

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER 2001-013

May 22, 2001

LAW ENFORCEMENT REVIEW BOARD

Review Numbers 1614 and 1744

Office URL: <http://www.oipc.ab.ca>

Summary: The Applicant wanted access under the *Freedom of Information and Protection of Privacy Act* (the “Act”) to the records regarding his appeals before the Law Enforcement Review Board (“LERB”). The Applicant also alleged that the LERB did not process his access requests in accordance with section 9(1) of the Act. The Commissioner decided that the LERB did meet its section 9(1) obligation to the Applicant. With the exception of some information the LERB severed from Record #9, the Commissioner also decided that the LERB had properly withheld the information under the various sections of the Act.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, S.A. 1994, c. F-18.5, ss. 1(1)(n)(vii), 9(1), 16(1) (4)(b),(5)(g),19(1)(a)(d.3)(j)(k), 23(1)(a), 26(1)(c)(ii), 26(2), 64(1), 68, 83; *Police Act*, S.A. 1998, c. P-12.01, ss. 20(1)(d), 45(1), 48(2).

Authorities Cited: AB: Orders 96-010, 96-022, 97-006, 99-021, 2001-011.

Case Cited: *Montana Band of Indians v. Canada (Minister of Indian and Northern Affairs)*, [1989] 1 F.C. 143 (T.D.).

I. BACKGROUND

[para. 1.] The Applicant made complaints against police officers of the Calgary Police Service (the “CPS”) pursuant to section 45(1) of the *Police Act*, S.A. 1998, c. P-12.01. The Chief of Police caused the complaint to be investigated. The Chief of Police advised the Applicant that the allegations were not sustained. On July 2, 1998, the Applicant filed a “Notice of Appeal” to the Law Enforcement Appeal Board (the “LERB”) to appeal the Calgary Chief of Police’s disposition letter. Under section 20(1)(d) of the *Police Act*, the LERB required that the records at issue be produced to the LERB during the course of the appeals.

[para. 2.] The Applicant made a request dated July 23, 1998 to the LERB pursuant to section 83 of the *Freedom of Information and Protection of Privacy Act* (the “Act”) for records regarding his appeal. Section 83 of the Act allows public bodies to make available to the public, categories of information without the necessity of making a request for access under the Act. On May 3, 1999, the Applicant complained to my Office that the LERB did not respond adequately to the Applicant’s request (File 1614).

[para. 3.] On June 17, 1999, the Applicant made a formal access request under the Act to the LERB and paid the \$25 administration fee for the request to proceed. This request was for the same information as set out in the Applicant’s July 23, 1998 request letter to the LERB. On November 8, 1999, the Applicant asked that I review the LERB’s response to the Applicant’s request for access under the Act (File 1744).

[para. 4.] Because the records were authored by the CPS and were generated by the CPS pursuant to its statutory duties under the *Police Act*, the CPS was identified as an Affected Party under section 64(1) of the Act. As a result, the CPS was permitted to make submissions in the written inquiry.

[para. 5.] During the course of the inquiry there was confusion as to what records and exceptions were in dispute. It became apparent that there were nine records at issue rather than three. For this reason, I gave the parties until May 4, 2001 to provide written submissions on the issue of whether the additional records should be withheld or severed by the LERB. I received additional submissions from the Applicant and from the CPS. Once I received the submissions, the written inquiry was held on May 10, 2001.

II. RECORDS AT ISSUE

[para. 6.] The records at issue were produced to the LERB by the CPS during the course of two appeals made by the Applicant under section 48(2) of the *Police Act*.

