# ORDER 96-003

April 16, 1996

**LAW ENFORCEMENT REVIEW BOARD**
**DEPARTMENT OF JUSTICE**

**REVIEW NUMBER 1010**

## BACKGROUND

An application was made in September 1995 to the Alberta Law Enforcement Review Board (the "Board") for access to certain records that the applicant believed existed on his police file. The Board had custody of those records from the relevant municipal police force as the result of a complaint made to the Board by the Applicant regarding the municipal police force.

The Board gave the Applicant access to certain records subject to severing of some information. The Board advised the Applicant of the sections of the Act which it believed justified the severing.

The request for review was submitted to my office by the Applicant on November 15, 1995. The Applicant sought a review of the information severed by the Board. The Applicant and the Board were advised that mediation was authorized under section 65 of the *Freedom of Information and Protection of Privacy Act* (the Act).

By letter dated January 24, 1996, the Applicant and the Board were advised that mediation had not been successful and that an inquiry would be held. Under section 66 of the Act, the inquiry would be conducted in private and both parties were advised they could submit written representations.

The Board responded on January 31, 1996, requesting an extension of time under section 66(6)(a) of the Act in order to provide a detailed response. I agreed that the parties had not had a reasonable period of time in order to prepare their representations and the inquiry date was moved forward to March 6, 1996. A detailed representation was submitted by the Board on February 27, 1996.

On April 2, 1996, the Board was contacted by telephone and asked several specific questions about the Board's representation. The Board was not given any opportunity to add additional grounds to their case nor was the Board given any opportunity to comment on any submissions made by the Applicant. In fact, the Board was not told whether or not the Applicant had submitted anything.

## RECORDS AT ISSUE

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| A-1 to A-9 | Pages 14 and 16 through 19 of a "Final Report" from the Internal Affairs Section to the Chief of Police; an Internal Police Memorandum and a Police General Occurrence Report. |
| B-1 to B-18 | Police General Occurrence reports and copies of pages from police officers notebooks. |
| C-1 to C-3 | Witness Statement, Letter objecting to the release of certain information by a witness; and, page 12 of a "Final Report" from the Internal Affairs Section to the Chief of Police. |

D-1 to D-4 Pages 21, 22, 23 and 24 of a "Final Report" from the Internal Affairs Section to the Chief of Police;

E-1 to E-8 An Internal Information Bulletin issued by the Police Service.

F-1 to F-2 Pages 10 and 11 of a "Final Report" from the Internal Affairs Section to the Chief of Police.

**ISSUES**

Due to the number of records at issue and the number of exemptions applied by the Board, I will summarize the issues in the following chart:

| RECORD | EXEMPTION APPLIED | ISSUE |
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| **A-1 to A-9**<br>• Pages 14, 16-19 of a "Final Report" from the Internal Affairs Section to the Chief of Police; an Internal Memorandum; and, a Police Occurrence Report. | • Section 19(1)(a)<br>• Section 19(1)(d)<br>• Section 16(2)(b) | • Could the release of the information reasonably be expected to "harm a law enforcement matter"?<br>• Could the release of the information reveal the identity of a confidential source of law enforcement information?<br>• Is the information third party personal information forming part of an investigation? |
| **B-1 to B-18**<br>• Police General Occurrence Reports and copies of pages from police officers notebooks. | • Section 16(2)(b)<br>• Section 19(1)(a) | • Is the information third party personal information forming part of an investigation?<br>• Could the release of the information reasonably be expected to "harm a law enforcement matter"? |
| **C-1 to C-3**<br>• Witness Statement; Letter objecting to the release of certain information by a witness; and, page 12 of a "Final Report" from the Internal Affairs Section to the Chief of Police. | • Section 16(2)(b)<br>• Section 16(2)(f)<br>• Section 16(3)(f)<br>• Section 17(1)(a) | • Is the information third party personal information forming part of an investigation?<br>• Is the information third party personal information consisting of personnel evaluations?<br>• Has the third party personal information been given in confidence?<br>• Could the release of the |

