Policy, at p.1.

*the privacy rights and personal information of students, staff, and members of the public.*

*This policy does not apply to video surveillance on school busses or the use of video recording for educational purposes.<sup>41</sup>*

[71] There are a number of definitions in the VS Policy including for ‘personal information’ and ‘record’. These definitions have the same meaning as in the ATIPPA.

[72] The definition of ‘video surveillance’ means “any form of visual and/or audio capture of activity in an area by camera on school grounds” [my emphasis]. The meaning of ‘storage device’ is “a videotape, computer disk or drive, CD-ROM, computer chip or other device used to store the recorded data, or visual, audio or other images captured by the video surveillance system”.<sup>42</sup>

[73] The “Policy Statement” states:

*For the purposes of enhancing the safety of students, staff and others on school premises and deterring destructive acts, the Department of Education may authorize the use of video surveillance equipment on school property.*

*A privacy impact assessment must be completed before video surveillance equipment can be used on school property.*

*Placing video cameras in and around schools can act as an effective deterrent against unsafe and illegal activities while providing an objective source of information when such activities do occur.*

*Video surveillance may be used at times and places where vandalism, safety or security issues are likely to occur, and where conventional measures for achieving law enforcement or public safety objectives such as increased school staff supervision or security guard patrols are substantially less effective or not feasible and the benefits of surveillance substantially outweigh the reduction of privacy inherent in using a video surveillance system.*

*The Department of Education recognizes both its legal obligations to provide appropriate levels of supervision in the interests of student and staff safety, and the fact that students and staff have privacy rights that are reduced, but not eliminated, while at school.*

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<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*, at p. 2.



*Video surveillance must be carried out in a way that respects student and staff privacy rights. The Department of Education will not accept the improper use of video surveillance and will take appropriate action in any cases of wrongful use of this policy.*<sup>43</sup>

[74] Under the heading “Approval of Surveillance Sites”, it states:

*Video surveillance may be used to monitor and/or record.* [My emphasis]

*Excluding investigative use<sup>[44]</sup>, the School Board or Council must approve any requests for permanent video surveillance camera installation and proposed locations before authorization by the building administrator **AND** the Assistant Deputy Minister of Public Schools may be granted.* [Bolding in the original]

*If a School Board or Council recommends the installation of video surveillance cameras in a school facility or on school land, the School Board or Council will refer the matter to the building administrator, who will take the request to the Assistant Deputy Minister of Public Schools.*

[75] The VS Policy describes the process for installing “permanent”<sup>45</sup> VST as follows.

1. A request must be made to the school council or board and the applicable body must approve the request. They may then make a recommendation to install VST in the school to the “building administrator”. The ‘building administrator’ is defined in the VS Policy as “the school principal ...”.
2. The school principal will take the request to the Assistant Deputy Minister of Public Schools (ADM-PS).
3. The ADM-PS then designates an employee or agent to install, maintain or “handle” video surveillance systems.

[76] There are processes for delegating the authority associated with installation, maintenance and handling of VST and a restriction on such activities to Department employees or agents. There are also processes for the maintenance and calibration of the VST.

[77] Regarding the use of VST, the VS Policy states:

*Video surveillance must not be used in locations where private activities/functions are routinely carried out, and equipment must not monitor the inside of areas where*

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<sup>43</sup> *Ibid.*, at pp. 2 & 3.

<sup>44</sup> “Investigative use” is a defined term that is not relevant for the purposes of this investigation.

<sup>45</sup> The reference to the word “permanent” suggests that the VST that is installed for permanent use is for overt surveillance rather than covert surveillance that is used for a specific purpose, usually related to law enforcement.

*students, staff and members of the public have a higher expectation of privacy (including, but not limited to change rooms, washrooms and classrooms).*

*Video surveillance will be installed in such a way that it only monitors those areas that have been identified as requiring video surveillance. Cameras will not be directed to look through the windows of adjacent buildings.*

*If the surveillance area of a camera can be adjusted remotely by an authorized operator, the camera's movement shall be restricted so that operators cannot adjust or manipulate them to overlook spaces that are outside of the intended area to be covered by the video surveillance system.*

*Consideration shall be given to the use of motion detectors to limit the time when the video surveillance cameras are in operation.<sup>46</sup>*

[78] There is also a section in the VS Policy on notification and use of VST. It states that:

*The Department of Education will ensure that students, parents, staff and the public are notified annually that video surveillance is being used to monitor public areas and protect the well-being and security of individuals ensuring student and staff safety and security in schools, as well as for the care and maintenance of school property, and as a deterrent to vandalism, criminal acts or other illegal activities [...].*

*The Department of Education will further ensure that students, staff and members of the public have reasonable and adequate warning that surveillance is, or may be, in operation by using clearly written signs, prominently displayed at the perimeter of the video security surveillance area, identifying video surveillance equipment locations.*

*Notice must include contact information of the building administrator or designated employee or agent of the Department of Education who is responsible for answering questions about the surveillance system.<sup>47</sup>*

[79] The VS Policy includes the following regarding real time monitoring.