[para. 7.] There are nine records at issue:

Description of record	Withheld under section #	Identified as Record #	Partially or entirely withheld
Memorandum to	26(2) (Privileged	1 (B-5 of LERB’s	Entirely withheld

Constable dated August 8, 1997	information relating to a person other than a public body)	submission)	
Letter dated March 18, 1998 from Crown Prosecutor to Inspector.	19(1)(d.3) (Information relating to or used in the exercise of prosecutorial discretion); 26(1)(c)(ii) (Privileged information)	2 (B-1 of LERB's submission)	Entirely withheld
Memorandum dated August 31, 1998 to Chief Silverberg	23(1)(a) (advice from officials)	3 (B-6 of LERB's submission)	Entirely withheld
Professional Standards Section Internal Report from Sergeant dated March 22, 1998	16(1)(4)(b)(g) (unreasonable invasion of personal privacy); 19(1)(a) (harm a law enforcement matter); 23(1)(a) (advice from officials); 26(1)(c) (Privileged information)	4	Partially withheld
17 pages of Printout showing assigned zone for Constable	16(1) (invasion of personal privacy); 19(1)(j)(k) (Harm the security of any property or system including a building, a vehicle, a computer system or a communications system and reveal information in a correctional record supplied in confidence)	5	Entirely withheld
Violation ticket dated August 12, 1996	16(4)(b) (Personal information is an identifiable part of a law enforcement record)	6	Entirely withheld
Warrant for arrest	16(4)(b) (Personal	7	Entirely withheld

dated August 21, 1997	information is an identifiable part of a law enforcement record)		
Printout for September 21, 1997 for Constables	19(1)(a)(d) (Harm a law enforcement matter and reveal the identity of a confidential source of law enforcement information)	8	Entirely withheld
Final Report- Calgary Police Service dated April 20, 1998	16(4)(b); 23(1)(a) (the personal information is an identifiable part of a law enforcement record and advice from officials)	9	Partially withheld

III. ISSUES

[para. 8.] There are two issues in this inquiry:

- A. Did the LERB fulfil its duty to make every reasonable effort to assist the Applicant and to respond openly, accurately and completely, as provided by section 9(1) of the Act?
- B. Did the LERB properly sever and withhold the records at issue?

IV. DISCUSSION

Issue A. Did the LERB fulfil its duty to make every reasonable effort to assist the Applicant and to respond openly, accurately and completely, as provided by section 9(1) of the Act?

i) General

[para. 9.] Section 9(1) reads:

9(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.

[para. 10.] The duty to “assist” and “respond” is a positive duty imposed on a public body by section 9(1) and the duty must be fulfilled openly, accurately, and completely. How a public body fulfills its duty to assist will vary according to the fact situation of each request.

ii) Was it reasonable for the LERB to process the Applicant’s July 23, 1998 request as a request for records outside the FOIP process?

[para. 11.] I understand that the Applicant alleged that the LERB breached section 9(1) of the Act by responding to the Applicant’s request as a request for information outside the formal FOIP process. According to the Applicant, the LERB should have requested clarification from the Applicant whether he wanted a formal “FOIP” request or a request outside the Act.

[para. 12.] In a letter dated July 23, 1998 to the LERB, the Applicant made the following request:

Therefore, I am making a formal request under section 83 of the Freedom of Information and Protection of Privacy Act (FOIP) to get FULL DISCLOSURE.

[para. 13.] Section 83 (records available without request) of the Act reads:

83(1) The head of a public body may specify categories of records that are in the custody or under the control of the public body and are available to the public without a request for access under this Act.

(2) The head of a public body may require a person who asks for a copy of an available record to pay a fee to the public body, unless such a record can otherwise be accessed without a fee.

(3) Subsection (1) does not limit the discretion of the Government of Alberta or a public body to release records that do not contain personal information.

[para. 14.] The LERB responded to the Applicant on July 27, 1998, stating that it had not yet received the file from the CPS. The letter went on to say that when the file was received, the Applicant would receive a disclosure package in accordance with Board Policy No. 5 pursuant to section 83 of the Act.

[para. 15.] An appeal date to hear the matters before the LERB regarding the Applicant’s complaints about the CPS was set in April 1999. On April 27, 1999, the LERB wrote to the Applicant and supplied a disclosure package in accordance with Board Policy No. 5. A copy of this policy was included.

[para. 16.] On May 3, 1999, the Applicant wrote to the LERB and complained about the partial disclosure afforded under the Board Policy No. 5. The Applicant stated:

You should be apprised that the Board's generated documents under your Policy #005 does not override the FOIP Act.

