

Royal Canadian Mounted Police
Commissioner



Gendarmerie royale du Canada
Commissaire

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NOV 20 2020

PROTECTED "A"

Ms. Michelaine Lahaie
Chairperson
Civilian Review and Complaints Commission
for the RCMP
P.O. Box 1722, Station "B"
Ottawa, Ontario
K1P 0B3

Dear Ms. Lahaie:

I acknowledge receipt of the Commission's report regarding the public interest investigation into allegations that the RCMP improperly monitored and disclosed information of persons and groups seeking to participate in National Energy Board (NEB) hearings, file number PC-2014-0380.

I have completed a review of this matter, including the findings and recommendations set out in the Commission's interim report.

I agree with Finding No. 1 that it was reasonable for the RCMP to provide a visible presence at the NEB hearings.

I agree with Finding No. 2 that it was reasonable for the RCMP to monitor the Prince Rupert protest.

I agree with Finding No. 3 that it was reasonable for the RCMP to monitor events for the purpose of identifying criminal activity.

I agree with Finding No. 4 that the RCMP acted reasonably in monitoring the demonstrations.

I agree with Finding No. 5 that it was reasonable to video-record the demonstrations.

I agree with Finding No. 6 that, as demonstrated by the RCMP's reliance on a closed-circuit surveillance camera policy, the RCMP lacks a clear policy with respect to video-recording public order events such as demonstrations and protests.

I support Recommendation No. 1 that the RCMP consider implementing a specific policy regarding video-recording protests and demonstrations, setting out criteria and limits for video-recording protests and demonstrations and for video retention periods.

There are operational policies currently under development for the policing of public assemblies that will include a section on video recording of protests and demonstrations and references to existing policies on Information Management (IM) and retention periods for recorded media. Other existing policies will be reviewed to determine if there is a need to amend those policies to include a section on video recording events such as those noted above. I will direct that provisions be added in the new policy for policing public assemblies and in the existing *Operational Manual* (OM) policy 55.2 "Aboriginal Demonstrations and Protests" and OM 37.7 "Labour Disputes" on the video recording of protests and demonstrations, which will provide general criteria for this practice and include references to the RCMP policies on IM for the retention periods of recorded media.

I support Recommendation No. 2 that, in particular, all recordings and images of peaceful protests and demonstrations be destroyed as soon as is practicable.

At the time of the NEB hearings, there was limited policy on video recording of protests or demonstrations. OM 16.4 "Closed Circuit Video Equipment" was in effect at the relevant time. It provided that, if no significant events occurred, the recordings were to be considered transitory records retained for a prescribed period set by the detachment commanders. This policy has since been amended and retention periods are now found in the RCMP policy on IM of recorded media, such as video recordings. The RCMP manages information obtained in the execution of its duties in accordance with the *Privacy Act* and RCMP policies on IM. Retention periods for recorded media is defined in *Information Management Manual* 2.3 "Operational Information Resources". We will take the opportunity to review and confirm current policies to ensure that the recorded media is destroyed as soon as practicable.

I agree with Finding No. 7 that it was reasonable for the RCMP to monitor open sources for information about upcoming protests and demonstrations.

I agree with Finding No. 8 that the RCMP's current policy on the use of open sources does not provide clear guidance as to the collection, use, and retention of personal information obtained from social media where there is no criminal nexus.

You will recall that in my response to the anti-shale gas protests in Kent County, New Brunswick I generally agreed to a similar finding. The Force adopted its first policy on this issue, namely OM 26.5 "Using the Internet for Criminal Investigations and Intelligence", in March 2015. On July 15, 2019, the original version of OM 26.5. was amended and is now titled "Using the Internet for Open Source Intelligence and Criminal Investigations". That policy update changed the roles and responsibilities of the Tactical Internet Operational Support Unit and unit commanders and aligned policy with the most recent technology developments in the area of open-source intelligence (OSI) collection. It did not modify the core provisions found in the original version.

The response in Kent County was based on the information that was known at that time and as provided by the various policy centers that were consulted for that report. Since my June 17, 2020, response on Kent County I have reviewed a draft of the report for the OSI Audit. I have also reviewed your Final Report on Kent County, released on November 12, 2020.