*Real-time monitoring may be implemented for the purposes of identifying problems that require immediate intervention, and for the safety of people on the premises during regular school hours. Real-time monitoring may also be used after hours and on weekends to monitor community use of schools. School Board or Council approval is required.*

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<sup>46</sup> *Ibid.*, at pp. 3 & 4.

<sup>47</sup> *Ibid.*, at pp. 4 & 5.

*Real-time monitoring may also be permitted for other purposes such as for monitoring weather conditions for grounds maintenance purposes (e.g., ice and snow removal). Monitoring for purposes such as this will not require School Board or Council approval.*

[80] The VS Policy states the following regarding records.

*Video surveillance records will be in the custody of or under the control of the Department of Education. Unless an investigation is underway, information obtained through video surveillance records will be deleted within 45 calendar days.*

*If decisions are made by the Department of Education based in whole or in part on information obtained through video surveillance, the information and video surveillance record(s) will be retained by the Department of Education for a minimum of one (1) year from the date the decision was made. All information obtained through the use of video surveillance will be protected and handled in accordance with the requirements of the ATIPP.*

[81] The VS Policy set out the following requirements regarding access to the VST records.

*Only the building administrator or designated Department of Education employee(s) shall have access to a video surveillance storage device. The storage device shall be password protected, encrypted and stored in a secure area.*

[82] Regarding roles and responsibilities:

*Building administrators are responsible for ensuring the proper maintenance and care of school property, including video surveillance systems, and the implementation of this policy at the school level.*

*The Assistant Deputy Minister of Public Schools is responsible for the implementation of this policy at the department level, ensuring the policy is reviewed, and tracking instances of review of video surveillance information.*

*All Department of Education staff are responsible for promoting health and safety in schools, and for ensuring the protection of student and staff privacy in accordance with the requirements of the ATIPP. School Boards and Councils are responsible for recommending or approving the use of video surveillance at the school level.*

[83] Regarding application:

*This policy applies to all staff, employees and students of the Department of Education as well as to members of the school community.*

[84] Regarding exceptional circumstance:

*Upon approval of the Assistant Deputy Minister of Public Schools, in situations where the particular circumstances of a case are such that the provisions of this policy cannot be applied or to do so would result in an unfair or an unintended result, some or all of the provisions of this policy may be waived based on the individual merits and justice of the situation. Such a decision would be considered for that specific case only and would not be precedent setting.*

*If this exceptional circumstances clause is utilized, the Assistant Deputy Minister of Public schools will, as soon as is reasonable, notify the Yukon Teachers Association, the Yukon Information and Privacy Commissioner, and any School Board or Council involved of the rationale for doing so.*

[85] Appendix 1 and 2 of the VST Policy provide for the public and annual notices to be used by the schools.

#### Appendix 1 – Annual Notice

##### *MEMO TO ALL STUDENTS, PARENTS AND GUARDIANS IN SCHOOL WITH VIDEO SURVEILLANCE*

*This building is equipped with a video surveillance system to provide protection for the well-being and security of individuals, and as a deterrent to vandalism, criminal acts or other illegal activities.*

*All information obtained by video surveillance is confidential and will only be transmitted to Education or police authorities when criminal or other illegal acts are suspected. All recorded information will be destroyed within 30 days of being recorded unless they are used as part of an investigation.*

*Any personal information collected through the use of the Video Surveillance Cameras at this site is collected and managed under the authority of s. 29(c) of the Access to Information and Protection of Privacy Act (ATIPP) and s.6(1)(h) of the Education Act.*

#### Appendix 2 – Public Notice

Attention:

*“This area may be monitored by video surveillance cameras. The personal information collected by the use of the Video Surveillance Cameras at this site is collected and managed under the authority of s.29(c) of the Access to Information and Protection of Privacy Act (ATIPP) and s.6(1)(h) of the Education Act.*

*Any information collected is for the purpose of providing protection for the well-being and security of individuals, and as a deterrent to vandalism, criminal acts or other illegal activities.*

*Any questions about this collection can be directed to the (list department) at (phone number), (School Board or Council address), (e-mail).*

[86] Appendix 4 provides for a template for logging of access to VST storage device and review of VST records. It includes the fields:

- date and time;
- location;
- review participants;
- reason for review;
- cameras reviewed;
- video extracted (yes or no);
- further action; and
- a signature field for the building administrator.