[para. 17.] On May 21, 1999 the LERB wrote to the Applicant and advised him that his request had been treated as a LERB Policy No. 5 disclosure request because the Applicant was specific in this regard. In addition, the LERB advised the Applicant how to make a formal access request under the Act. Accordingly, a formal request was made to the LERB for the same information. I note that on June 17, 1999, the Applicant sent in his administrative fee and by July 23, 1999, the LERB sent the Applicant the first package of information. The LERB consulted with the CPS as an Affected Party in responding to the Applicant.

[para. 18.] On December 7, 1999 the LERB located and disclosed an additional letter to the Applicant.

[para. 19.] I have reviewed the LERB Policy No. 5. It is clear that the LERB's intention in implementing this policy is to provide disclosure to individuals appearing before it with respect to public complaints within the meaning of section 48(2) of the *Police Act*. The Applicant fell within this category.

[para. 20.] I agree with the LERB that it was reasonable to understand from the Applicant's request that he wanted information available to the public pursuant to section 83 of the Act and to the Board Policy No. 5. He had appeals before the LERB and this policy was created for this type of disclosure. Consequently, I find that it was reasonable for the LERB to respond in accordance with its policy.

[para. 21.] Section 9(1) does not require a public body to request clarification of a request when the request is, on its face, very clear. The Applicant's request was very specific. While I encourage public bodies to assist applicants by clarifying requests, I find that in processing the Applicant's request in this manner, the LERB did not contravene section 9(1) of the Act.

iii) Is the LERB obliged to request further records from the CPS to respond to the Applicant's request?

[para. 22.] On December 7, 1999, the LERB located and disclosed an additional letter to the Applicant. The letter was addressed to the Applicant's formal counsel from the CPS's counsel in connection with the LERB hearing. It refers to several documents that were enclosed; however, the LERB did not acquire those enclosed documents.

[para. 23.] The December 7, 1999 letter from the LERB to the Applicant said:

Please find enclosed one further piece of correspondence concerning your appeal in this matter. In that correspondence a number of documents are identified – the Board, however, has never acquired any of those documents on its file. This letter is the only record on file that you have not previously received and it was not

forwarded earlier as your former counsel would have that document in any event. Nevertheless, the Board has directed that you have a copy of this document to exhaust any concerns that there may be in connection with this appeal.

[para. 24.] The Applicant submitted that the LERB did not provide all the relevant records and that it has a duty to request other records from the CPS to respond to his request because these records, according to the Applicant, are in the control of the LERB.

[para. 25.] I understand that the Applicant believes that the LERB has a duty to retrieve the records referred to in the correspondence and that the LERB had control of the records even though the LERB may not have the records in their custody.

[para. 26.] Other than transferring a request under section 14 of the Act, a public body is not required to search for records in the custody or control of other public bodies (see: Orders 97-006, 99-021). In Order 99-021, I stated:

In Order 96-022, I agreed that a public body must make every reasonable effort to search for the records that have been requested. I further agreed that a public body will meet its duty to assist an applicant where it makes every reasonable effort to search for the records requested. But a public body must search only for records that are in its custody or under its control. Order 96-022 should not be interpreted as imposing a requirement that a public body search for records in the custody or under the control of another public body.

[para. 27.] Under section 20(1)(d) of the *Police Act*, the LERB may require that copies of all investigation reports, statements, correspondence or other documents or things relating to the investigation of the Applicant's complaint be produced to the LERB prior to an appeal or an inquiry.

[para. 28.] The LERB stated in its submission (page 5):

The legal authority of the Board to require production of the "file" records (s. 20(1)(d)), however, is not without limit as the Police Act refers specifically to, "investigation reports, statements, correspondence or other documents or things relating to the matter". If the Police Service has records beyond the context of the complaint (s. 45) and the investigation of that complaint, the Board is without authority to require production of those records. In some instances appellants request the Board to obtain records (considered helpful to the appellant) that the Police Service may have created. When such requests are made the Board is unable to act on those requests if the record or thing is beyond the scope of section 20(1)(d) of the Police Act.