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| | | information reasonably be expected to threaten anyone else's safety or mental or physical health? |
| **D-1 to D-4**<br>• Pages 21, 22, 23 and 24 of a "Final Report" from the Internal Affairs Section to the Chief of Police. | • Section 19(1)(a)<br>• Section 19(1)(c)<br>• Section 19(2)(a)<br>• Section 26(1)(a)<br>• Section 16(2)(b)<br>• Section 1(n)(viii) | • Could the release of the information reasonably be expected to "harm a law enforcement matter"?<br>• Could the release of the information reasonably be expected to harm the law enforcement investigative techniques?<br>• Could the release of the information reasonably be expected to expose the author to civil liability?<br>• Is the information subject to any type of legal privilege, including solicitor client privilege or parliamentary privilege?<br>• Is the information third party personal information forming part of an investigation?<br>• Does the information come within the definition of "personal information"? |
| **E-1 to E-8**<br>• An Internal Information Bulletin issued by the Police Service. | • Section 19(1)(a)<br>• Section 19(1)(c)<br>• Section 16(2)(b)<br>• Section 19(3)<br>• Privacy Act | • Could the release of the information reasonably be expected to "harm a law enforcement matter"?<br>• Could the release of the information reasonably be expected to harm the law enforcement investigative techniques?<br>• Is the information third party personal information forming part of an investigation?<br>• Does the information form part of a law enforcement record, disclosure of which is an offence under an Act of Canada?<br>• Is the information protected by the Federal Privacy Act? |

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| **F-1 to F-2**<br>• Pages 10 and 11 of a "Final Report" from the Internal Affairs Section to the Chief of Police. | • Section 16(2)(b)<br>• Section 16(2)(f)<br>• Section 16(3)(b)<br>• Section 18<br>• Section 19(2)(a) | • Is the information third party personal information forming part of an investigation?<br>• Is the information third party personal information consisting of personnel evaluations?<br>• Would disclosure of this third party personal information likely promote public health and safety or environment?<br>• Was the information compiled for the purpose of determining the applicant's suitability for employment?<br>• Could the release of the information reasonably be expected to expose the author to civil liability? |

**DISCUSSION**

It is appropriate to reiterate my role as Commissioner in reviewing the exemptions applied by the head of a public body such as the Board. Wherever I find that the head of a public body has properly applied his discretion to withhold a record or a portion thereof, I cannot interfere with the manner in which the head of a public body has exercised that discretion: section 68(2)(b). I can only ask the head of a public body to reconsider.

**Record A-1 to A-9.**

Six lines of page A-1, consisting of information supplied by an anonymous source were severed under exception 19(1)(d) which states:

> **19**(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
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> (d) reveal the identity of a confidential source of law enforcement information.

The position of the Board was that the source of the information later became known to the police as a confidential police informant and is therefore protected by this section. Their view was that the information itself would identify the source.

To qualify for this exemption, the record must be reasonably expected to disclose the identity of a confidential source. I would not go so far as to say that the information must

have been given with an explicit assurance of confidentiality. I would expect that, in many cases of this kind, there is an implicit understanding that the information is given in confidence. However, this does require evidence of the circumstances in which the information so as to indicate that it was given in confidence or with a reasonable expectation of confidence, for example, a description of police practices and policies when conducting investigations and a description of the circumstances under which the information was obtained.

In this case, the information itself could only be attributable to one source, a source which would be known to the Applicant based upon the nature of the information itself. The source of the information explicitly asked that the information be kept confidential by the police. I am satisfied that disclosure of that part of the record would reveal the identity of a confidential source of law enforcement information. The Board therefore properly applied section 19(1)(d) to Record A-1.

Records A-2 and A-3 are a verbatim repetition in one Police memorandum of information contained in Records A-6 and A-7 from another Police memorandum. Records A-3 and A-4 are also verbatim repetitions of information in Records A-8 and A-9. Therefore, within each group, an exemption applying to the information contained in one record must apply to the same information contained in another record of the same group.

The Board cited section 19(1)(d) in relation to the severing of information contained in records marked A-2, A-3 and A-4 and records marked A-6, A-7, A-8 and A-9. The complete records were reviewed and I find that the records contain information supplied by a source who would be identifiable if the those portions of the records were released. Accordingly, I find that the Board has properly exercised its discretion in refusing to release the severed parts.