[87] The paragraphs regarding access and review in the VS Policy state that:

*Access and Review of Video Surveillance Records*

*Only the building administrator or designated Department of Education employee(s) shall have access to a video surveillance storage device. The storage device shall be password protected, encrypted and stored in a secure area. Video surveillance records in the custody of or under the control of the department may never be sold, publicly viewed or distributed in any fashion except as provided for by the ATIPP or other legislation. Information obtained through the use of video surveillance will only be reviewed when investigating an incident or a complaint. When video surveillance records are reviewed (see Appendix 4):*

- *A log must be kept of any access of a video surveillance record and must include a record of the reason for the review of video surveillance information, as well as the persons conducting the review;*
- *The log must be kept on file by the building administrator, and a copy forwarded to the Assistant Deputy Minister of Public Schools. Monitors used to review video surveillance recordings will not be located in a position that enables unauthorized viewing.*

*Recordings may only be reviewed by the building administrator, department staff who have direct involvement with the contents of the specific recording, parents and students (see below) or designated Department of Education employees or agents responsible for the technical operations of the system (for technical purposes only).*

*Parents and/or guardians may, if authorized by the building administrator, review a segment of a recording if the segment relates to a specific incident (e.g., accident or misconduct) involving their child/children, unless the review might violate the privacy of a third party. In that case, the review shall not take place unless authorized by the Assistant Deputy Minister of Public Schools.*

*Students may view a segment of a recording relating to themselves if they are capable of exercising their own access to information rights under the ATIPP. Student/parent viewing must be done in private and in the presence of the building administrator. An individual whose personal information has been collected and recorded by a video surveillance system may request access to the information in accordance with the ATIPP. Records may be disclosed to police to assist in police investigations as authorized by the ATIPP.*

[88] The rules in the VS Policy regarding retention and disposal are as follows.

#### *Retention and Disposal of Video Surveillance Recordings*

*Where an incident raises a prospect of a legal claim against the Government of Yukon or criminal charges for any party, relevant video surveillance recordings shall be sent to the Department of Justice upon authorization by the Assistant Deputy Minister of Public Schools.*

*The system will be configured to loop a minimum of seven calendar days and a maximum of 45 calendar days, thereby automatically erasing the previous period's video recording.*

*As required by the ATIPP, video recordings must be retained for one (1) year if the recording has been used in making a decision about an individual. If the surveillance information in the custody of or under the control of the department has been used for law enforcement or school or public safety purposes the information must be retained for the longer of the following two times:*

- I. For one (1) year from the date of viewing, or*
- II. For one (1) year from the date of the final resolution of the incident.*

*Any information obtained through video surveillance that is retained by the Department of Education, will be handled in accordance with the requirements of the Archives Act and record schedules set under regulation.*

Necessary test

[89] To establish if the Department has met the necessary threshold as set out above, an analysis of the Department's submissions, the VS Policy and the evidence from the Department's other documents produced for this investigation follows.

1. there is history of incidents involving the specific school that creates significant risks to the health or safety of students in the school or significant damage to school property (Identified Risks);

[90] The VS Policy assumes that there are risks to the safety of students in the school but does not require a history of incidents that create the Identified Risks prior to deciding whether to use VST in the school.

[91] No evidence has been provided to indicate that a history of incidents that create any of the Identified Risks had occurred prior to deciding to use the VST in any of the seven schools. For some of the schools, logs have been provided that show some incidents occurred after the use of VST began.

2. less intrusive means of mitigating the Identified Risks were tried and were determined to be unworkable, noting that cost cannot be the only factor in making this determination;

[92] The VS Policy includes the requirement to consider alternatives and requires them to be established as less effective or not feasible.

*...where conventional measures for achieving law enforcement or public safety objectives such as increased school staff supervision or security guard patrols are substantially less effective or not feasible and the benefits of surveillance substantially outweigh the reduction of privacy inherent in using a video surveillance system.*

[93] No evidence has been provided for any of the seven schools to show a consideration, weighing of, or exploration of the mentioned alternatives as is required by the VS Policy and as set out in the test.

3. it considered whether recording personal information using VST would be effective in dealing with or preventing the Identified Risks;

[94] The VS Policy identifies broad objectives for the deployment of VST. The VS Policy also requires the identification of areas requiring surveillance, assumingly based on a rational substantiation of that need, i.e., the Identified Risks.

[95] There is no process in the VS Policy or in practice that requires the identification of risks and consideration about whether the use of VST may address those risks. These risks must be specific to a school considering the use of VST to justify its use in the school. There is no evidence that these considerations occurred prior to deploying VST in any of the seven schools.

4. it assessed the effects that using VST to record personal information will have on personal privacy and any other adverse effects of its use and the ways in which such adverse effects may be mitigated;

[96] The VS Policy elaborates on the effect that VST has on privacy rights.