[para 29.] The LERB is required to disclose the records in its custody and control, and I find that it has done so. The records that fall outside of section 20(1)(d) of the *Police Act* are not within the LERB's custody or control. I agree with the LERB that the LERB is not obliged to request further records from the CPS to respond to the Applicant's request

when the LERB has no statutory authority to make such a request to the CPS. Therefore, I find that the LERB did not contravene section 9(1) of the Act by refusing to obtain additional records from the CPS. In any event, the Applicant can now make an access request to the CPS because the CPS has been subject to the Act since October 1, 1999.

[para 30.] I also note that the LERB responded promptly, continued to search for responsive records after the first disclosure to the Applicant, and provided additional records to the Applicant.

Conclusion for Issue A

[para 31.] For the above reasons, I find that the LERB has fulfilled its duty to make every reasonable effort to assist the Applicant and respond openly, accurately and completely, as provided by section 9(1) of the Act.

Issue B: Did the LERB properly sever and withhold the Records at Issue?

i) Did the LERB properly sever and withhold Record #1 (Memorandum to Constable dated August 8, 1997)

[para. 32.] I agree with the CPS that Record #1 is not responsive to the access request. Therefore, I will not consider whether the LERB properly severed and withheld it under the Act, and I do not require the LERB to disclose it.

ii) Did the LERB properly sever and withhold Record #2 (Letter dated March 18, 1998 from Crown Prosecutor to Inspector)?

[para. 33.] The LERB applied sections 19(1)(d.3) (information relating to or used in the exercise of prosecutorial discretion) and 26(1)(c)(ii) (privilege) to withhold Record #2 in its entirety.

[para. 34.] This record was authored by an Alberta Justice lawyer. It recites a number of facts and then comes to a conclusion respecting prosecution.

[para. 35.] In Order 2001-011, I dealt with the interpretation of information related to and used in the exercise of prosecutorial discretion. In my view, the information contained in Record #2 qualifies as information that relates to the exercise of prosecutorial discretion.

[para. 36.] Section 19(1)(d.3) is a discretionary exception because it authorizes a public body to refuse access to information, but does not require a public body to do so. In Order 96-017, I discussed the two-step decision-making process a public body must do when claiming a discretionary exception, as follows.

[para. 37.] In an inquiry, a public body must first provide evidence on how a particular exception applies; and second, on how the public body exercised its discretion. A public

body must show that it took into consideration all the relevant factors when deciding to withhold information, including the purposes of the Act, one of which allows access to information.

[para. 38.] The LERB did not provide any direct evidence by way of affidavit or otherwise, to show how the head exercised his discretion. Often, this evidence can be given by the public body's FOIP coordinator or the person responsible for reviewing the records.

[para. 39.] Nonetheless, I note that the LERB did consult with the CPS and the CPS did provide by way of affidavit evidence, reasons why the records at issue should not be disclosed. Therefore, I find from a review of the records and the submissions, that the LERB, taking into account the CPS's position, exercised its discretion properly under section 19(1)(d.3).

[para. 40.] Having found that the LERB correctly applied section 19(1)(d.3) to Record #2, I do not find it necessary to also consider whether the LERB correctly applied section 26(1)(c)(ii) to Record #2.

The LERB properly severed and withheld Record #2. The LERB is not required to disclose Record #2 to the Applicant.

iii) Did the LERB properly sever and withhold Record #3 (Memorandum dated August 31, 1998 to Chief Silverberg)?

[para. 41.] The LERB applied section 23(1)(a) (advice from officials) to withhold Record #3 in its entirety.

[para. 42.] Record #3 is a memorandum to the Chief of Police to assist her in making a determination under section 45 of the *Police Act*. It contains an opinion whether there was sufficient evidence to sustain or not sustain a complaint.

[para. 43.] Section 23(1)(a) reads:

23(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal

(a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council...

[para 44.] To fall within section 23(1)(a), the “advice” (advice, proposals, recommendations, analyses or policy options) should:

(i) be sought or expected, or be part of the responsibility of a person by virtue of that person's position,

(ii) be directed toward taking an action,

(iii) be made to someone who can take or implement the action.

[para 45.] Based on the LERB's and the CPS's evidence, I am satisfied that the information severed from Record #3 contains analyses and a recommendation. That "advice" meets the three requirements for section 23(1)(a), as set out above.

