



# Withholding homicide victim names: Looking for a win-win solution for families and the police

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## ABSTRACT

Although withholding the names of homicide victims from the public is a relatively new police practice, it has proven to be controversial, with the media, legal scholars, and victim advocacy groups often opposing these policies. In order to better understand the issue of withholding names, we examined the prevalence of these practices in Canada's largest municipal police services. These results were further explored in a series of semi-structured interviews with stakeholders from 20 victim services and advocacy organizations. Analysis of the interview and survey results reveal that the key priority of the police is maintaining the integrity of their investigations, and all other issues are secondary. Although the issue of withholding information has become contentious, many of the arguments become moot, as the friends and family members of these victims often post the information related to these deaths on social media, effectively bypassing both the press and the police. Implications for policy development are discussed in light of these findings.

**Key Words** Homicide investigations; crime victims; privacy; public interest.

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## INTRODUCTION

After 2010, a growing number of Canadian police services started to withhold the names of homicide victims from the press and public. The rationale for withholding this information was to respect the privacy needs of the victims' families. A Royal Canadian Mounted Police (RCMP) spokesperson stated, "We don't have the right to release (names) unless we are furthering an investigation, or basically the public interest overrules the privacy aspect of it" (Potkins, 2017, para. 19). The RCMP's position is not unique. Penney (2018) examined the practices of various Canadian police services with respect to releasing the names of homicide victims and did not find a consistent approach across the country. There appears to be no clear reason for these changing policies. For instance, there have been no recent meaningful changes in federal or provincial privacy laws. The federal government's *Privacy Act*, for example, which guides the actions of the RCMP and other federal law enforcement agencies, hasn't been amended in 30 years (Potkins, 2017). Nor does there appear to be any precipitating incident(s) that led to this policy change.

Instead, the practice of withholding names seems to be evolving from an increased awareness of victims' rights and the recognition that many victims of crime have been historically dissatisfied and angered by the actions of the people working within the justice system (Policy Centre for Victim Issues, 2014). It is plausible that the increasing awareness of victims' rights has had an impact on agency

policy-making, with a move to interpret privacy legislation more conservatively.

Regardless of why information-sharing practices are changing, withholding victims' names has become a contentious issue between the police, the press, and other stakeholder groups. The press opposes the practice of withholding names and contends that the public has a right to know what is happening in their communities. The Media Coalition (2019, p. 1) argues that "A policy which presumptively prohibits public release of the names of homicide victims is inconsistent with the *Charter*-protected right to an open justice system and is out of step with the Canadian sense of community." Some victim advocacy groups also support releasing this information to the public, as they believe that withholding names contributes to stigmatizing family violence (Alberta Council of Women's Shelters, 2019). Moreover, limiting information about homicide and other serious offences reduces our understanding of those crimes, including changes over time and the vulnerability of different population groups. Legal scholars, such as Penney (2018), also oppose police policies that withhold information from the public, arguing that the public should have access to this information to ensure that government actions are transparent.

Although the issues related to the public's access to government information and the right to privacy have been analyzed by legal scholars, there has been comparatively little academic scholarship shedding light on these issues. In order

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to respond to this gap in the extant literature, we examined the practice of withholding homicide victims' names using a mixed-methods approach that included semi-structured interviews of victims' advocacy organization stakeholders as well as a survey of Canada's largest police services. In what follows, we provide a review of the extant literature, a description of the data and methods used in our study, and the results of our analyses. That section is followed by the implications for police practice in light of these findings.

