



# Police Communications with the Public Following Serious Incidents and During Active Investigations

Communications Manager

## Background

### ▪ Integrity of the Investigation

From a law enforcement perspective it is of utmost importance to maintain the integrity of any active investigation. Due to the inherent risk of serious jeopardy to an active investigation, which arises from a premature release of information, evidence gathered is protected at law by an investigation privilege while an investigation is ongoing.

In recognition of the importance of protecting the integrity of ongoing investigations, the evidence gathered during the course of an investigation is given special protection by the *Access to Information and Protection of Privacy Act, 2015* (ATIPPA) which states in Section 5 (1) (k):

- 5. (1) This Act applies to all records in the custody of or under the control of a public body but does not apply to
  - (k) A record relating to an investigation by the Royal Newfoundland Constabulary if all matters in respect of the investigation have not been completed;

and, 31(1)(a)) which states:

- 31. (1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to
  - (a) interfere with or harm a law enforcement matter;

Section 16(1)(a)(ii) of the federal *Access to Information Act* also protects information that relates to an investigation from release to the public.

- 16 (1) The head of a government institution may refuse to disclose any record requested under this Act that contains
  - (a) information obtained or prepared by any government institution, or part of any government institution, that is an investigative body specified in the regulations in the course of lawful investigations pertaining to
    - (i) the detection, prevention or suppression of crime,
    - (ii) the enforcement of any law of Canada or a province.

Additionally, the release of information to the public during an active investigation is governed by current RNC policy including Section 8.1(a) of the RNC Media Relations policy (See Appendix A), and Section 19 of the RNC Major Case Management policy (See Appendix B).

- **Impartiality of the Chief of Police**

The Chief of Police is a unique role within the RNC, which is governed by the *Royal Newfoundland Constabulary Act* and, includes amongst other things specified in section 6, the responsibility to administer discipline in accordance with the Act and Regulations enacted thereunder. The responsibility of the Chief of Police to administer discipline to police officers requires that he or she remain and appear to remain impartial when it comes to investigations which may result in discipline to police officers, at least until the necessary investigation(s) have been completed.

- **RNC Communications with the Media During the Investigations related to the Death of Donald Dunphy**

The RNC communication strategy reflected the need to preserve the integrity of the ongoing investigations, the need for the Chief of Police to remain impartial and the need to inform the public. During the media question and answer session with Chief Janes on April 6, 2015, in addition to providing the general factual outline of the circumstances surrounding the incident itself, Chief Janes primarily wanted to offer condolences to the family of Mr. Dunphy and explain RCMP jurisdiction over the investigation. (See speaking notes in Appendix C) This was the RNC's only communication with media during the investigations. Much of the information regarding the incident was previously released by RCMP in a live interview and a media release.

To discuss in detail the topics of proactive policing, the role of the Protective Services Unit, single officer home visits and/or use of force/use of force training would necessarily involve a discussion of issues which were central to the ongoing investigations. Any detailed statement on these topics by the RNC during the active investigations would be interpreted as a statement or opinion on the actions of Acting Sergeant Smyth which would negatively impact the perceived impartiality of the Chief of Police and could well influence a witness' testimony during any future proceeding related to the case. Further, in this case given that the RCMP and the Saskatoon Police Service were conducting these investigations, it would be inappropriate for the RNC to comment publically on matters related to the substance of the investigations.

It is worth noting that the RCMP provided a very detailed media release in April of 2015 which did not resolve issues of public perception in relation to this case, and to date, despite the public inquiry process there are still detractors. In light of this, it is submitted that it is not realistic to expect that a news conference by the Chief of Police covering the topics of proactive policing, use of force/use of force training, single officer home visits and the role of the Protective Services Unit in detail while the investigations were ongoing would have significantly improved the public perception of the RNC, the investigative process or Acting Sergeant Joe Smyth.

▪ **Volume and Significance of RNC Media Communications and Current RNC Media Relations Resource**

There are over 1,000 media releases by the RNC per year, an average of between 5-10 inquiries from the media per day and 2-3 radio, newspaper and television interviews involving the RNC per week. The RNC deals with matters of significant public interest such as homicides, fatal car crashes, sexual assaults, home invasions and armed robberies. Currently, an officer who holds the rank of Constable fills the position of Media Relations Officer at the RNC. Amongst many other duties, the Media Relations Officer assists in developing strategies for the controlled release of information around active investigations or other incidents, which have gained significant public attention.

Social media plays an increasingly important role in community awareness and engagement and as a result it plays a significant role in the communication the RNC has with the public. The RNC Media Relations Officer communicates with the public and shares a large volume of information through the traditional media streams as well as via social media through Twitter, Facebook, Snapchat, Instagram and YouTube.

The RNC has conducted a jurisdictional scan, which has revealed that it is standard for police services across Canada to have Managers or Directors of Communication on staff with specific media relations expertise and education. Given the large volume of media requests, interviews and communications that the RNC must manage on an ongoing basis, a civilian Manager of Communications would be of great value to the RNC. Furthermore, the challenges of balancing the interests of protecting the integrity of an investigation, and maintaining the impartiality of the Chief of Police with the need to inform the public, along with the need to remain responsive to the public in the ever expanding social media context, a Manager of Communications would significantly benefit both the RNC and public.

**Recommendation**

It is recommended that a Manager of Communications position be created to oversee communication functions with the Royal Newfoundland Constabulary including media relations and social media.