[para 46.] Section 23(1)(a) is a discretionary ("may") provision in that, even if the section applies, a public body may nevertheless decide to disclose the information. As I set forth my reasons regarding Record #2, I find that the LERB did exercise its discretion properly.

[para 47.] Therefore, I find that the LERB properly applied section 23(1)(a) to Record #3. The LERB properly severed and withheld Record #3. As a result, the LERB is not required to disclose Record #3 to the Applicant.

iv) Did the LERB properly sever and withhold Record #4 (Professional Standards Section Internal Report dated March 22, 1998)?

[para. 48.] The LERB applied the following sections to sever information from Record #4:

- 16(4)(g) (unreasonable invasion of personal privacy)
- 16(4)(b) (unreasonable invasion of personal privacy when part of a law enforcement record)
- 19(1)(a) (disclosure harmful to law enforcement)
- 23(1)(a) (advice from officials) and
- 26(1)(c) (privileged information)

[para. 49.] Record #4 is an internal investigative report provided to the Chief of Police from members of the Professional Standards Section, Internal Affairs Unit and Citizen Complaint Unit of the CPS. This record was prepared as part of the Professional Standards Section's duties for their Chief's review and to assist the Chief with her disposition under section 45 of the *Police Act* of the Applicant's complaints against CPS police officers. This record summarizes the evidence gathered during the investigation and makes a recommendation.

- Information severed according to section 16(4)(g)

[para. 50.] The LERB severed third party names and addresses under section 16(4)(g). Section 16(4)(g) reads:

16(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

...

(g) the personal information consists of the third party's name when

(i) it appears with other personal information about the third party, or

(ii) the disclosure of the name itself would reveal personal information about the third party...

[para. 51.] I find that the information severed under section 16(4)(g) constitutes third parties' personal information (section 1(1)(n)(i)) and that this information does fall within section 16(4)(g). As a result, I find that section 16(4)(g) applies, and that the relevant circumstances under section 16(5) weigh in favour of withholding this personal information. Therefore, I uphold the LERB's decision to withhold the information severed under section 16(4)(g).

- Information severed according to section 16(4)(b)

[para. 52.] On page C44, the LERB severed a table containing personal information regarding warrants and summonses assigned to a constable. This information was severed under sections 16(4)(b) and 19(1)(a).

[para. 53.] In addition, on pages C46 and C61, the LERB severed paragraphs under section 16(4)(b).

[para. 54.] I find that this information constitutes third parties' personal information (section 1(1)(n)(vii)).

[para. 55.] Section 16(4)(b) reads:

(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

...

(b) the personal information is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an investigation,

[para. 55.] I find that section 16(4)(b) applies and that the relevant circumstances under section 16(5) weigh in favour of withholding this personal information. Therefore, I uphold the LERB's decision to withhold the information severed under section 16(4)(b).

[para. 56.] Having found that the LERB correctly applied section 16(4)(b) to the information severed on pages C46 and C61 of Record #4, I do not find it necessary to also consider whether the LERB correctly applied section 19(1)(a) to that same information.

- Information severed according to section 26(1)(c)

[para. 57.] The LERB severed one paragraph under section 26(1)(c) on page C48 of Record #4. It is information cited from Record #2. I found that section 19(1)(d.3) applied to that information in Record #2. However, I agree with the LERB that section 26(1)(c) also applies here because it is information in correspondence between an agent or lawyer of the Minister of Justice and Attorney General and any other person in relation to a matter involving the provision of advice or other services by the Minister of Justice and Attorney General or by the agent or lawyer.

[para. 58.] Section 26(1)(c) is also a discretionary section and for the reasons stated above, I find that the LERB exercised its discretion properly. Therefore, I find that this information meets the requirements of section 26(1)(c) and that the LERB is not required to disclose this information to the Applicant.

- Information severed according to section 23(1)(a)

[para. 59.] The CPS submitted that the information severed under section 23(1)(a) contained recommendations, conclusions and analyses of facts provided by the member of or the Manager of the Professional Standard Section of the CPS. Investigative reports are prepared pursuant to the Chief's statutory obligation to cause a complaint to be investigated under section 45(1) of the *Police Act*. The recommendations can either be accepted or rejected by the Chief of Police or her designate.