## BACKGROUND

### Balancing the Public's Interests and a Family's Privacy

The two opposing positions on withholding the names of homicide victims centre on the issue of privacy rights of victims and their families, on the one hand, and the public's right to know about crimes occurring in their communities, on the other. Journalists argue that the right to know about crime and victimization, including the names of homicide victims, is in the public's interest, and Simons (2017) observes, "It's time to speak up for an open, transparent justice system. It's time to stand up for the nameless, who can no longer speak for themselves" (para. 23). The Media Coalition (2019) reports that the "public release of the names of homicide victims is vital to the public interest in allowing the public to receive important information about their local community and understand the broader social context in which they live" (p. 1). Writing about the public's interest, Brown (2008) notes that the issue "must be shown to be one inviting the public attention, or about which the public has some substantial concern because it affects the welfare of citizens, or one to which considerable public notoriety or controversy has attached" (pp. 137–138). In *R v. Canadian Broadcasting Corporation*, the Supreme Court addressed the issue of a publication ban prohibiting the identification of a young homicide victim that was imposed after the CBC had already posted the information on their website. The Court recognized the freedom of the press and said there was a tangible, immediate utility to the posting of the identifying information and that it was in the public's interest to access that information (see *R v. Canadian Broadcasting Corporation*, 2018, p. 211).

The Media Coalition (2019) also argues that naming victims can assist the investigative process and is consistent with the *Charter's* guarantee of freedom of expression and the press, adding that when names are withheld, there is a corresponding lack of transparency that undermines the public's confidence in the justice system. Although withholding the names of homicide victims is a relatively new issue, the police and press have always grappled over how much information will be released to the public. Writing about Canadian police services, Ericson (1989) says, "the police have a particular bent toward reticence and secrecy" (p. 211), and they are tasked with balancing censorship and publicity.

Supporters of full-disclosure policies are critical of police organizations that are reluctant to share information about crime and victimization with the public. The Canadian Broadcasting Corporation's database of the 461 people involved in fatal encounters with the police between 2000 and 2017, for example, shows that 23 of these people are unnamed (Marcoux & Nicholson, 2018). Some find it troubling that a

person can die in police custody—or be killed in an interaction with the police—and their name, age, ethnicity, and sometimes the circumstances surrounding their death are unknown to the public (Shantz, 2019). Other agencies associated with the justice system also regularly withhold information from the public. Five of the civilian oversight organizations that investigate serious incidents involving the police—such as Ontario's Special Investigations Unit—stopped releasing the names of victims unless there was an investigative necessity (Canadian Civilian Oversight Agencies, 2015). The Canadian Civilian Oversight Agencies (2015) argue that they present all of the relevant information surrounding the cases they investigate but are withholding names because:

Knowing the injured or deceased person by name, instead of as "the affected party" or "complainant" adds nothing of additional relevance. It does, however, add greatly to the public exposure that will be imposed on the injured person or the family of the deceased. We would argue that the right to privacy of the individuals concerned far outweighs what the public will gain by knowing the name. (p. 1)

Lupick (2017) reports that the British Columbia Coroners Service also stopped releasing the names of homicide victims in 2017. Thus, police policies restricting the dissemination of information about these events in one jurisdiction may be influencing the actions of other criminal justice organizations.

It is plausible that police decisions to withhold information from the public about crime could have a significant impact if incremental changes over a period of years have a long-term impact on information sharing. In September 2019, for example, the Ontario Provincial Police (OPP) announced that they were no longer reporting the gender of suspects or victims. The OPP indicated that the decision to withhold that information from the public came after "a regular review of the *Police Services Act*, the *Freedom of Information and Protection of Act*, as well as the *Ontario Human Rights Code* forced the change" (Dubinski, 2019, para. 4), even though Dubinski observes that none of those acts or regulations have recently been amended or changed.

Although withholding the names of homicide victims is a relatively new practice, there is a long-standing practice of the police managing the amount of crime-related information disseminated to the public (Ericson, 1989). The police routinely withhold information to protect the identities of crime victims, their family members, and witnesses. The police also withhold information from the public in order to carry out investigations. Some privacy advocates are critical of this stance, claiming that police interests in identifying a suspect may bias their decision-making with respect to the public's need to know about issues related to crime. These decisions are made by the police service and are typically not subject to external review or scrutiny. Penney (2018) contends that "Instead of giving police unfettered discretion to decide whether to invade privacy, whenever feasible we require that this decision be made by a neutral and impartial arbiter" (p. 31). In what follows, we briefly examine publication bans on court-related information, as well as agency practices in releasing victim names.