Section 19(1)(a) was claimed as an exemption for the records marked A-2 and A5. I have dealt with Record A-2 as having been properly exempted under section 19(1)(d). That leaves Record A-5. The information in that record relates to possible charges involving a person other than the Applicant. In addition, portions of A-5 also deal with a named individual other than the Applicant. Section 19(1)(a) reads:

> **19**(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
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> (a) harm a law enforcement matter.

To qualify for the section 19(1)(a) exemption, there must be a reasonable expectation that harm will be done to a law enforcement matter.

The Federal Court of Appeal has stated that an exception to access in the *Access to Information Act*, R.S.C., 1985, c. A-1, which contains the element of harm, must be based on a, "reasonable expectation of probable harm."(*Canada Packers Inc. v. Canada (Minister of Agriculture* [1989 1 F.C.47 at 59-60). This appears to be consistent with the

purpose of the Alberta Act. Such a statement emphasizes the need for the harm to be genuine and conceivable. There must be a connection between the disclosure of that specific information and the harm which is alleged.

Since there are varying degrees of harm it would be helpful to define what is "reasonable" by the use of a threshold test. The general threshold that must be reached is that disclosure would cause damage or detriment, not simply hindrance or minimal interference (*Order No. 13-1994* [B.C.I.P.C.D. No.16]). This is more that a mere possibility of harm. The threshold may vary depending on the context of the "harm". For example, in issues of threats to personal safety the threshold would be lower than with law enforcement matters.

The burden to establish that this threshold has been reached is placed on the public body. To discharge the burden, explicit and sufficient evidence must be presented to show a "reasonable expectation of probable harm". "… [The] evidence must demonstrate a probability of harm from disclosure and not just a well-intentioned but unjustifiably cautious approach to the avoidance of any risk whatsoever because of the sensitivity of the matters at issue." (*Canada (Information Commissioner) v. Canada (Prime Minister)* [1992] F.C.J. No. 1054)

In the case of section 19(1)(a) of the Alberta Act, the public body should identify a specific law enforcement matter that would be harmed and not simply claim harm to law enforcement in general. Once the specific law enforcement matter is identified, three questions arise:

(1) What is the connection between disclosure and the anticipated harm?
(2) Does the harm constitute "damage" or "detriment" to the matter?
(3) Is there a reasonable expectation that the harm will occur?

The Board claims that the portion of the record identified in A-5 refers to a confidential internal police record and that information relating to that type of record would reveal criminal intelligence operations as set out at page 72 of the Policy Manual issued by the Department of Public Works, Supply and Services under the Act. The Board has not, in my view, established a reasonable expectation that harm would befall a law enforcement matter if this information were to be disclosed. Nor has a connection been established between disclosure and the harm.

The Board also argued that the disclosure of information relating to the other named persons would harm ongoing investigations involving those two persons by making them aware of the fact that they are subject to an investigation. The harm would occur then with respect to ongoing investigations. However, the Board was not sure if there was an ongoing investigation. In fairness to the Board, they are in possession of these records through the Edmonton Police Service and have no way of knowing the status of Police activities in this matter. This puts me in the difficult position of being unable to apply the harm test set out above but not wanting to do harm if there is an ongoing investigation.

However, the Board also applied section 16(2)(b) to A-5. Section 16(2)(b) reads:

> **16**(2) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
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> (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

With one exception, I am satisfied that the severed information in Record A-5 (as well as Records A-2, A-3, A-4, A-6, A-7 A-8 and A-9) consists of a third party's name which is personal information according to section 1(1)(n)(i). I am also satisfied that it was compiled and is identifiable as part of an investigation into a possible violation of law. Therefore, even though the Board did not apply section 16(2)(b) to all of these records, I find that, since the records contain the same information in different forms, if that exemption applies to that information in one record, it must apply to that information in the other records.

The exception I referred to is on Record A-5, in a line beginning "On 1994 Sep 16, ...". That line should be disclosed subject to severing any third party information and the name of the entity issuing the bulletin referred to. The withholding of the third party information is for obvious reasons and the name of the issuing agency should be withheld on the basis that disclosure could reasonably be expected to harm a law enforcement matter: section 19(1)(a).

**Record B-1 to B-18.**

The information contained in this grouping of records relates to a named individual other than the Applicant. In severing this material, the Board cites sections 19(1)(a) and 16(2)(b). Both sections are set out above. The Board also notes that the information contained in these records is not relevant to the Applicant's complaint before the Board.