[para. 60.] The CPS also submitted that the advice provided by CPS officials to the Chief of Police is important and valuable information to assist the Chief with his or her statutory functions under the *Police Act*.

[para. 61.] Based on the LERB's and the CPS's evidence, I am satisfied that the information severed from Record #4 are recommendations. That "advice" meets the three requirements for section 23(1)(a), as set out above.

[para. 62.] Further, I find that the LERB exercised its discretion properly and that the LERB is not required to disclose this information to the Applicant.

- Conclusion with respect to Record #4

[para. 63.] I find that the LERB properly severed and withheld the information under the various sections of the Act and that the LERB is not required to disclose additional information contained in Record #4 to the Applicant.

v) Did the LERB properly sever and withhold Record #5 (17 Pages of Printout Showing Assigned Zone for a Constable)?

[para. 64.] The LERB applied sections 16(1) and 19(1)(j) and (k) to withhold Record #5 in its entirety.

[para. 65.] According to the CPS, these 17 pages show a Constable's assignment from "District 6 for execution of numerous warrants." I agree with the CPS that the only page responsive to the Applicant's access request is the page concerning warrant #97T13529 (marked "C126"). Therefore pages C127-C142 are non-responsive. Consequently, for the purposes of this Order, I will only deal with page C126.

[para. 66.] Page C126 contains information concerning the execution of a warrant of a third party. This information is that third party's personal information (section 1(1)(n)(vii)).

[para. 67.] Section 16(1) reads:

16(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

[para. 68.] I find that section 16(1) applies to the third party's personal information and that the relevant circumstances under section 16(5) weigh in favour of withholding this personal information. Having made this finding, I do not find it necessary to consider sections 19(1)(j) or (k).

[para. 69.] The balance of information on this printout sheet is written in code and concerns CPS's internal tracking numbers or date received, due, completion dates and the name of the officer assigned. Disclosure of these numbers and codes would provide meaningless information to the Applicant: see *Montana Band of Indians v. Canada (Minister of Indian and Northern Affairs)*, [1989] 1 F.C. 143 (T.D.) and Order 96-010. Therefore, I find that the LERB reasonably severed the entire content of Page C126 and I do not order that this page be disclosed. Because the remaining 16 pages are non-responsive, the LERB is not required to disclose Record #5 in its entirety.

vi) Did the LERB properly sever and withhold Record #6 (Violation ticket dated August 12, 1996)?

[para. 70.] The LERB applied sections 16(4)(b) and 19(1)(j) and (k) to withhold Record #6 in its entirety.

[para. 71.] Record #6 is a violation ticket with respect to a third party who contravened the *Motor Vehicle Administration Act*. I find that this record contains a third party's personal information such as the individual's name and address, sex, age, inheritable characteristics, operator's license and criminal history (section 1(1)(n)(i)(iii)(iv)(vii)).

[para. 72.] I find that section 16(4)(b) applies and that the relevant circumstances under section 16(5) weigh in favour of withholding this personal information. Therefore, I uphold the LERB's decision to withhold Record #6 under section 16(4)(b) and I do not require that the LERB disclose Record #6.

[para. 73.] Having found that the LERB correctly applied section 16(4)(b) to Record #6, I do not find it necessary to also consider whether the LERB correctly applied sections 19(1)(j) and (k) to that same record.

vii) Did the LERB properly sever and withhold Record #7 (Warrant for arrest dated August 12, 1997)?

[para. 74.] The LERB applied section 16(4)(b) to withhold Record #7 in its entirety. Record #7 is a Warrant for Arrest, Form 7 of the Criminal Code.

[para. 75.] I find that this record contains a third party's personal information such as the individual's name and address, age and criminal history (section 1(1)(n)(i)(iii)(vii)).

[para. 76.] I find that section 16(4)(b) applies and that the relevant circumstances under section 16(5) weigh in favour of withholding this personal information. Therefore, I uphold the LERB's decision to withhold Record #7 under section 16(4)(b) and I do not require that the LERB disclose Record #7.

viii) Did the LERB properly sever and withhold Record #8 (Printout for September 21, 1997 for two Constables)

[para. 77.] The LERB applied sections 19(1)(a) and (d) to withhold Record #8 in its entirety.