When OM 26.5 - "Using the Internet for Criminal Investigations and Intelligence" came into effect in 2015 and after being reviewed in 2019, it was felt the policy was adequate. Despite the policy being in place, the 2020 OSI Audit revealed that it was not well-known and compliance levels were very low among those persons interviewed. The Audit identified opportunities to develop a more robust governance framework and to review and strengthen the current OM 26.5 policy and any other policies related to the collection, storage, and retention of OSI. The Audit Report and Management Action Plan will be available when it is published.

Based on the foregoing, I support Recommendation No. 3 that the RCMP provide clear policy guidance describing what personal information from social media sites can be collected, the uses that can be made of it, and what steps should be taken to ensure its reliability. I will direct that this be done as part of the Management Action Plan for the Audit of OSI.

I support, in part, Recommendation No. 4 that the RCMP policy require the destruction of records obtained from social media sources containing personal information (such as screen captures of social media sites) once it is determined that there is no criminal nexus regarding the information.

There is already IM policy that provides retention periods once information is added to an operational file. That information is then protected by legislation, namely the *Privacy Act* and the *Access to Information Act*, as well as the RCMP Access to Information and Privacy Branch processes and IM policy.

As already noted, since my response to a similar recommendation on the Kent County protests, I have become aware of new information. RCMP policies on OSI and IM will be reviewed and strengthened as it relates to the retention of

records obtained from social media through the OSI Audit report and Management Action Plan. I will direct that this recommendation be actioned as part of that work.

I agree with Finding No. 9 that there is insufficient information to support a finding that it was unreasonable to retain the profile and the personal information of Person G.

I agree with Finding No. 10 that the RCMP lacks clear policy/guidance as to the use and retention of personal information in circumstances where it is determined that there is no nexus to criminal activity.

I support Recommendation No. 5 that the RCMP develop a policy providing that where the RCMP obtains personal information that is determined to have no nexus to criminal activity, the information should not be retained.

The RCMP takes its legislated obligations to safeguard all personal information very seriously, whether or not there is a nexus to criminal activity. In the context of OSI and for law enforcement or criminal intelligence purposes, I will direct that information retention related policy be amended and if required, new policy developed.

I agree with Finding No. 11 that it was not unreasonable to conduct open source and internal database checks in the other specific instances reviewed by the Commission.

I agree with Finding No. 12 that it was reasonable for the RCMP to attend the workshop and make observations.

I agree with Finding No. 13 that it was not unreasonable to collect licence plate numbers for intelligence-gathering purposes.

I agree with Finding No. 14 that the RCMP lacks policy/guidance on the collection, use, and retention of licence plate numbers and associated personal information for intelligence purposes.

I support Recommendation No. 6 that the RCMP develop a policy providing that where a licence plate number and any associated personal information has no nexus to criminal activity, the information should not be retained.

Over the years, there have been differing legal decisions and opinions on whether licence plate numbers constitute personal information. Therefore, it does merit further examination for that reason. This can be included with the review of various policies as part of the OSI Audit Management Action Plan. I will direct that this be done.

I agree with Finding No. 15 that it was reasonable for the RCMP to share information about potential threats to energy critical infrastructure with Natural Resources Canada.

I agree with Finding No. 16 that the RCMP did not share confidential source information with the NEB.

I agree with Finding No. 17 that it was reasonable in the circumstances for the RCMP to share intelligence and threat assessments with the NEB.

I agree with Finding No. 18 that it was unreasonable for the RCMP to share the personal information of a protest organizer with the NEB.

I support Recommendation No. 6 that the Kelowna Detachment review all policies concerning the collection, retention, and disclosure of personal information and take action to ensure that personal information is disclosed in accordance with legislation and policy.

The report only identified one incident that occurred several years ago. As such, it was not commonplace or systemic in Kelowna Detachment. Many, if not the majority of, personnel have likely transferred since this occurred. However, it is prudent to have the Kelowna Detachment Commander review policies as set out in the recommendation. In addition to what has been recommended, I will also direct the "E" Division Criminal Operations Officers review the same policies.

I look forward to receiving your final report on this matter.

Kindest regards,

A handwritten signature in blue ink that reads "B. Lucki". The signature is written in a cursive, flowing style.

Brenda Lucki
Commissioner