I have reviewed the records. As to section 19(1)(a), the information I have does not establish a reasonable expectation that harm will come to a law enforcement matter given the above test. The Board has not specified the nature of the anticipated harm nor established a causal relationship between disclosure and harm.

Again however, the severed information is clearly the personal information of a third party. It is also clear that the information was compiled as part of an investigation into a possible violation of law. I therefore agree with the Board that this information is exempted from disclosure by section 16(2)(b).

**Record C-1 to C-3.**

The severed portions of these Records consist of the statement of a witness. The Board applied section 17(1)(a) in severing this information. Section 17(1)(a) states:

> **17**(1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to
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> (a) threaten anyone else's safety or mental or physical health.

In support of that exception, the Board provided documentation from a party named in the record which indicates that the party believes possible harm could result to his or her safety if access was given to the unsevered record. The Board also provided convincing evidence that a reasonable possibility that harm could occur to the third party if the information was disclosed. I therefore concur with the exercise of this discretion by the Board.

The Board claims further exceptions for Records C-1 to C-3 under sections 16(2)(b) and 16(2)(f) and 16(3)(f) Those sections read as follows:

> **16**(2) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
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> (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.
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> (f) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations.
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> (3) In determining under subsection (1) or (2) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether
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> (f) the personal information has been supplied in confidence.

I do not find that section 16(2)(f) applies. That section is intended to exempt information which is given for the explicit purpose of a reference or recommendation. That is not the case here.

Section 16(2)(b) does not apply since, other than the name of the person providing the information, the information itself is not that of a third party under section 1(1)(n)(viii).

Section 16(3)(f) is not, in and of itself, an exception to disclosure. Section 16(3)(f) is one of the criteria to be used in determining if disclosure of third party information would be an unreasonable invasion of personal privacy pursuant to section 16(1). I do not see this information falling within section 16(1), given the criteria in section 16(3) because it is not information about the person who gave it. By virtue of section 1(1)(n)(viii), this information would be the information of the person it is about, not the person who gave it. However, as stated, the Board correctly applied section 17(1)(a) to this information.

**Record D-1 to D-4.**

The severed portions consist of first, an internal police report setting out the conclusions an opinions of investigating officers and second an internal police report relating to the police investigation of a complaint lodged by the Applicant with the Board.

The Board cites sections 19(1)(a) and 19(1)(c) in severing material relating to the opinions and recommendations of investigative officers. The Board also notes that potentially sections 19(2)(a) and 16(2)(b) apply. Section 19(2)(a) reads:

> **19**(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
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> (a) harm a law enforcement matter.
>
> (c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement
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> **19**(2) The head of a public body may refuse to disclose information to an applicant if the information
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> (a) is in a law enforcement record and the disclosure could reasonably be expected to expose to civil liability the author of the record or an individual who has been quoted or paraphrased in the record.

To further support its position, the Board provided the decision of British Court of Appeal in the case of Taylor v. Anderton [1995] 2 ALL E.R. 417 (C.A.). In his decision, Sir Thomas Bingham MR writes:

> ... I have no difficulty in accepting the need for investigating officers to feel free to report on professional colleagues or members of the public without the apprehension that their opinions may become known to such persons. I can readily accept that the prospect of disclosure in other than unusual circumstances would have an undesirably inhibiting effect on investigating officers' reports. I would therefore hold that the reports of investigating officers made in circumstances such as these form a class which is entitled to public interest

> immunity. That does not, of course, shut out the plaintiff if he is able to satisfy the judge, applying the familiar tests, that, on the facts of this case, the public interest in disclosure of the contents of these reports or any part of them, outweighs the public interest in preserving the confidentiality of these reports. ...