[para. 78.] On the second page of this two-page record is a unit history for the vehicle occupied on September 21, 1997 by the two Constables subject to the Applicant's Citizen Complaint. It shows the activities of the unit and includes various complaint numbers and addresses which pertain to the activities of the unit, such as attempts to execute warrants and other law enforcement matters. There are also other individuals' license plate numbers and addresses.

[para. 79.] The CPS stated in its submission:

In my submission, the only responsive lines would be the information on line 2129 which gives the date and the regimental numbers of the constables involved. Further down that listing at 2336 gives the constables' attendance at the address

of the Applicant, and 2348 demonstrates when the constables made a license inquiry search on the Applicant's license plate. All the other information on pages one and two of this printout are, in my submission, not related to the Applicant's access request.

[para. 80.] I agree with the CPS that only lines 2129, 2336, and 2348 are responsive to the Applicant's request. Therefore, for the purposes of this Order, I will only consider whether those three lines should be withheld or disclosed by the LERB.

[para. 81.] On this printout is a variety of confidential four-digit police codes. The LERB applied section 19(1)(a) and (d) to the entire contents of this record, including the lines I have determined are responsive to the Applicant's request.

[para. 82.] 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

(a) harm a law enforcement matter,

[para. 83.] I find that disclosure of these codes could reasonably be expected to harm a law enforcement matter within the meaning of section 19(1)(a). Section 19(1)(a) is a discretionary provision. For the reasons stated earlier in this Order, I find that the LERB exercised its discretion properly under section 19(1)(a). Therefore, I find that the LERB properly applied section 19(1)(a) to lines 2129, 2336, and 2348 of Record #8.

[para. 84.] Therefore, the LERB properly severed and withheld Record #8. The LERB is not required to disclose Record #8 to the Applicant. Having made this finding, I do not find it necessary to consider section 19(1)(d).

ix) Did the LERB properly sever and withhold Record #9 (Calgary Police Service Final Report dated April 20, 1998)

[para. 85.] Record #9 is an investigative report prepared by members of the Professional Standards Section of the CPS pursuant to the Chief's statutory obligation to cause a complaint to be investigated under section 45(1) of the *Police Act*. According to the CPS (page 4 of their submissions), the manager of the Section, any investigators of the Section or from the CPS generally, and any commanders of those investigators provide analyses of the facts of the investigations and recommendations to the Chief concerning whether or not allegations made by a complainant should or should not be sustained. Like Record #4, Record #9 was provided to the Chief of Police to make a disposition under section 45 of the *Police Act*. The recommendations can either be accepted or rejected by the Chief of Police.

[para. 86.] The LERB severed information contained in Record #9 under section 16(4)(b) and section 23(1)(a).

- Information severed according to section 16(4)(b) (personal information part of a law enforcement record)

[para. 87.] The LERB severed the names of the following individuals under section 16(4)(b) of the Act:

- Names of officers who had conducted investigations into the conduct of other officers who were the subject of the Applicant's complaints (one was the presenting officer at a disciplinary hearing, and another was a member of the CPS Professional Standards Section);
- Name of previous Chiefs of Police;
- Names of the two constables who attended the Applicant's residence in 1993;
- Third party names in letters written between counsel for the CPS and counsel for the Applicant;
- Names of lawyers representing the Applicant in connection with these matters and the name of the counsel representing the CPS;
- Names of officers of the CPS Professional Standards Section involved in the investigations of the Applicant's complaints.

[para. 88.] In determining whether section 16(4) applies, I considered the following relevant circumstances, as required by section 16(5):

- The names of all these individuals were provided solely in their professional capacity with respect to the matters in connection with the Applicant;
- Some of the names were contained in letters exchanged between the Applicant's and the CPS' counsels. Therefore, the Applicant is well aware of the names since he would have received this correspondence; and
- The names of the lawyers working on the cases are probably a matter of public record, or in the very least, within the Applicant's knowledge.

