



TRANSIT POLICE

INCIDENT VIDEO – RESPONDENTS AND WITNESSES

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POLICY

Definitions

Charter – Canadian Charter of Rights and Freedoms, Constitution Act, 1982, c. 11(U.K.), Schedule B.

Criminal Code – Criminal Code of Canada [RSC 1985, c. C-46].

Chief Officer – The Transit Police Chief Officer or delegate.

Designated Constables – The Transit Police police officers appointed by the Police Board.

IIO – The Independent Investigations Office of British Columbia established pursuant to s. 38.02 of the *Police Act*.

JPD – Jurisdictional Police Department.

Member – A sworn member of the Transit Police.

Police Act – The BC Police Act, [RSBC 1996], c. 367, and the regulations thereto, including the Transit Police Operations Regulation, all as amended from time to time.

Respondent – A Member under investigation, either under the *Police Act* or the *Criminal Code*.

Use Immunity – Pursuant to s. 102(1) of the *Police Act*, this form of immunity forecloses the prosecution from using the respondent/witness's statement against the witness in a prosecution resulting from a statement given by that respondent/witness for that prosecution or any other future prosecutions. The limitation to "use immunity" is that if the prosecutor acquires evidence independent of that statement from other sources, including forensic evidence, such evidence may be used against that respondent /witness.

Witness – A Member who is a witness to the actions of another Member who is under investigative scrutiny, either under the *Police Act*, the *Criminal Code*, or other relevant legislation.

Transit Police – The South Coast British Columbia Transportation Authority Police Service.

Authority

1. Showing incident video to Members who are Respondents or Witnesses in *Police Act* or criminal investigations will be consistent with the requirements of the *Police Act*, *Criminal Code*, other relevant legislation, *Charter* and relevant case law.

General

2. With the increasing availability of video evidence showing police-involved incidents, there are some circumstances where available video should be considered as an aide to a Respondent's/Witness's memory (in the same way as contemporaneous notes, computer aided dispatch printouts and audio from police radio transmissions) and used to assist in providing an accurate account of their actions.
3. On a case-by-case basis, the Transit Police endorses that careful consideration must be given to providing Respondents/Witnesses access to incident video prior to providing a statement to assist them in providing an accurate statement.

NOTE: It is important to understand that obtaining a factual statement is not a "memory test," and that a statement that is inconsistent with video evidence may be indicative of the frailties of human memory, and not a lack of truthfulness.

4. The Transit Police will establish protocols and guidelines related to providing Members who are Respondents or Witnesses access to incident video that may exist, for the purpose of providing an accurate statement. This access provision is limited to such reasonable efforts within the authority of the Transit Police.
5. The Transit Police recognizes that in all police investigations, regardless of whether the subjects are police officers, the purpose of an investigation is to determine the truth. Where the subject of investigation is an on-duty police officer, an investigative goal is often to determine whether the police officer acted on the basis of legal authority.
6. An investigation conducted under the *Police Act* compels a Respondent/Witness to provide a statement and answer questions to provide an accurate and truthful account of the reasons for their actions. In a criminal investigation, a suspect officer has a *Charter* right not to provide a statement or answer questions. In all circumstances, investigators obtaining statements from Respondents/Witnesses will do so in a professional manner consistent with good investigative practice, including providing access to aids to memory prior to an interview unless there are bona fide investigative reasons not to.
7. In circumstances where reliable incident video exists, the Respondent/Witness will be advised of such prior to a statement being requested or obtained. Except as outlined in s. 8 of this policy, the investigator will not purposely hold back from the Respondent/Witness the availability of incident video for review.
8. In circumstances involving a covert operation, the investigator may purposely hold back from the Respondent/Witness officer, or suspect officer, in the availability of incident video for review, with authorization from the Deputy Chief Officer Operations or designate so as not to compromise an ongoing investigation.

9. Members conducting investigations under the *Police Act* should exercise the same considerations as contained in this policy to providing incident video to civilian witnesses/complainants as an aid in obtaining an accurate statement.