*The Department of Education recognizes ... the fact that students and staff have privacy rights that are reduced, but not eliminated, while at school.<sup>48</sup>*

*Video surveillance must be carried out in a way that respects student and staff privacy rights. The Department of Education will not accept the improper use of video surveillance and will take appropriate action in any cases of wrongful use of this policy.*

[97] The VS Policy fails to recognize that ATIPPA applies and that the Act does not contemplate a reduction of privacy rights for individuals in any circumstance. The privacy rights afforded to an individual under the ATIPPA are codified in the privacy provisions of the Act and they are the same for every individual no matter the circumstance.

[98] There is nothing in the VS Policy that requires an assessment of the privacy risks or other adverse measures before deciding to deploy VST in a school. Furthermore, there is no evidence that any such assessment occurred in relation to the use of VST in the seven schools.

5. the school community, including the school council and board, parents of students in the school, the school's principal and superintendent, were consulted about using VST to address the Identified Risks and as part of

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<sup>48</sup> This statement may be referring to section 8 of the *Canadian Charter of Rights and Freedoms*, which protects an individual's reasonable expectation of privacy against unreasonable search and seizure by the state. See, for example paras 34 to 63 in *R. v. Cole*, 2012 SCC 53 (CanLII).



this consultation the assessment of privacy risks and other adverse effects associated with the use of VST in a school were shared and discussed;

[99] According to the VS Policy, the school board or council must approve the deployment of VST. However, the VS Policy stops short of requiring any kind of consultation with the broader school community including students, parents and teachers that are not on a school council or board.

[100] One document was provided that shows evidence of a vote by a school council on the expansion of existing VST usage in a school.<sup>49</sup> Another document relates to concerns of the Yukon Teachers Association (YTA)<sup>50</sup> with the VST deployment and apparent discussion of issues at one of the meetings between YTA and the Department.<sup>51</sup> From the correspondence, it is clear that the discussion was initiated by YTA after the *de facto* deployment of VST.

*We are hoping to open dialogue about some concerns raised by our members regarding the recent instillation of surveillance cameras at the Carcross school.*<sup>52</sup>

*Some things we would like to discuss and obtain information about include:*

- *What are the relevant considerations prior to or leading to the decision to use video surveillance in a school;*
- *is there an applicable/current video surveillance policy;*
- *how is the/a policy and other issues relevant to the use or implementation of video surveillance communicated to YTA members;*
- *what are the rules relevant to the access, use, disclosure, retention, security and disposal of video surveillance records;*
- *is there any process of evaluation or review of the use of video surveillance.*

*These are just a few of our questions, but I hope it give you a good idea of where we would like to continue our enquiries.*

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<sup>49</sup> Email from Ryan Sikkes to James McCullough, 20 February 2019, Subject: Installation of additional cameras at Vanier.

<sup>50</sup> Now the Yukon Association of Education Professionals.

<sup>51</sup> Email from Lake Apted to Melanie Harris, Anne Kinsey, 10 January 2015, Subject: E-1 Agenda – surveillance in schools.

<sup>52</sup> The Department did not identify in its submissions that Carcross school is using VST to record personal information. Given that it only identified the seven schools in its submissions as using VST together with the fact that the date of this email is January of 2015, I will assume that VST is not being used in the Carcross school to record personal information at present.

[101] There is no evidence that prior to deploying the use of VST in the seven schools that any discussion or consultation occurred with school councils, boards or the broader school community about the privacy risks and adverse effects associated with the use of VST in a school.

[102] Lastly, it is unclear why the VS Policy requires a school board or council to approve the use of VST in a school. It is up to the Department alone to comply with the ATIPPA in order to collect personal information using VST. Given this, it may be more appropriate for the VS Policy to require the Department to consult with a school board or council in a meaningful way (i.e., by presenting them with the Identified Risks, alternative options, adverse effects, effectiveness, etc.) so they can determine whether it is appropriate to use VST in a school.

6. there is a need to for the cameras to record, rather than using less intrusive means to deter the behaviour that creates the risks including: and

[103] The VS Policy does require any assessment about whether it is necessary to record personal information using VST or if less intrusive measures will address the Identified Risks. Furthermore, there is no evidence that any such consideration occurred prior to deploying the use of VST in the seven schools.

[104] The PIAs describe a need to monitor less supervised areas of the school but do not clarify why recording needs to take place.<sup>53</sup>

7. the proposed design and operation of the VST minimizes privacy intrusion to that which is necessary to achieve the purpose of its use, for example, by:
  - (a) recording activity only in high-incidence areas;
  - (b) recording activity only during high-incident or high-risk time periods;or
  - (c) have cameras that can be switched on randomly.

