

**ALBERTA**  
**OFFICE OF THE INFORMATION AND PRIVACY**  
**COMMISSIONER**

**ORDER F2005-001**

February 16, 2005

**CALGARY POLICE SERVICE**  
**ALBERTA JUSTICE**

Review Numbers 2848 and 2850

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

**Summary:** The Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* to the Calgary Police Service for access to all records pertaining to the death of her son. This request included: statements of investigations, medical examiner reports, crown prosecutor reports, videos, pictures and audio recordings.

In response, the Calgary Police Service provided the Applicant with a portion of the records, but withheld the remainder. The Calgary Police Service also transferred a portion of the access request to Alberta Justice. At the time of the inquiry, 137 pages of Calgary Police Service records remained at issue as well as a seven-page Alberta Justice record.

At the inquiry, the Calgary Police Service cited section 27(1) [privileged information], 17 [personal information], 20(1) [law enforcement], 21 [intergovernmental relations] of the *Freedom of Information and Protection of Privacy Act* as its authority to withhold its information. Alberta Justice cited section 27(1) [privileged information] and section 20(1)(g) [prosecutorial discretion] as its authority.

The Adjudicator held that the Calgary Police Service properly withheld the majority of the records under sections 17, 20(1)(m) and 27(1)(b). The Adjudicator also found that Alberta Justice properly withheld its records under section 27(1)(b). However, the Adjudicator found that the Calgary Police Service breached Part 2 of the *Freedom of Information and Protection of Privacy Act* when it disclosed to the parties, as part of its

earlier submission, some of the records. The Adjudicator ordered the Calgary Police Service to stop disclosing personal information in contravention of Part 2 of the Act. The Adjudicator ordered the Calgary Police Service to take greater care in preparing its submissions and to put the proper procedures in place to ensure that this type of error does not reoccur.

**Statutes Cited: AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c.F-25, ss. 1(n), 17, 17(1), 17(2)(b), 17(2)(c), 17(4), 17(4)(a), 17(4)(b), 17(4)(d), 17(4)(f), 17(4)(g), 17(4)(h), 17(5), 17(5)(b), 17(5)(c), 17(5)(f), 17(5)(g), 20(1), 20(1)(c), 20(1)(d), 20(1)(g), 20(1)(m), 21, 21(1)(a), 21(1)(b), 21(4), 27(1), 27(1)(a), 27(1)(b), 27(1)(c), 40, 59, 67(1), 67(2), 71(2), 72, Part 2

**Authorities Cited: AB:** Order 96-017, Order 97-002, Order 97-020, Order 98-007, Order 99-010, Order 99-028, Order 2000-027, Order 2001-037

## **I. BACKGROUND**

### **A. Access Request sent to the Calgary Police Service**

[para 1] On August 14, 2003, the Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the “Act”) to the Calgary Police Service (the “CPS”). The Applicant requested access to all records pertaining to the death of her son which included: statements of investigations, medical examiner reports, crown prosecutor reports, videos, pictures and audio recordings.

[para 2] On August 20, 2003, the CPS and the Applicant agreed to narrow the request to only include a severed copy of a police report. On that date, the CPS also transferred to Alberta Justice, the portion of the access request regarding the Medical Examiner’s records and the Crown Prosecutor’s records.

[para 3] On September 23, 2003, the CPS responded to the Applicant’s request and provided the Applicant with a portion of the responsive records. These included a severed copy of the police report and two pages containing five photos. In that letter, the CPS stated that although section 17 did not permit this disclosure of personal information under Part 1 of the Act, it was exercising its discretion to disclose some of the information under section 40 of the Act.

[para 4] On October 16, 2003, the Applicant requested a review of the CPS decision.

[para 5] During mediation, the CPS agreed to re-open the Applicant’s request to include the entire investigative file.

[para 6] On February 13, 2004, the CPS responded to the revised request and provided the Applicant with a portion of the investigative file, but withheld the remainder.