### Publication Bans

Judges can restrict the amount and type of information about crimes that can be released to the public using publication bans. According to the Government of Canada (2015) such a ban “prevents anyone from publishing, broadcasting or sending any information that could identify a victim, witness, or other person who participates in the criminal justice system” (p. 1). Broadly speaking, there are three types of discretionary or mandatory publication bans. The Canadian Judicial Council (2007) describes how publication bans are automatically and permanently issued for information concerning a complainant’s sexual history, information in confidential records such as medical or psychiatric reports, or information coming from the interviews of jurors or actually identifying jurors (pp. 14–25). Other publication bans are automatically issued but are temporary and expire once some action has been taken, such as information arising from search warrants if a suspect has been charged.

Discretionary publication bans can be issued for information from bail or show-cause hearings, preliminary hearings, and in regular court proceedings. Of specific relevance to this study are discretionary bans pursuant to section 486.5 of the *Criminal Code of Canada*, which is a “general provision allowing for the protection of witnesses or victims” (Court of Appeal for British Columbia, 2017, p. 3). Discretionary bans are often imposed in sexual assault and child victim cases—to protect the privacy of these victims—although are otherwise intended to be rarely used (see *R. v. Mentuck*, 2001). According to Jacobsen (2015), “the Supreme Court of Canada has reiterated on several occasions that judges should only impose publication bans when absolutely necessary and on the clearest of evidence that a ban is required to advance the ends of justice” (p. 1).

The key difference between the police withholding information and the courts imposing a publication ban is that judicial decisions are transparent to the public, as they are made in open courts. Moreover, these discretionary bans can be appealed, and in *Dagenais v. Canadian Broadcasting Corporation* (1994), the Canadian Broadcasting Corporation appealed the court’s decision to temporarily ban the broadcast of a television program that may have influenced a jury deliberating a real case. In *Dagenais*, the Court held that, while judges can impose these bans, they must also consider their effects on the right to freedom of expression, the right of the accused to a fair and public trial, and the efficacy of the administration of justice, which were priorities laid out in the Court’s decision about publication bans in *R. v. Mentuck* (2001, para. 32). Not surprisingly, journalists oppose publication bans, with Metcalf (2018) arguing that these bans undermine the public’s right to know.

### Releasing Victims’ Names

There is virtually no mention of the issue of releasing homicide victims’ names in the scholarly literature. As a result, our review of the literature is primarily based on a review of federal and provincial legislation, agency reports, and information from advocacy groups and the media (see Burnett, Ruddell, O’Sullivan, & Bernier, 2019, for a comprehensive review of associated legislation).

The federal government, as well as all provincial and territorial governments, have enacted privacy legislation, and Ontario’s *Victims’ Bill of Rights*, 1995, specifically notes that

the parents, children, dependents, and spouse of a person killed in the commission of a crime are considered victims. The preamble to Ontario’s legislation states that victims are to be treated in a manner that does not increase their suffering or discourage them from participating in the justice process. The issue of privacy, however, is only mentioned once, and there are no specific guidelines about balancing the needs of the public and those of victims. In Alberta, by contrast, the *Freedom of Information and Protection of Privacy Act* (FOIP Act) makes specific reference to the disclosure of information that is harmful to personal privacy. Section 40(1)(b) allows the release of information “if the disclosure would not be an unreasonable invasion of a third party’s personal privacy,” although the disclosure must be reasonable and necessary.

Most reporters writing about the issue of balancing the privacy of a crime victim and the public’s interests have described the changing police practices related to releasing this information. These accounts reveal that, while privacy legislation is seldom updated, police services are interpreting this legislation more conservatively in terms of respecting the wishes of family members of homicide victims to withhold their names. Spokespersons from the Royal Canadian Mounted Police (RCMP) often refer to section 8 of the federal *Privacy Act*, which states that “the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure,” or to instances where the personal information is publicly available, which is defined in section 69(2) of the *Act*. Depending on the circumstances of a case, the RCMP will only release a name if the individual’s family consents or if the disclosure aids in an investigation. The RCMP’s position, however, has been criticized, and the agency has been called secretive (Potkins, 2017).