### Royal Newfoundland Constabulary Policy and Procedure Manual

#### Media Relations

##### 8.0 Guidelines for Release of Information

###### 8.1 Restrictions

a. Information shall not be released to the media when release of information could potentially:

(1) deal with RNC policy or procedure;

(2) deal with discipline of RNC employees;

(3) endanger human life (e.g. ransom kidnapping or the use of an informant);

(4) interfere with an investigation or arrest (e.g. disclosing the amount of money obtained in a holdup, or other details of a crime which could be known only to the perpetrator might impair an investigation);

(5) violate the law (e.g. releasing the name of a Young Offender or the names of family members which may lead to the identification of a Young Offender);

(6) prejudice court proceedings or violate the rights of an accused, for example;

(7) disclose any confidential investigative techniques or operational tactics;

(8) disclose any confession or statement made by the accused;

(9) comment on cases before the courts; or

(10) describe the criminal record of the accused.

### Royal Newfoundland Constabulary Policy and Procedure Manual

#### Major Case Management

##### 19. Media Relations:

- a) The RNC must maintain a consistent approach when dealing with the media regarding the investigation of major cases (see Part 1 Chapter F - Release of Information). Investigations may be impacted by the manner and conduct of relationships with the media. The information released, and the manner by which it is released, can have consequences to the ongoing investigation and any subsequent prosecution. The media can be a valuable asset in an investigation. It is imperative that the RNC maintain a positive relationship with the media.
- b) In addition to the procedures outlined in Part 1 Chapter F - Release of Information, the following procedures shall apply to Major Cases:
  - (1) in all major case investigations the Major Case Manager is responsible for, and shall, with the direction of the Chief of Police or his/her designate, approve any and all releases of information to the media;
  - (2) no RNC member will release information to, nor speak with the media without the prior approval of the Major Case Manager, in consultation with the Media Relations Officer;
  - (3) the Media Relations Officer shall be the designated spokesperson for the release of any and all information to the media;
  - (4) in some situations, the Major Case Manager may consider the release of information to the media in the interest of public safety;
  - (5) in some situations, the Major Case Manager may make a public appeal for information through the media;
  - (6) whenever information is to be released to the media, the person directed to prepare the media release shall:
    - (a) research, compile and draft the relevant information;
    - (b) submit the draft of the media release to the Media Relations Officer for editing;
    - (c) submit the edited draft to the Major Case Manager for final approval;
    - (d) submit the approved media release to the Media Relations Officer for distribution to the media; and
    - (e) forward a copy of the media release to the File Coordinator; and
  - (7) when speaking with the media, under no circumstances shall personal opinion regarding the case be discussed.

- c) The Media Relations Officer shall provide advice on media strategies, including: briefing investigators regarding avenues the media will explore when attempting to obtain information, such as court documents, and addressing the requirements of the media community.
- d) The Media Relations Officer shall monitor all press coverage of an incident and brief the investigative team on any potential problems which such coverage may lead to, including interviews of potential witnesses.
- e) In some circumstance the media may request specific information (e.g., photographs, access to crime scene). In such cases advice will be sought from RNC Legal Counsel prior to responding to the media.

## Appendix C

### Chief's Speaking Notes Mitchell's Brook Shooting

I would like to begin by saying that on behalf of myself and the RNC I would like to offer our sincere condolences to the family of Mr. Dunphy. Any premature loss of life in this way is always a tragedy. I am hopeful that in the end the family will find the answers that they need.

At approximately 2:30 p.m. yesterday, a member of the RNC was in the area of Mitchell's Brook conducting inquiries regarding an investigation. The officer was confronted and shots were fired. As a result a 59 year old male Mr. Dunphy was confirmed deceased at the scene. Our officer did not receive physical injuries during the incident. At this time we are ensuring our officer receives the support necessary for his well-being while cooperating with the RCMP to ensure they have all the information needed to conduct their investigation.

Q. Premiers security detail?

A. Our officer was assigned to the Protective Services Unit on a full time basis and was acting in that capacity. The nature of the officer's inquiry would at this point form part of the RCMP investigation.

Q. Ongoing threats?

A. As always we will continue to do threat assessments as part of Protective Services Unit's mandate. We deploy resources based on operational requirements.

Q. Why was a RNC Officer in RCMP jurisdiction?

A. Common to cross jurisdiction borders during investigation.

Q. Why was the officer alone?

A. Sometimes our officers work alone and other times with a partner. This will likely form part of the RNCs internal inquiry after the RCMP have completed their investigation.

Q. Was the officer Joe Smyth?

A. Won't be confirming identity at this time. I can tell you it is a mid-career officer who has significant training and experience in Protective Services.

Q. Mental Health concerns?

A. I have received no information to suggest this case involves mental health issues. It is a priority of the RNC to enhance our response to persons with mental health challenges. We are currently conducting training for front line staff in partnership with Canadian Mental Health Association in Mental Health First Aid.

Q. Will outside agency be called in?

A. This incident occurred in RCMP jurisdiction. In past cases when we called in an outside police service the incident was in RNC jurisdiction. As it is their jurisdiction, the RCMP will have carriage of this investigation and I believe that supplies the independence and impartiality that we need and the public expects.

Q. Has police officer involved been removed from duty?

A. As per policy any member involved in a shooting is removed from active duty. We will also be making sure that the officer involved receives the appropriate support.

Q. What kind of support are you talking about?

A. We have an employee assistance program to aid employees and there will be a debriefing for the member as well. Whenever there is a loss of life it can be a traumatic experience.

Q. How long will they remain off the job?

A. Will depend on the needs of the officer but we have a mandatory minimum.

Q. Will there be support for the family of the deceased?

A. Yes, Victim Services will be offering them guidance and support.

Q. Was the man who died known to police?

A. I am not aware of that information.

Q. Evidence question?

A. That will be the focus of the RCMP investigation and we cannot comment on that at this time.