[para. 89.] I find, based on the circumstances, that disclosure of the third parties' names would not constitute an unreasonable invasion of their personal privacy. Therefore, I find section 16(4)(b) does not apply to the above names severed in Record #9.

- Information severed according to section 23(1)(a) (Advice from Officials)

[para. 90.] Included in Record #9 are several recommendations set out in pages B42-B48. The LERB severed these recommendations under section 23(1)(a) of the Act.

[para. 91.] The CPS submitted (page 4 of their submission) that only severing the portions that constitute advice and leaving in most of the report that details the conduct of the investigation strikes a good and accountable balance between access and the ability of the Chief of Police to receive advice from CPS officials.

[para. 92.] I agree with the CPS. I find that these recommendations are advice and do meet the criteria of section 23(1)(a). I also find that the LERB exercised its discretion properly under this section.

[para. 93.] Therefore, I uphold the LERB’s decision in withholding the information severed according to section 23(1)(a) in Record #9.

- Conclusion with respect to Record #9

[para. 94.] In Record #9, the LERB may withhold the information severed under section 23(1)(a) but not the third parties’ names severed under section 16(4)(b). Consequently, I intend to order the LERB to disclose the third parties’ names it severed under section 16(4)(b), but the LERB is not required to disclose the information it severed under section 23(1)(a).

V. ORDER

[para. 95.] Under section 68 of the Act, I make the following Order:

Issue A: Did the LERB fulfil its duty to make every reasonable effort to assist the Applicant and to respond openly, accurately and completely, as provided by section 9(1) of the Act?

[para. 96.] The LERB fulfilled its duty to make every reasonable effort to assist the Applicant openly, accurately and completely as provided by section 9(1) of the Act.

Issue B: Did the LERB properly sever or withhold the records at issue?

Record #1	I find that Record #1 is not responsive to the Applicant’s access request. Therefore, I do not require the LERB to disclose it.
Record #2	I find that the LERB properly applied section 19(1)(d.3) to Record #2. Therefore, I do not require the LERB to disclose it.
Record #3	I find that the LERB properly applied section 23(1)(a) to Record #3. Therefore, I do not require the LERB to disclose it.
Record #4	<p>I find that sections 16(4)(b) and (g) apply to the information severed under those sections. Therefore, I uphold the LERB’s decision to withhold the information severed under sections 16(4)(b) and (g).</p> <p>I find that the LERB properly applied section 26(1)(c) to information severed from Record #4. Therefore, I do not require the LERB to disclose it.</p> <p>I find that the LERB properly applied section 23(1)(a) to information severed from Record #4. Therefore, I do not require the LERB to disclose it.</p>

Record #5	<p>I find that pages C127-C142 are not responsive to the Applicant's access request.</p> <p>I find that section 16(1) applies to the personal information on page C126. The remaining information on page C126 is meaningless. Therefore, I uphold the LERB's decision to withhold Record #5 in its entirety.</p>
Record #6	I find that section 16(4)(b) applies to Record #6. Therefore, I uphold the LERB's decision to withhold Record #6 under section 16(4)(b).
Record #7	I find that section 16(4)(b) applies to Record #7. Therefore, I uphold the LERB's decision to withhold Record #7 under section 16(4)(b).
Record #8	I find that only lines 2129, 2336 and 2348 are responsive to the Applicant's access request. I also find that the LERB properly applied section 19(1)(a) to that information and I do not therefore, require the LERB to disclose Record #8.
Record #9	<p>I find that section 16(4)(b) does not apply to the names of the individuals severed from Record #9. Therefore, I order the LERB to disclose the names it severed under section 16(4)(b).</p> <p>I find that the LERB properly applied section 23(1)(a) to information severed from Record #9. Therefore, I do not require the LERB to disclose it to the Applicant.</p>

[para. 97.] For the sake of clarity, I have provided the LERB with a photocopy of Record #9, and have highlighted the information which the LERB is required to disclose to the Applicant.

[para 98.] I order the LERB to notify me in writing, within 50 days of being given a copy of this Order, that the LERB has complied with this Order.

Robert C. Clark
Information and Privacy Commissioner