PROCEDURES

Investigator Responsibilities

10. The investigating Member shall follow these procedures regarding showing incident video to Respondents/Witnesses:
 - 10.1 A Respondent/Witness will only be provided access to video of an incident if they could have observed the events depicted and/or their actions are depicted in the video. A Respondent/Witness should not be shown video of events they could not have directly observed.
 - a. In the event of the implementation of body worn video (BWV), such recordings will be considered the evidentiary equivalent of an officer's notes and the officer shall be provided access to the BWV recordings in the same manner as access to contemporaneous notes he/she recorded.
 - 10.2 In cases where a Respondent/Witness will be shown video at any point in the statement-taking process, and there are multiple video sources available that capture an incident from different angles, access will only be provided to the video which best captures what the Respondent/Witness could have seen (from the investigator's perspective), unless there are compelling investigative reasons to proceed differently.
 - 10.3 Where identification of a suspect is an issue in the investigation, the possibility that Respondent/Witness identification of a suspect may result from being shown a video, rather than their own independent recollection of the person, must be considered. Further, the investigator will take into consideration whether a still-capture image is better for identification evidence.
 - 10.4 For investigations conducted under the *Police Act*, to avoid the potential for allegations about, or the reality of, improper "witness tainting," requests by a Respondent/Witness for a copy of such video in advance of an interview shall generally be declined. Video shall be shown in a controlled environment so that the circumstances may be carefully documented. Any variance to these provisions will require a case-by-case assessment of the circumstances by the investigator and authorization from the Deputy Chief Officer Operations or designate.
 - 10.5 For criminal investigations, a suspect officer has the same *Charter* rights as all suspects, including the right not to provide a statement or answer questions. While investigators may desire to control the environment as described in s. 11(4) of this policy, if the Respondent wishes to review the video showing their actions and/or events they observed prior to providing a

statement or being interviewed, then consideration must be given to this request.

- 10.6 Considerations must include the value to the investigation of seeking a statement prior to the Respondent/Witness reviewing the video, given that the purpose of the investigation is to determine the truth of what occurred, not to test the Respondent/Witness's memory against accurate video which appears to show the entire interaction.
- 10.7 Where the events of an incident appear to the investigator to be clearly and incontrovertibly shown in available video, the value of a Respondent's or Witness's independent recall of feelings and perceptions may be outweighed by the value gained by the Respondent/Witness using the video as an aid to memory in providing an accurate statement.
- 10.8 Where Respondent/Witness perceptions of the event are seen as an important factor to be considered in determining the facts, then anything which may interfere with, or influence improperly, the Respondent/Witness perceptions at the time they acted can be critical to the outcome of the case. In such cases, the investigator will consider conducting a two-stage interview, as follows:

Stage 1 – Respondent/Witness to be asked to provide a statement about their perceptions of what occurred.

Stage 2 – The Respondent/Witness to be allowed to access the video of the event to refresh their memory and assist in ensuring that a supplemental statement is provided if necessary to be accurate. No inference of untruthfulness should be drawn simply from inaccuracies in the initial statement.
- 10.9 The investigator must ensure that an exact copy of the video shown to the Respondent/Witness is preserved as an exhibit. The investigator must be able to say precisely what video the Respondent/Witness reviewed and all the surrounding circumstances.
- 10.10 As standard practice in the interview, the investigator will canvass the Respondent/Witness to ascertain if any video of the event was viewed by the Respondent/Witness outside of the control of the investigation (e.g., video posted on the Internet or media source prior to initiation of the investigation). If affirmative, a copy of that video is also to be preserved as evidence.
 - a. Once an investigation has commenced, a Respondent/Witness will only be permitted access to incident video in accordance with this policy or as authorized by the Deputy Chief Officer Operations.
- 10.11 In circumstances where a Respondent/Witness has provided a statement regarding an incident under investigation and additional incident video is obtained that provides a more complete depiction of the incident, the Respondent/Witness will be provided an opportunity to review the additional video and provide a supplementary statement if necessary.

External Investigations

11. In circumstances where Members are subject to a critical incident investigation by the IIO or an investigation by an external police agency, any access to incident video will be as determined by the investigating agency that has file control.

NOTE: All police agencies in BC have adopted the model policy (see references below) that is the basis for this policy, but it has not been adopted by the IIO, which is guided by its own substantially different policy and procedure.

[Refer to Transit Police policy chapter: [OH070 – Independent Investigations Office.](#)]

Key References

BC Police Act, [RSBC 1996], c. 367

Canadian Charter of Rights and Freedoms, Constitution Act, 1982, c. 11(U.K.),
Schedule B

Criminal Code of Canada [RSC 1985, c. C-46]

Decision on Review of the Record pursuant to section 141 *Police Act* re OPCC File #14-9611, by Carol Baird Ellan (Retired Judge of the Provincial Court)/Adjudicator, January 26, 2016

Decision on Recommendations pursuant to section 141 *Police Act* re OPCC File #14-9611, by Carol Baird Ellan (Retired Judge of the Provincial Court)/Adjudicator, May 25, 2016

Discussion Paper, “*Showing Incident Video to Respondent Police Officers in Police Act and Criminal Investigations*” by Deputy Chief Officer Doug LePard, O.O.M./Vancouver Police Department and Bronson Toy, B. Comm., L.L.B./Vancouver Law Department, October 2014

R. v. Kelly, 2014 NLPC 1313A0227

R. v. White, [1999] 2 S.C.R. 417