[para 7] In March 2004, the Applicant requested that the review of the CPS decision proceed. The matter was set down for a written inquiry. Initial submissions were exchanged between the parties.

[para 8] On April 28, 2004, the CPS informed this Office that it inadvertently disclosed to the Applicant, as part of its initial submission, some of the records at issue in request for review #2850. The CPS subsequently took steps to retrieve the records from the Applicant. The CPS regained possession of the records from the Applicant.

[para 9] On April 29, 2004, the CPS notified this Office that it would like the opportunity to revisit its decision in regard to the request for review #2850 and, in particular, revisit its application of section 17 of the Act.

[para 10] On May 5, 2004, I granted the CPS's request to revisit its decision and asked the CPS to notify the parties and myself of its revised decision by May 19, 2004. I also informed the CPS that, given the disclosure of third party personal information, I would address, as part of request for review #2850, whether a third party's privacy was breached under Part 2 of the Act.

[para 11] On May 18, 2004, the CPS released additional information to the Applicant.

[para 12] On August 12, 2004, the CPS informed this Office that the CPS had initiated an internal formal review into the Criminal Investigation in regard to the death of the Applicant's son. The CPS suggested to this Office that, given the internal review, I may wish to delay the inquiry for Request for Review #2848 and #2850 until the CPS internal review is completed. The CPS stated that if the inquiry proceeds, the CPS will apply section 20(1)(f) to the records as there is an ongoing investigation underway.

[para 13] On August 16, 2004, I wrote to the CPS informing the CPS that a formal review by the CPS would not preclude an inquiry into Request for Review #2848 and #2850. As such, I had decided not to delay the inquiry. However, given the change in circumstances outlined in the CPS letter, I was prepared to add section 20(1)(f) as an issue to the inquiry.

## **B. Access Request transferred to Alberta Justice**

[para 14] On August 20, 2003, the CPS transferred a portion of the Applicant's access request to Alberta Justice.

[para 15] Alberta Justice provided the Applicant with access to the Medical Examiner's records in their entirety. Alberta Justice did not provide the Applicant with access to the Crown Prosecutor's records. On October 16, 2003, the Applicant requested a review of Alberta Justice's decision not to disclose the Crown Prosecutor's records.

## **II. RECORDS AT ISSUE**

### **A. Calgary Police Service Records**

[para 16] At the date of the inquiry, there are 137 pages of CPS written records, five audiotapes, one videotape and one compact disk at issue.

[para 17] The CPS entirely withheld pages 116-165 of the CPS Investigative File, the audiotapes, the videotape and the compact disk.

[para 18] The CPS partially withheld the following pages:

1) Police Report: pages 2-29, 29A

2) CPS Investigative File: pages 13, 16, 17, 19, 20-23, 25, 26-28, 30-39, 40, 42-45, 47, 48, 50, 55, 56, 57, 59, 60, 63, 65, 68, 70, 74, 77, 79, 81, 86, 87, 89, 90, 92, 95, 99, 100, 102, 105, 106, 109, 110, 111, 113

### **B. Alberta Justice Records**

[para 19] The Alberta Justice records at issue consist of a seven-page memo from a Crown Prosecutor to the Chief Crown Prosecutor.

## **III. PRELIMINARY ISSUES**

### **A. Page Numbers Severed and Withheld**

[para 20] In addition to the records referred to above, the CPS also severed and withheld several page numbers which were applied in error to pages 110, 111, 112, 113, 114 and 115 of the CPS Investigative file. As there are no mandatory exceptions that apply to these page numbers and the CPS did not apply any discretionary exceptions to the numbers, I intend to Order the CPS to disclose this information to the Applicant.

### **B. Responsiveness of the Records**

[para 21] The CPS severed a portion of pages 36, 37, 38, 39, 40, 70, 74 and 77 of the CPS Investigative file as non-responsive.