In order to develop a consistent approach to releasing or withholding victims’ names, a number of police services are using frameworks to help their decision-making. The Alberta Association of Chiefs of Police (2017), for example, developed and adopted a decision-making framework for its members. Since that framework was released, however, several Alberta police services, such as the Edmonton Police Service, have developed new guidelines (Ramsay, 2019). Those changing policies reveal that these practices are dynamic.

## METHODS

Two strategies were used to conduct this study: an online survey of Canada’s largest police services and a series of semi-structured interviews with members of victim advocacy and victim-serving organizations. Most of the interview participants were from Alberta-based organizations, although representatives from Canada’s largest advocacy organizations were also invited to participate. Interviewers asked about organizational policies, privacy concerns, agency positions regarding police practices (regarding the release of information), and the criteria that police should use in determining whether to release a victim’s name. The interviews were carried out in March and April 2019. Most averaged from 30 to 45 minutes in length.

A link to the 17-item online survey was also sent to the executive leadership of 37 of Canada’s largest municipal police services on March 13, 2019, and over three-quarters (28 agencies) responded by April 5, 2019. Respondents were



asked about their agency's practices surrounding the release of information about homicide victims, who made decisions about releasing information, and the relationships between the police, media, and victim advocacy groups. Many of the questions had a qualitative component, and respondents could add their comments. Over one half of the agencies were based in Ontario, with the rest distributed across the nation, although there was only one respondent from each of Quebec and Atlantic Canada.

## RESULTS

### Survey Results

Initial examination of the survey data revealed that the primary objective related to the release of any information by a police service was to preserve the integrity of its investigations, and the decision to release information was often delegated to the officers in charge of the homicide or equivalent unit (e.g., criminal investigations division). The following summarizes the five key findings from the survey:

- (1) **Agency Policies:** More than one third (36%) of the agencies released the names of all homicide victims, 54% released the names depending on circumstances of the case, 7% always withheld those names, and one agency did not provide a response. Some specific qualitative comments from the respondents include the following: "We release the names of homicide victims for a number of reasons. We never want to live in a society where someone can be murdered in secret." "We do not name young persons and consider victims of murder/suicide occurrences on a case-by-case basis." "We respect the wishes of families not to release if they request. I cannot think of a time this has happened though." "Without the name being released, we could lose valuable tips or witnesses." Although over one-half of the respondents indicated that they considered the circumstances on a case-by-case basis before releasing a victim's name, some respondents indicated that withholding information from the public can harm the integrity of their investigations.
- (2) **Decision Makers:** Even in police services that routinely release victims' names, there are often investigative reasons to manage the type of information released to the public and when that information is released. Overall, however, the respondents indicated that maintaining the integrity of the investigation was their overriding goal. In over three quarters (77%) of the cases, the investigators responsible for the homicide or equivalent unit made the decision to release information, and in the remaining organizations, the Chief or other executive officer made that decision in conjunction with the investigators. Some respondents provided specific comments with respect to who decides to release information: "Collaborative decision between corporate communications, the investigative team (homicide unit) and the senior management of the service." "We work closely with the sergeant in charge of the investigation to determine what information we release and when it is released." "In the event of an unsolved homicide, I feel that it is imperative to get the name of the victim out there. This stimulates the collective memory of the community and can lead to tips that would otherwise not be called in."
- (3) **Family Wishes:** Fifty-four percent of the respondents indicated that the family's wishes were considered when it came to releasing the names of homicide victims. The investigators typically inform families that it is often difficult to prevent a victim's name and information about the case from being shared on social media by friends or other relatives of the victim. Once that disclosure happens on social media, the media often use that information in their reports. Anecdotal accounts, however, suggest that reporters prefer to cite multiple unofficial sources of information if no confirmation from the police, coroner, or other agency is forthcoming. Given that reality, the respondents indicated that they tried to respect the family's wishes for privacy: "I strongly believe that family of victims should be part of the decision to release the name in order to respect their wishes and requests for privacy." "Investigative integrity is of the utmost importance (obtaining all information possible). However, we also will weigh family wishes in how we proceed. To date it has not been an issue." Ultimately, the respondents indicated that the victim's family wishes to release a victim's name were respected unless withholding that information negatively impacted their investigations.
- (4) **Social Media:** When asked whether information about victims was posted on social media before the police service released a victim's name, half (50%) indicated that names were always or usually posted prior to the police release of information, and 43% indicated that names were sometimes posted on social media prior to police releasing that information. "At the end of the day, with social media, oftentimes our hands are tied regardless and the names will be released.... It can be beneficial if we have the opportunity to get in front of the release and guide the public story." "Releasing the name leads to credibility, versus not commenting—when it usually is known already in the world of social media." In some respects, the ability of a murder victim's acquaintances, friends, and family members to post information on social media platforms such as Facebook undermines any official police policy related to the disclosure of information to the public. Moreover, when the police are not the first to release these names, the information posted on social media can be misleading, erroneous, or incomplete, which can lead to unfounded rumors and speculation.
- (5) **Media Practices:** When asked whether the media released information about victims' names prior to the police release of that information, about half (48%) of the respondents indicated this was not applicable as their agencies always released names; in almost all the remaining agencies the media always, usually, or sometimes (45%) reported this information before the police. "Media gets the name from