The Board argues that "an ad hoc approach to release of such opinions would not be a productive alternative" and that "A case by case analysis is therefore problematic and in the final analysis unsuitable.". I believe that the Board is proposing that reports of investigating police officers should be, as a rule, exempt from disclosure. In further support of their claim, the Board makes reference to section 26 of the Act which deals with privileged information. They might have also made reference to section 23 (advice from officials) in this regard. While I am sympathetic to the idea expressed in the passage from the judgment of Sir Thomas Bingham that "the prospect of disclosure in other than unusual circumstances would have an undesirably inhibiting effect on investigating officers' reports", I cannot find that the class of information referred to in the judgment is recognized by the *Freedom of Information and Protection of Privacy Act* as an exemption. That being the case, the information in the particular case must either come within one of the exemptions provided by the Act, such as section 19, or be subject to disclosure. I must assume that, in making this law, the Legislature, contemplated the possibility that there may be instances where disclosure of reports of investigating officers should be made. The above quotation from the judgment itself contemplates the possibility that public interest in disclosure could outweigh the public interest in preserving confidentiality.

I want to emphasize that police officers should not feel threatened by the fact that their investigative reports might be subject to disclosure under the Act. It is to their benefit that the public know how well they do their jobs. Where harm could result from disclosure, exemptions such as section 19, are available to protect their records.

What is at issue here is whether the recommendations made by Internal Affairs Officers to the chief of police upon conducting their investigations of members of the Police Service should be disclosed. I believe it is relevant to consider the overall police complaints scheme in this Province. In doing this, I am assisted by a decision of the British Columbia Information and Privacy Commissioner, Order 13-1994, British Columbia (Police Commission).

As I understand it, under the Alberta *Police Act*, a person may lodge a complaint about the actions of a police officer. I will break the process that follows into stages.

> Stage 1: The chief of police must have the complaint investigated: section 45(1).
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> Stage 2: The chief must then decide if the actions may constitute an offence in law or a contravention of regulations governing the performance of duty: section 45(2).

> Stage 3: On considering the matter of the complaint, the chief of police may dismiss the matter or take action against the person whose conduct is complained of: section 47(4). If he dismisses the matter, section 47(5) requires him to advise the complainant in writing of the disposition and of the grounds on which the disposition was made.
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> Stage 4: If the chief of police finds a contravention of regulations governing the performance of duty, but that it is not serious, he may, subject to the regulations, dispose of the matter without a hearing: section 45(4). If the complaint is disposed of without a hearing, section 47(5) requires the chief of police to advise the complainant in writing of the disposition and of the grounds on which the disposition was made.
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> Stage 5: If the chief of police is of the opinion that there has been a contravention of regulations governing the performance of duty and that it is serious, he must conduct a hearing into the complaint: section 45(3).
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> Stage 6: Complainants or police officers may appeal the chief of police's decision to the Law Enforcement Review Board.

In this case, the complaint was dismissed by the chief of police. He is required by the *Police Act* to advise the complainant in writing of the disposition of the complaint and of the grounds on which the disposition was made. If local public bodies were presently subject to the Act, the disclosure required by the *Police Act* would not relieve a chief of police of the duty to comply with the *Freedom of Information and Protection of Privacy Act*.

Like my counterpart in British Columbia, I am of the view that many of the complaints at Stage 1 may be exempt from disclosure under section 19(1)(a) (harm a law enforcement matter). But to be exempted, they must pass the "harm" test. As well, consideration has to be given to section 16 with respect to invasions of personal privacy of both the complainant and the officer whose conduct is complained of. However, as the complaint proceeds through the various Stages, that is, as it is treated as having more substance, section 16(3)(a), which says that the head of a public body must consider whether disclosure is desirable for the purpose of subjecting activities of a public body to public scrutiny, will have increasing weight. In the initial stages however, the personal privacy of both officers and complainants is a major consideration.

The records marked as "D" by the Board consist of pages numbered 21 through 24. Section 19(1)(a), again, requires that reasonable expectation that harm will occur upon disclosure. I am not satisfied that this is the case.

As to the application of section 19(1)(c), I agree with the Board that these pages pertain to a law enforcement matter within the definition of section 1(1)(h) as they are investigations or proceedings which could lead to a penalty or sanction being imposed. I must then consider whether there is a reasonable expectation that harm would come to an

investigative technique were the information to be disclosed. I would adopt the reasoning of Order 170 of the Ontario Information and Privacy Commissioner which is:

> In order to constitute an "investigative techniques or procedure" in the requisite sense, it must be the case that disclosure of the technique or procedure to the public would hinder or compromise its effective utilization. The fact that the particular technique or procedure is generally known to the public would normally lead to the conclusion that such compromise would not be effected by disclosure and accordingly that the techniques or procedure in question is not within the scope of the protection afforded by section 14(1)(c) [section 19(1)(c) in Alberta].