[para 22] In Order 97-020, the Commissioner stated that information or records will be responsive to an access request if they are reasonably related to the request.

[para 23] The Applicant's initial request was for all records pertaining to the death of her son which included: statements of investigations, medical examiner reports, crown prosecutor's reports, videos, pictures and audio recordings. I find that the CPS properly withheld portions of pages 36, 37, 38, 39, 40, 70, 74 and 77 of the CPS Investigative file

as non-responsive. The information relates to other investigations or administrative matters not related to the access request. As such, I find that the CPS is not required to disclose this information to the Applicant.

### **C. Identification of Affected Parties**

[para 24] The Applicant states that I should have identified a number of additional persons as Affected Parties in this inquiry.

[para 25] Section 67(1) states that the Commissioner must give a copy of the request for review to a) the head of the public body concerned, and (b) to any other person who, in the opinion of the Commissioner, is affected by the request. In this inquiry, I exercised my discretion to include, as Affected Parties, the accused and other individuals who were identified as civilian witnesses by the CPS. I did not include, as Affected Parties, other individuals that may have been named in the police report.

### **D. Severing of a Request for Review**

[para 26] The Applicant states that her request for review should not have been severed before it was sent to the Affected Parties. The Applicant states that the information severed from her request for review was important information that should have been disclosed to the other parties.

[para 27] Section 67(2) states that the Commissioner may sever any information in the request that the Commissioner considers appropriate before giving a copy of the request to the head of the public body or any other person affected by the request. In this inquiry I decided to sever a portion of the Applicant's Request for Review that was not directly relevant to the Request for Review. This information included the Applicant's opinions, her health concerns, as well as her home, work and cell phone numbers and her address. This information was severed to protect the privacy of the Applicant.

### **E. Disclosure of Letters Generated during the Access and Review Process**

[para 28] The Applicant states that some of the letters generated during the access and review process should have been disclosed to the Affected Parties as part of the inquiry notice. The Applicant states that these letters would have assisted the Affected Parties in understanding the issues in this inquiry.

[para 29] Section 67 requires the Commissioner to provide the Affected Parties with a copy of the Request for Review, a summary of the review procedures and the anticipated date for a decision on the review. The Act does not require or permit the disclosure of additional information. Rather, section 59 clearly prohibits the disclosure of any further information by the Commissioner or his staff which is obtained in the performance of their duties, powers or functions under the Act. The only exceptions to

this prohibition are the limited circumstances outlined within the various section 59 subsections. None of the limited circumstances apply in this inquiry.

#### **IV. ISSUES**

[para 30] There are five issues outlined in the inquiry notice:

- A) Did the CPS and Alberta Justice properly apply section 27(1) of the Act (privileged information) to the records/information?
- B) Does section 17 of the Act (personal information) apply to the CPS records/information?
- C) Did the CPS properly apply section 20(1) of the Act (law enforcement) to the records/information?
- D) Did the CPS properly apply section 21 (intergovernmental relations) to the records/information?
- E) Did the CPS disclose personal information in contravention of Part 2 of the Act?

#### **V. DISCUSSION**

##### **A. Did the CPS and Alberta Justice properly apply section 27(1) of the Act (privileged information) to the records/information?**

[para 31] Section 27(1) reads:

*27(1) The head of a public body may refuse to disclose to an applicant*

*(a) information that is subject to any type of legal privilege, including solicitor-client privilege or parliamentary privilege,*

*(b) information prepared by or for*

*(i) the Minister of Justice and Attorney General,*

*(ii) an agent or lawyer of the Minister of Justice and Attorney General,*

*(iii) an agent or lawyer of a public body,*

*in relation to a matter involving the provision of legal services, or*

*(c) information in correspondence between*

*(i) the Minister of Justice and Attorney General,*

*(ii) an agent or lawyer of the Minister of Justice and Attorney General, or*

*(iii) an agent or lawyer of a public body,*

*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 32] The CPS states that section 27(1)(a) and 27(1)(b)(ii) apply to pages 138 and 139 of the CPS Investigative file. Alberta Justice states that sections 27(1)(a), 27(1)(b) and 27(1)(c) apply to the Alberta Justice records.