[105] The VS Policy does not require consideration about limiting the operation of VST to high-incidence areas, high-incidence or high-risk time periods or on a random basis.

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<sup>53</sup> Yukon Dept. of Education, PIA\_CSSC Mercier video surveillance R1\_20210408, dated: Jan 28, 2021. Submitted Feb 2022. Yukon Dept. of Education, PIA\_EET video surveillance 2020, dated: Aug 3, 2020. Submitted Feb 2022.

[106] There is some evidence that schools limit the operation of VST, for example to only the perimeter of the school as opposed to also inside the school. However, no rationale was provided for this choice of limiting deployment.

### Finding – Paragraph 15 (c)(i)

[107] Based on the foregoing, on balance, I find that the Department has not established that it is necessary to collect the personal information using VST in the seven schools for the purpose identified in the VS Policy, which is to ensure the safety and security of staff and students in schools and for the care and maintenance of school property. Consequently, it cannot rely on paragraph 15 (c)(i) as authority for its collection of this personal information.

[108] Based on the evidence provided, I also find that there is no other provision in the ATIPPA that would authorize the collection of this personal information.

### Subsection 12(b)

[109] The VS Policy states the following about limiting the collection of personal information.

*Video surveillance must not be used in locations where private activities/functions are routinely carried out, and equipment must not monitor the inside of areas where students, staff and members of the public have a higher expectation of privacy (including, but not limited to change rooms, washrooms, and classrooms).*

...

*Video surveillance will be installed in such a way that it only monitors those areas that have been identified as requiring video surveillance.<sup>54</sup>*

...

*Consideration shall be given to the use of motion detectors to limit the time when the video surveillance cameras are in operation.*

[110] In PIAs for two of the seven schools, it states the following.

*Has the program conducted a review of the personal information collected to ensure only the minimum necessary is being collected?*

*No official review. However, the department and school will take efforts to minimize the amount of data collected, including only placing security cameras in critical areas internal and external to the school.*

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<sup>54</sup> Page 3 and 4

[111] Various maps and still screens provided in the document package provided by the Department show the following:<sup>55</sup>

- cameras are deployed in multi-use areas (labelled as theatre multi purpose room, interactive learning studio);
- cameras are deployed in sport facilities; and
- cameras are deployed near and aimed at the entrances of bathrooms and give limited visibility into the common area of these bathrooms.

[112] The PIAs describe a need to monitor less supervised areas of the school<sup>56</sup> but do not clarify why collection<sup>57</sup> needs to take place.

[113] There is no evidence of any consideration of minimizing collection for five out of seven schools other than, as required by the VS Policy, the absence of VST inside bathrooms, changerooms and most rooms that qualify as classrooms. As indicated, in the PIAs for the two schools, there was some consideration, however, it is lacking in scope, substantiation, and thoroughness.<sup>58</sup>

[114] Furthermore, there is evidence that the Department is not adhering to the VS Policy regarding minimization. This is because ‘multi-use’ and ‘sport facilities’ qualify as classrooms as per the common definition of a classroom and should, according to the Department’s VS Policy, not be subject to VST. In addition, according to this Policy, bathrooms enjoy a higher level of privacy expectation. It is, therefore, concerning that entrances and common areas in bathrooms are being recorded using VST.<sup>59</sup>

### Findings - Subsection 12(b)

[115] Based on the foregoing, on balance, I find that the Department does not adhere to the limitation principle as set out in section 12(b) for its collection of the personal information using VST.

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<sup>55</sup> See Appendix A for details regarding the placement of cameras.

<sup>56</sup> Yukon Dept. of Education, PIA\_CSSC Mercier video surveillance R1\_20210408, dated: Jan 28, 2021. Submitted Feb 2022, Page 11

<sup>57</sup> Recording video material, as opposed to live monitoring of the screens. Monitoring of the screens does not constitute a collection under ATIPP as no record is created.

<sup>58</sup> Yukon Dept. of Education, PIA\_CSSC Mercier video surveillance R1\_20210408, dated: Jan 28, 2021. Submitted Feb 2022. Yukon Dept. of Education, PIA\_EET video surveillance 2020, dated: Aug 3, 2020. Submitted Feb 2022.

<sup>59</sup> See Appendix A, organized evidence schools, row 4.

## Section 16

[116] The Department indicated in its submissions that its authority to collect the personal information using VST is in accordance with paragraph 15(c)(i). In its submission, it does not qualify if the collection is direct or indirect.

[117] The wording of subsection 16 that is relevant to the matter before me is as follows.