In line with this reasoning, since the *Police Act* clearly requires that an investigation of a complaint be conducted, it must be generally known to the public that, after a complaint has been made, an investigation has taken place. Since the technique is known, nothing can be protected by withholding information that confirms that the technique exists. Therefore, I cannot agree that section 19(1)(c) would apply to exempt the Records marked "D" from disclosure.

However, it may still be the case that some information contained in those reports is subject to an exemption. The Board claimed sections 19(1)(a) in this regard. I am of the opinion that the head of the public body correctly applied section 19(1)(a) to the pages numbered 21 and 22. They contain information which would probably harm a law enforcement matter if disclosed. Pages 23 and 24 of Record D appear to consist of the findings of the investigating section as reported to the chief of police. They consist of the allegations of the complainant, who is the Applicant in this inquiry, and the findings of the investigation with respect to those allegations. For the most part, I cannot find any information in pages 23 and 24 which would reasonably be expected to harm a law enforcement matter under section 19(1)(a) or constitute an invasion of a third party's personal privacy under section 16. As I said, the fact that they are investigative reports is not in itself enough to bring section 19(1)(a) into play. Therefore, pages 23 and 24 of Record D should be released to the Applicant except for the last word in the 6th from the last line of page number 23 and the last 5 lines of that page 23 and the first 9 lines of page 24, which should be severed pursuant to section 17(1)(a) and section 19(1)(a). The name of the writer of the report may also be severed under section 16(2)(b). Subject to this and with the severing indicated, I do not need to comment on the application of section 19(2)(a).

**Record E-1 to E-8.**

Record "E" consists of eight pages of an internal police document. The exceptions claimed with respect to the severed parts of the document are sections 19(1)(a), 19(1)(c), and possibly 16(2)(b). In addition to those exceptions, the Board notes that information contained in the record refers to matters protected under Federal legislation.

As I understand it, it is not the fact that this record exists that is sought to be exempted from disclosure, it is the contents of the record.

The record in question here contains information which is given to officers as a notification of things they should be aware of as they work their shifts. It does contain information pertaining to ongoing investigations and the results of information received from confidential sources of information. As such I find that it is properly withheld under sections 19(1)(a) and 19(1)(c). Furthermore, it contains personal information about third parties compiled as part of investigations into possible violations of law and as such, with one exception, the Board correctly applied the exemption under section 16(2)(b). The exception is on the third page of Record E, the information about the Applicant, and nothing more, should be released to the Applicant.

**Record F-1 to F-2.**

Two paragraphs of a Final Report from the Internal Affairs Section to the Chief of Police report were severed as the Board claimed that information related to "personnel evaluations." The Board cites sections 16(2)(b) and (f) in support of the severing and notes that the information was supplied in confidence (section 16(3)(b)). The Board suggests that sections 18 and 19(2)(a) also apply.

Section 16(2)(b) and (f) state:

> **16**(2) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
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> (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.
>
> (f) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations.

and section 18 reads:

> **18** The head of a public body may refuse to disclose to an applicant personal information that is evaluative or opinion material compiled solely for the purpose of determining the applicant's suitability, eligibility or qualifications of employment or for the awarding of government contracts or other benefits when the information is provided, explicitly or implicitly, in confidence.

I do not find that section 18 applies to the information severed. Certainly the severed information was not "compiled solely for the purpose of" any of the matters referred to in section 18. It was given to investigating officers as part of an investigation.

As to the claim under section 16(2)(f), this would not apply because the personal evaluations involved are about the applicant. Someone else's opinion about me is my personal information (section 1(1)(n)(viii)). My views or opinions about someone else are not personal information (section 1(1)(n)(ix)).

The Board also claimed the exemption contained in 16(2)(b), which is, again, personal information which is compiled and is part of an investigation into a possible violation of law. However, the only third party personal information contained is the names of third parties which gave the information. These could be severed, leaving the rest of the record. But I find that the record which would then remain would probably allow the Applicant to identify the person who made the statements. Therefore, these portions were properly severed.