[para 33] After a review of the records, I find that section 27(1)(b) applies to all of the records at issue under this section. Section 27(1)(b) consists of three criteria:

- (i) The information must be prepared by or for one of the individuals listed in section 27(1)(b);
- (ii) The information must be prepared in relation to a matter involving the provision of legal services; and
- (iii) The public body must show that it properly exercised its discretion.

[para 34] In Order 96-017, the Commissioner defined the term “legal services” by its ordinary dictionary meaning. He stated that the term “legal services” would include any law-related service performed by a person licensed to practice law. As such, the section is broader than solicitor-client privilege.

[para 35] I find that pages 138-139 of the CPS Investigative File and the Alberta Justice records fulfill all of the three criteria under section 27(1)(b). As such, I uphold the decision of these public bodies to withhold the records under this section. I also find that these two public bodies properly exercised their discretion to withhold these records.

[para 36] As I have held that the records at issue were properly withheld, I will not address whether these public bodies properly applied sections 27(1)(a) and 27(1)(c) to those records.

**B. Does section 17 of the Act (personal information) apply to the CPS records/information?**

[para 37] Section 17 is a mandatory (“must”) section of the Act. If section 17 applies, a public body must refuse to disclose the information. There are two criteria that must be fulfilled under section 17:

- (a) the information must be “personal information” of a third party; and
- (b) the disclosure of the personal information must be an unreasonable invasion of a third party’s personal privacy.

[para 38] The CPS severed information under section 17 on the following records:

Police Report: pages 2-29, 29A

CPS Investigative File: pages 16, 17, 19-23, 25-28, 30-35, 37, 38, 39, 42-45, 47, 48, 50, 55, 56, 57, 59, 60, 63, 79, 81, 86, 87, 89, 90, 92, 95, 99, 100, 102, 105, 110, 111, 113

[para 39] The CPS also entirely withheld the following records under section 17:

CPS Investigative File: pages 116-165

Five Audiotapes, One Videotape and One Compact Disk

[para 40] As I have found that the CPS properly withheld pages 138 and 139 of the CPS Investigative file under section 27(1)(b), I will not address whether these records fulfill section 17.

**1. Is the information “personal information” of a third party?**

[para 41] Personal information is defined in section 1(n). This section reads:

*I In this Act,*

...

*(n) “personal information” means recorded information about an identifiable individual, including*

*(i) the individual’s name, home or business address or home or business telephone number,*

*(ii) the individual’s race, national or ethnic origin, colour or religious or political beliefs or associations,*

*(iii) the individual’s age, sex, marital status or family status,*



*(iv) an identifying number, symbol or other particular assigned to the individual,*

*(v) the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,*

*(vi) information about the individual's health and health care history, including information about a physical or mental disability,*

*(vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,*

*(viii) anyone else's opinions about the individual, and*

*(ix) the individual's personal views or opinions, except if they are about someone else;*

[para 42] The CPS states that the information in the records consists of third party personal information. The CPS states that the information consists of names, addresses and telephone numbers, race, colour, age, sex of the third parties, employment history, criminal history, as well as the personal views and opinion of the third parties, and other individuals' opinions about the third parties.

[para 43] The Applicant states in her in camera submission that she does not want access to any personal information. The Applicant states that she only wants to know what happened to her son in his final minutes.