*16(1) A public body authorized under section 15 to collect the personal information of an individual must collect it directly from the individual except if authorized under subsection (2) to collect it from another source.*

[118] Collection is defined under subsection 1 of ATIPPA

*“collection”, of personal information, includes gathering or obtaining the personal information but does not include the use, disclosure or management of the personal information;*

[119] The ordinary meaning of “obtain” is defined as:

*[g]et, acquire, or secure (something).<sup>60</sup>*

[120] Any personal information that is captured through the use of VST that creates a video record is personal information that would be collected directly from the individual. However, the Department indicated that it is producing logs about access and that the video record also produces meta data. Both these records contain personal information that is acquired by the Department as part of its use of VST in the seven schools. As such, this information is indirectly collected by the Department.

[121] Indirect collection is any collection of personal information about an individual that is not collected directly from the individual. As logs and metadata are collected indirectly from individuals, they constitute an indirect collection of personal information.

[122] As per subsection 16 (1), the Department must collect personal information directly from the individual unless it is authorized to indirectly it under subsection 16 (2).

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<sup>60</sup> Oxford online dictionary, <https://www.lexico.com/definition/obtain>.

[123] The Department in its supporting documents provides no evidence of its authority to indirectly collect this information. In its submissions<sup>61</sup>, the VS Policy<sup>62</sup> and the PIAs<sup>63</sup> it indicates that the only collection taking place concerning the use VST is a direct collection.

### Findings - Section 16

[124] I find that, on balance, the Department has not established that it has authority to indirectly collect personal information as part of its VST deployment.

### Findings – Issue three (a)

[125] Based on the foregoing, for the seven schools identified by the Department as using VST<sup>64</sup> I find that the Department has not established that:

1. it has authority under section 15 to collect personal information using VST;
2. it is authorized under subsection 16 (2) to indirectly collect personal information as a result of its use of VST; and
3. in accordance with subsection 12 (b) it has limited the amount of personal information collected as a result of its use of VST to the amount that is reasonably necessary to carry out the purpose of the collection.

[126] As a result of this finding, I need not go on to decide Issue three (b) to (f).

## VIII RECOMMENDATIONS

[127] Given that that the Department has not established that it has authority to collect the personal information through the use VST in schools, I recommend the following:

1. the Department immediately ceases its collection of personal information by means of using VST in the seven schools;
2. the Department immediately destroys in a secure manner any personal information that it holds from the use of VST in the seven schools including any logs or other records containing meta data that contain personal information;
3. the Department confirm that recommendations 1 and 2 herein have been implemented within 20 days of receiving this Investigation Report; and

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<sup>61</sup> Submission on issue 3 A. The department relies solely on 15(c)(i)

<sup>62</sup> The Policy's appendix a relies on section 29(c) of the previous ATIPP Act.

<sup>63</sup> Ibid footnote 81. Paragraph 3.4.2. of the PIA that addresses indirect collection is empty. Indirect collection via the logs is also missing from the PI flows.

<sup>64</sup> See paragraph [10] of this Report.

4. if the Department decides to recommence its use of VST in any of the seven schools, that it submits a PIA to the Office of the IPC for review and comment prior to deploying VST in any of these schools.

## Public body's decision after review

[128] Section 104 of the Act requires the Department to decide not later than 15 business days after receiving this Investigation Report whether to follow my recommendations and provide me with a written notice of its decision within the same time period. If it decides to reject any of my recommendations, the Department must provide their reasons for the rejection.

[129] If the Department does not give notice of its decision within 15 business days of receiving this report, then it is deemed to have rejected my recommendations.

[130] If the Department accepts a recommendation but does not comply with it within 15 business days after providing me with its notice to accept the recommendation, then it is deemed to have refused to follow the recommendation unless an extension is granted by the IPC in accordance with subsection 104 (4).

### ORIGINAL SIGNED

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Diane McLeod-McKay  
Information and Privacy Commissioner