social media. We are trying to lessen the burden on the family and assist in dealing with [the] media.” “I think that most often in today’s world, the name is out anyway. Using the media properly ensures the police still control the message.” The survey respondents also indicated that the media also has access to information about these cases once a suspect has been apprehended and the information presented in open court. Unless there is a publication ban, the media is then free to report the names of the suspect and the deceased.

### Interview Results

The 20 semi-structured interviews examined issues related to policies on releasing victims’ names, privacy concerns, when information should be released, and the criteria for releasing the names of homicide victims. While most respondents supported releasing the names of homicide victims, what differed was the preferred approach or process. Respondents were divided primarily between police services releasing the name immediately and in every case and, in contrast, releasing the name in conjunction with the family’s wishes. Feedback confirmed the need to balance the value of public awareness with the need for human dignity and respect when information about a homicide is shared with the media for public release.

Respondents further indicated that ensuring appropriate guidance, time, and support reduces the stressors on affected family members and minimizes the risk of additional trauma. Specifically, they mentioned sharing key information with families about the nature of the media release, and helping to adequately prepare the family and include them in the process. “[There] needs to be criteria for investigators to follow, particularly when it relates to sitting down with the family and explaining why the name should be released and preparing them for what might happen next once the name is released.” Further to that point, many participants felt strongly that police should not be making “policy” decisions with regard to the release of a victim’s name without consultation from key community stakeholders, the victim’s family, and even the media. “Police cannot decide this all on their own. We need to bring together police, the media, and the families affected as a bit of a ‘think tank.’ Homicides can be an opportunity to educate and prevent.”

In fact, respondents felt strongly that a consistent, transparent framework or policy should be established and based on specific criteria, which may include items such as notifying next of kin, consulting with the family, providing appropriate support services to families, prioritizing investigation needs, and developing specialized protocols to manage cases where children are involved. Many inferred that this should not only be included in provincial legislation, it should extend nationally across Canada. It was also suggested that police officers who consistently work homicide cases should have specific training on such policy to ensure consistent standards when working with families of homicide victims.

## DISCUSSION

Our analysis of the interview and survey results reveals the burdens that police leaders and investigators confront when

weighing the costs and benefits of releasing information about serious crimes to the public. The survey results, for example, reveal that most large police services still release the names of homicide victims, although those releases sometimes only confirm information that has already been reported by the media or on social media.

The need for a common approach to releasing victim names was a consistent theme that emerged from the interviews. Many respondents believed that a consistent policy framework was needed to guide agency decision-making. Some suggested that such a framework should be developed at the national level, so that family members would be treated in a consistent manner across the country. It was posited that making decisions based on such an approach would reduce inter-agency inconsistencies and increase transparency. Respondents did not identify any specific agency that might guide such a discussion, but this might be an opportunity for the Canadian Association of Chiefs of Police to develop a national policy statement.