[para 44] I find that the information severed under section 17 on the following pages contains third party personal information:

Police Report: pages 2-29, 29A

CPS Investigative File: pages 16, 17, 19-23, 25-28, 30-35, 37, 38, 39, 42-45, 47, 48, 50, 55, 56, 57, 59, 60, 63, 79, 81, 86, 87, 89, 90, 92, 95, 99, 100, 102, 105, 110, 111, 113

[para 45] I also find that the information on the following records consists of third party personal information:

CPS Investigative File: pages 116-137, 140-165

Five Audiotapes, One Videotape and One Compact Disk

[para 46] The personal information in the above records includes information regarding the witnesses, the accused and the deceased.

**2. Would the disclosure of the personal information be an unreasonable invasion of a third party's personal privacy, as provided by section 17(1) or section 17(4)?**

a. Section 17(1)

[para 47] Section 17(1) states that the head of a public body must refuse to disclose personal information if the disclosure would be an unreasonable invasion of a third party's personal privacy. This section reads:

*17(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.*

b. Section 17(4)

[para 48] Section 17(4) lists a number of circumstances where a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy. The CPS states that sections 17(4)(b), 17(4)(d), 17(4)(g) and 17(4)(h) apply to the records.

[para 49] In addition, the Applicant states that sections 17(4)(a) and 17(4)(f) also apply to the records. However, if either section 17(4)(a) or 17(4)(f) are found to apply, it would result in a presumption of an unreasonable invasion of third party privacy and support the CPS decision to withhold the information. These sections, if fulfilled, would not assist the Applicant.

[para 50] I find that the personal information within the written records and the audiotapes, videotape and compact disk fulfill section 17(4)(g)(i) and 17(4)(g)(ii). These sections read as follows:

17(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] The personal information consists of the names of third parties which appear with other personal information about the third parties. In addition, the disclosure of the names themselves would reveal personal information about the third parties. As I have found that the presumption under section 17(4)(g) applies to the records, I do not need to address the whether the other section 17(4) subsections apply.

### **3. Relevant Circumstance under Section 17(5)**

[para 52] In determining whether the disclosure of personal information would constitute an unreasonable invasion under sections 17(1) and 17(4), a public body must consider the relevant circumstances under section 17(5). The CPS states that section 17(5)(f) is relevant. This section reads:

*17(5) In determining under subsections (1) and (4) 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*

...

*(f) the personal information has been supplied in confidence*

[para 53] The CPS states that section 17(5)(f) applies to a number of the written records at issue as well as to the audiotapes and the videotapes. The CPS states that these records were created during the course of an investigation by the CPS. The CPS states that the CPS's past practice is to treat such investigative records as confidential.

[para 54] If section 17(5)(f) applies, it is a relevant circumstance that weighs in favour of withholding the personal information.

[para 55] In Order 98-007, the Commissioner held that the primary concern under section 17(5)(f) is to honour promises of confidentiality made to individuals providing personal information and to protect their privacy and the privacy of others to whom the information relates. The Commissioner found that the context in which information is recorded and the sensitivity of the events recorded are indicators of confidentiality under this section.

[para 56] After a review of the records I find that section 17(5)(f) is a relevant circumstance that applies to a number of records at issue under section 17. A number of the records indicate, on their face, that they were submitted in confidence. For example, pages 122, 125 and 128 of the CPS Investigative file clearly state that the information within those records is restricted and that distribution is only permitted to authorized agencies. In addition, the context in which the records at issue were created and the sensitivity of the records at issue under section 17 also indicate that the records were submitted in confidence.

[para 57] I do not, however, agree that section 17(5)(f) applies to the following information within the CPS Police Report: pages 2, 15 (1<sup>st</sup> severed line), 29 (names and

identification number of victim services members), 29A (names and identification numbers of victim services members). This information consists of the names and identification numbers of individuals who work for the CPS including those in the victim assistance unit. I do not find that this information was submitted in confidence. I also find that the fact that these names and identification numbers are information related to their work is another circumstance that weighs in favour of disclosure. Given the nature of this information and the context in which it is recorded, I do not find that the disclosure of this information would be an unreasonable invasion of a third party's privacy.