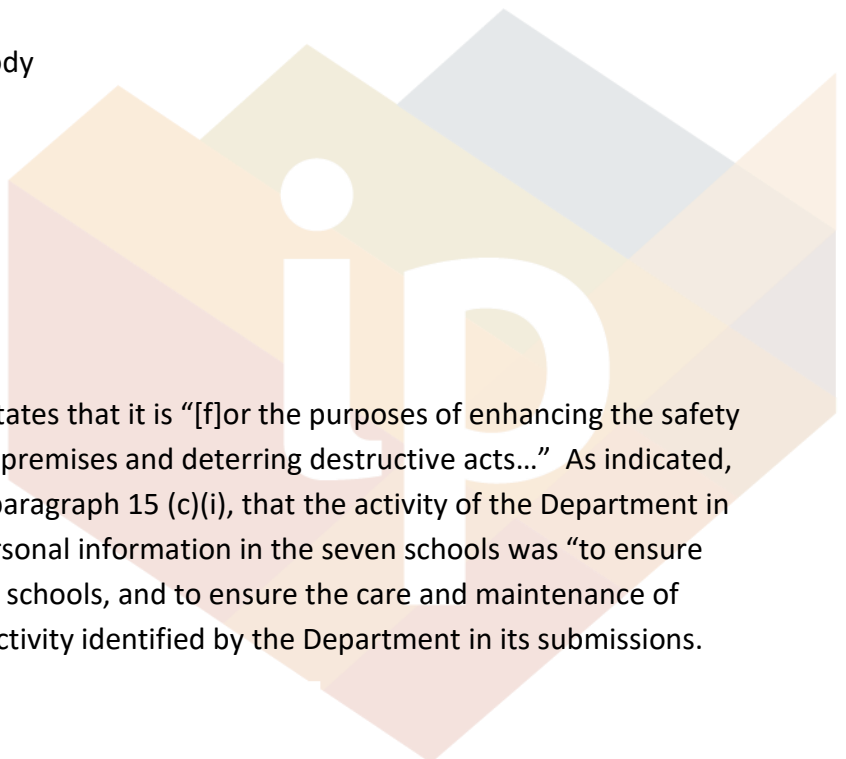
Distribution List: Head of the Public Body

Attachments: Appendix A

## Postscript

### Policy Statement

The Policy Statement in the VS Policy states that it is “[f]or the purposes of enhancing the safety of students, staff and others on school premises and deterring destructive acts...” As indicated, I determined that for the purposes of paragraph 15 (c)(i), that the activity of the Department in relation to the use of VST to record personal information in the seven schools was “to ensure student and staff safety and security in schools, and to ensure the care and maintenance of school property”. This was the same activity identified by the Department in its submissions.



The activity identified by the Department in the VS Policy is not the same as the activity identified for the purposes of paragraph 15 (c)(i). This needs to be rectified in the VS Policy to ensure that it is clear to those applying the VS Policy about the only activity for which the use of VST may be authorized.

### **Decision to use VST in schools**

In its submissions, the Department submitted that the decision to use VST in a school rests with “individual school communities”. The Department did not define the meaning of ‘individual school communities’ and this term does not appear in the VS Policy.

The *Education Act* sets out the duties of a school council in section 113 of that Act. The provision is silent on whether the council has a role to play in ensuring that the school in its attendance area is safe for students and staff and for ensuring the care and maintenance of school property. It may be that paragraph 113 (1)(a) implies this role given that it requires a council to “review, modify if necessary, and approve...other matters required for the effective functioning of the school”.

Even if the council has a role to play in deciding whether to use VST in schools, the council is a third party to the Department and does not have any authority under the ATIPPA to decide on behalf of the Department about whether the Department is authorized to collect the personal information using VST. This decision must be made by an “employee” of the Department as that term is defined in section 1.

Given this and based on the process outlined in the VS Policy, above, the decision about compliance with ATIPPA in the use of VST in a school must be made by either the principal or the ADM-PS or another designated employee of the Department.

It is unclear from the documentation provided as to who made the decision to use VST in the seven schools and who decided that the collection of personal information using VST is authorized under the ATIPPA.

### **Paragraph 6 (1)(h) of the *Education Act***

The Department’s VS Policy does not list paragraph 6 (1)(h) of the *Education Act* as the authority to use VST in schools. Recall that this paragraph authorizes the Minister to “provide for any other matter that the Minister considers advisable to effectively administer the Act and the Yukon Education system”. However, the various notices and the PIAs mention this authority (e.g., Appendix 1 of the VS Policy).

The VS policy references sections 21 and 38 and subsection 169 (k) of the *Education Act* in the “legislative and policy reference” section of the VS Policy. This section of the VS Policy also



references s. 29 of the ATIPP Act<sup>65</sup> (now repealed), which set out three circumstances authorizing collection in the prior ATIPP Act.

No evidence was provided to indicate that the Minister, or her delegate, has exercised their authority under paragraph 6 (1)(h) of the *Education Act* such that they have determined that it is “advisable to effectively administer the Act and the Yukon education system” that VST be used in Yukon’s schools to record personal information for the purposes identified by the Department in the VS Policy. If this determination has been made, the Department should consider adding this information to the VS Policy along with any other relevant authority in the ATIPPA that may authorize the collection, use and disclosure of this information.

### **Additional observations**

Different practices regarding the use of VST were reported via the document package. There is evidence of non-compliance and absence of evidence of compliance, as the submitted documents do not include the information that is necessary to demonstrate compliance with the ATIPPA and the VS Policy within some schools. Gaps include adequate notice, camera necessity/angles, log keeping, the VST approval process as per the VS Policy, etc.<sup>66</sup>

The two schools for which PIAs<sup>67</sup> were supplied as part of the document package do give reasons for the deployment of VST but do not substantiate why VST is necessary.