Given the complexity of some homicide cases, however, there may be no single solution: releasing too much information can harm a family’s privacy, especially when these crimes involve child victims or other vulnerable people. On the other hand, withholding a victim’s name might jeopardize the integrity of an investigation. Given this lack of consistency across the country, Saskatchewan’s privacy commissioner indicated that a clear policy about releasing victim names might only come after a court decision (Cowan, 2018). The Supreme Court, however, has generally ruled in favour of the public’s interest in accessing information about crime and has recognized the freedom of the press when considering publication bans.

It became evident after reviewing the interview and survey results that police services attempted to abide by the wishes of the victim’s family to release or withhold information, although maintaining the integrity of the investigation was their most important priority. The interview results, however, also highlighted the importance of police services consulting with the family members throughout the investigation and providing support and guidance. In many cases, family members would change their minds about withholding a name after learning that their loved one’s name would ultimately be reported, whether the police released that information or not. Some family members, by contrast, wanted the names of these victims released because they did not want these people to be forgotten.

Regardless of respondents’ positions about releasing or withholding information, a key finding of this research was that users of social media typically bypassed the police and media by reporting information about these cases, including a victim’s identity. Once posted online, the information retrieved from social media was often disclosed by the media, but even after such disclosure, reporters would still attempt to confirm the information. Ninety-three percent of the survey respondents revealed that, in their agencies, information was always or sometimes released on social media prior to police notification. Bypassing the police can have ramifications for the integrity of investigations, the spread of inaccurate information, and notification of next of kin, who might find out from social media that a loved one has been murdered.

One outcome of our study was that some respondents

feared that withholding information about serious crimes, such as the names of homicide victims, may be the first step in a process that further restricts our access to information related to serious crime. The OPP decision in September 2019 to withhold information about the gender of offenders or victims is one example. Hayes (2019) notes, “Concerns have been raised by researchers and anti-violence advocates, who fear this move will blur the public’s understanding of the realities of violence against women and intimate partner violence” (para. 2). One particular concern regarding the change in OPP policy is that it makes it more difficult to track violence against women, which limits our understanding of gendered violence.

Decisions to withhold information may have impacts beyond the needs of the media or academic researchers. Farquhar (2019) contends that restricting information about women killed in domestic violence incidents can contribute to victims feeling isolated, and they may be less likely to seek help. Farquhar says that, in order to address issues of domestic violence, we need to shed light on the topic rather than suppress that information.

## CONCLUSIONS

Since the 1990s, there has been increasing attention paid to the experiences of crime victims and their families. While these individuals may enjoy increased visibility and greater participation in the justice system today, some advocacy groups say they are still excluded from participating in decisions that are made about their cases (Policy Centre for Victim Issues, 2014, p. 3). Despite the enactment of the *Canadian Victims Bill of Rights*, some victims report being re-victimized in their encounters with the criminal justice system. One issue that is important for crime victims and their families is maintaining their privacy after violent crimes occur. Our study of withholding the names of murder victims highlights the tension between the public’s need to know about crimes in their communities and the privacy needs of crime victims and their families.

There are indications that the debate over releasing or withholding information from the public will intensify as agencies associated with the criminal justice system—such as coroner’s offices and police watchdog agencies—are also withholding information from the public. Furthermore, the police seem to be placing more restrictions on the information they release, as demonstrated by the OPP’s decision in September 2019 to withhold information about gender in their media reports (Dubinski, 2019). These restrictions on releasing information have not been driven by new legislation and, instead, seem to have come from an increasingly conservative interpretation of existing privacy legislation. The problem with many police decisions in this regard is that these judgements are made behind closed doors and neither the public nor the press are privy to their considerations in the decision-making processes (Penney, 2018). Given a lack of consensus on releasing victims’ names, it seems prudent to work towards finding a win–win solution that meets the needs of both the families and the police.

## CONFLICT OF INTEREST DISCLOSURES

The authors declare that there are no conflicts of interest.

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