



**F07-06-MS                      Privacy in Public Spaces: Employer Withholds Surveillance Video Shot on City Street**

After suffering an injury, a municipal worker took absences to recuperate. When the absences continued after a long period of time, the employer began to suspect the worker of malingering. Rumours that he was running a business on the side, selling items on city streets, simply heightened the suspicion. In preparation for possible disciplinary measures, the employer hired a private investigator to track and, in some cases, film the worker's movements.

The upshot was that the worker was eventually fired. As part of his efforts to grieve the dismissal, he filed a request for access to the videotape taken by the private investigator. The municipality turned down the request, arguing that releasing the videotape would, under section 22 of the *Freedom of Information and Protection of Privacy Act*, be an unreasonable invasion of privacy of other people shown interacting with the worker on city streets.

Ordinarily, when a public body applies section 22 to materials requested under FIPPA, it will sever the personal information in question and release other parts of the record to which FIPPA exemptions do not apply. In this case, however, the municipality argued that, because of the expense entailed in hiring a film editor's services, it could not reasonably sever the images of other people in the videotape and therefore had no obligation to do so under section 4(2) of FIPPA.

The request for access to the videotape thus raised two problematic questions: Did a lowered expectation of privacy in public places mean that releasing the videotape would constitute an unreasonable invasion of privacy of passers-by or of people seen conversing with the man under surveillance? And, if so, was it reasonable for the municipality to argue that the cost of blurring faces on the videotape meant it was entitled to withhold the videotape in its entirety?

Portfolio Officers in our office dealing with requests for review try to mediate resolutions that both comply with the law and are acceptable to the parties. In the event of an impasse, we will advise applicants of their right to request a formal inquiry resulting in a written order. Portfolio Officers may also, in providing this information, share with applicants their conclusions as to the likelihood of success at inquiry—there is little point encouraging requests for an inquiry where the issues are straightforward and have clearly been addressed in previous Commissioner's orders.

This request for review raised issues that have not been directly addressed in the past—but may well become more common in future, given the increasing incidence of video surveillance. It appeared to the Portfolio Officer that good arguments could be made by either side and the outcome would by no means be a sure thing. We therefore offered no predictions when advising the applicant of his right to request an inquiry, and in the end he decided not to do so.