The Board also referred to section 16(3)(b) and 19(2)(a). Since I have found that the Board correctly applied section 16(2)(b) to this Record, I will not comment on the applicability of section 16(3)(b) or 19(2)(a).

**ORDER**

I confirm the decision of the Board to refuse access with 2 exceptions:

1. In Record A-5, the line beginning "On 1994 Sep 16, ...". should be disclosed to the Applicant subject to severing any third party information and severing the name of the entity issuing the bulletin referred to.

2. Pages 23 and 24 of Record D should be released to the Applicant except for the last word in the 6th from the last line of page number 23 and the last 5 lines of that page 23 and the first 9 lines of page 24, which should be severed pursuant to section 17(1)(a) and section 19(1)(a). The name of the writer of the report may also be severed under section 16(2)(b).

3. The information about the Applicant on the third page of Record E, and nothing more, should be released to the Applicant.

The attached chart summarizes the records involved and my decision with respect to the Board's application of the Act. Where I have ordered part of a previously severed record be released, I would ask that the head of the public body provide that part to the Applicant and notify me in writing, within 30 days, that this order has been complied with.

Robert C. Clark
Information and Privacy Commissioner

**POST SCRIPT**

This inquiry raised some significant issues which I would like to address for the assistance of public bodies in the future.

Section 67(1) places the burden of proof squarely on the shoulders of the public body where an inquiry relates to a decision to refuse access. When seeking to apply an exemption. it is important that the public body explain to me their reasons for applying the exemption, for refusing disclosure. If it is a technical or complicated matter, the public body must be all the more diligent in making sure the issues are clear and relevant procedures and technical information are set out. A case in point is the "harm" test I set out above. Any public body must be certain to present detailed and sufficient evidence which demonstrates a probability of harm from disclosure. In particular, I need to be shown the connection between disclosure and the anticipated harm which could occur. It is risky to make assumptions about my knowledge of causality in a specific situation. Given the nature of the information for which disclosure is being refused, nothing should be left to chance.

**SCHEDULE**
**SUMMARY OF ORDER**

| RECORD | EXEMPTION APPLIED | COMMISSIONER'S DECISION |
|---|---|---|
| **A-1** | Section 19(1)(d) | Uphold decision of Board |
| **A-2** | Section 16(2)(b)<br>Section 19(1)(a)<br>Section 19(1)(d) | Uphold decision of Board<br>Harm test not satisfied<br>Uphold decision of Board |
| **A-3** | Section 19(1)(d) | Uphold decision of Board |
| **A-4** | Section 19(1)(d) | Uphold decision of Board |
| **A-5** | Section 19(1)(a)<br>Section 16(2)(b) | Harm test not satisfied<br>Release with severing |
| **A-6** | Section 19(1)(d) | Uphold decision of Board |
| **A-7** | Section 19(1)(d) | Uphold decision of Board |
| **A-8** | Section 19(1)(d) | Uphold decision of Board |
| **A-9** | Section 19(1)(d) | Uphold decision of Board |
| **B-1 to B-18** | Section 16(2)(b) | Uphold decision of Board |
| | Section 19(1)(a) | Harm test not satisfied |
| **C-1 to C-3** | Section 16(2)(b) | Not Applicable |
| | Section 16(2)(f) | Not Applicable |
| | Section 16(3)(f) | Not Applicable |
| | Section 17(1)(a) | Uphold decision of Board |
| **D-1 to D-4** | Section 19(1)(a) | Harm test not satisfied<br>Release with Severing |
| | Section 19(1)(c) | Not Applicable |
| | Section 19(2)(a) | Not Applicable |
| | Section 26(1)(a) | Not Applicable |
| | Section 16(2)(b) | Not Applicable |
| | Section 1(n)(viii) | Not Applicable |
| **E-1 to E-8** | Section 19(1)(a) | Release with severing |
| | Section 19(1)(c) | Release with severing |
| | Section 16(2)(b) | Release with severing |
| | Section 19(3) | Not Applicable |
| | Federal Privacy Act | Not Applicable |
| **F-1 to F-2** | Section 16(2)(b) | Uphold decision of Board |
| | Section 16(2)(f) | Not Applicable |
| | Section 16(3)(b) | Not Applicable |
| | Section 18 | Not Applicable |
| | Section 19(2)(a) | Not Applicable |