On the first pages of the PIA the Department states that:

*“The School community requires video surveillance for the following reasons:*

- *To deter vandalism and provide an opportunity to identify persons involved with this behaviour;*
- *To capture incidents of bullying or threatening behaviour in less supervised areas around the exterior of the school;*
- *To deter and identify forced entry to the building / property.”*

The PIAs contained no evidence or rationale that the above issues have occurred or are occurring at the two schools for which the PIAs were completed. The only evidence provided for all schools about any incidents are three log files containing log entries that have logged sporadic incidents for three of the seven schools<sup>68</sup> while the VST was already active.

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<sup>65</sup> RSY 2002, c. 1.

<sup>66</sup> See appendix A – Organized evidence schools.

<sup>67</sup> Yukon Dept. of Education, PIA\_CSSC Mercier video surveillance R1\_20210408, dated: Jan 28, 2021. Submitted Feb 2022. Yukon Dept. of Education, PIA\_EET video surveillance 2020, dated: Aug 3, 2020. Submitted Feb 2022.

<sup>68</sup> See Appendix A.

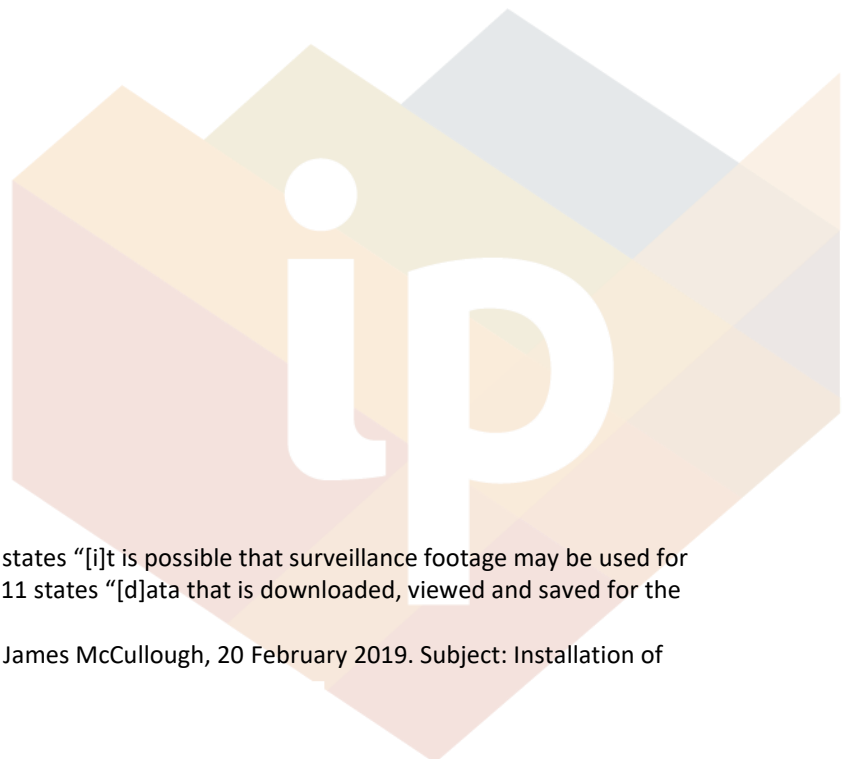
In the information flow section of the PIA, the Department cites “to identify problem behaviour”<sup>69</sup> and later in the PIA also “discipline” as a purposes for collection. The Department does not demonstrate it has authority to conduct VST for these purposes.

Both PIAs have not been signed by the Deputy Minister or their delegate. The documents are drafts.

School board or council approvals or school community decisions have not been provided to verify the authorized deployment of VST. Only one note regarding a school council vote to expand already existing VST with four more cameras was provided.<sup>70</sup>

There is no documented evidence of sign-off by the building administrator and ADM as per the VS Policy.

PIAs for five of the seven schools have not been provided. The VS Policy requires a PIA be completed before video surveillance equipment can be used on school property. Recall that the VS Policy is dated February 6, 2017. If the video surveillance occurring in any of the seven schools predate the VS Policy, efforts should have been made to conduct PIAs for the use of VST in these schools and pass adequate governance steps (i.e., sign off by school council/board and ADM) once the VS Policy went into effect.



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<sup>69</sup> Page 6 refers to problem behavior. Page 10 states “[i]t is possible that surveillance footage may be used for disciplinary purposes within the school”. Page 11 states “[d]ata that is downloaded, viewed and saved for the purpose of discipline...”

<sup>70</sup> Attachment to an email from Ryan Sikkes to James McCullough, 20 February 2019. Subject: Installation of additional cameras at vanier.