#### **4. Did the Applicant meet the burden of proof under section 71(2)?**

[para 58] Section 71(2) states that if the record or part of the record to which the Applicant is refused access contains personal information about a third party, it is up to the Applicant to prove that disclosure of the information would not be an unreasonable invasion of a third party's personal privacy.

[para 59] I have found that the information at issue under section 17 consists of personal information. Furthermore, I have found that the CPS correctly applied the presumption in section 17(4)(g)(i) and 17(4)(g)(ii) to the records. In addition, except for the records already mentioned, I have found that section 17(5)(f) is a relevant circumstance which weighs in favour of withholding a number of the records. Given these findings it is up to the Applicant to prove that the disclosure of this information would not be an unreasonable invasion of third party's personal privacy for the following records severed or withheld in their entirety under section 17:

Police Report: pages 3-14, 15 (except for the 1<sup>st</sup> severed line), 16-28, 29(except for the names and identification numbers of victim services members), 29A (except for the names and identification numbers of victim services members)

CPS Investigative File: pages 16, 17, 19-23, 25-28, 30-35, 37, 38, 39, 42-45, 47, 48, 50, 55, 56, 57, 59, 60, 63, 79, 81, 86, 87, 89, 90, 92, 95, 99, 100, 102, 105, 110, 111, 113, 116-137, 140-165

Five Audiotapes, One Videotape and One Compact Disk

##### **a. Section 17(2)(b)**

[para 60] The Applicant states that section 17(2)(b) applies. It reads:

*17(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if*

*...*

*(b) there are compelling circumstances affecting anyone's health or safety and written notice of the disclosure is given to the third party,*

[para 61] The Applicant states that her health and the health of several close family members has been adversely affected by the stress of the incident.

[para 62] In Order 97-002, the Commissioner set out the test for section 17(2)(b):

(1) there are compelling circumstances presently affecting a person's health or safety; and

(2) there is a casual connection between the disclosure and those circumstances.

[para 63] I find that this section does not apply. This section was meant to facilitate the disclosure of information as a warning or notice to individuals in order to prevent harm to a person's health or safety. The section was not meant to facilitate disclosure to an Applicant whose health has been affected by a prior circumstance or as a result of being denied access to records. I do not agree that the Applicant's interpretation of the section accurately reflects the intent of the section. In any event, even if this section could be interpreted in the manner suggested by the Applicant, I do not find that there is a clear causal connection in this inquiry between the disclosure of the information and a health-related outcome.

b. Section 17(2)(c)

[para 64] The Applicant refers to section 17(2)(c) in her submission. Section 17(2)(c) reads:

*17(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if*

...

*(c) an Act of Alberta or Canada authorizes or requires the disclosure*

[para 65] I find that this section does not apply. The Applicant has not identified an Act of Alberta or Canada that authorizes or requires the disclosure.

c. Section 17(5)(b)

[para 66] The Applicant states that section 17(5)(b) is a relevant circumstance that weighs in favour of disclosure. Section 17(5)(b) reads:

*17(5) In determining under subsections (1) and (4) 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*

...

*(b) the disclosure is likely to promote public health and safety or the protection of the environment,*

[para 67] I find that this section is not a relevant circumstance in this inquiry. There is insufficient evidence before me to support the Applicant's argument regarding public health and safety.

d. Section 17(5)(c)

[para 68] The Applicant states that section 17(5)(c) is a relevant circumstance that weighs in favour of disclosing the information. The Applicant states that the personal information is relevant to a fair determination of her rights. The Applicant states that she wants to know what happened the night her son died. Section 17(5)(c) reads:

*17(5) In determining under subsections (1) and (4) 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*

*...  
(c) the personal information is relevant to a fair determination of the applicant's rights,*

[para 69] From the Applicant's submission, it is apparent that the Applicant believes that she has a moral right to access the information at issue. However, Order 99-028 and other subsequent Orders have interpreted this section to only include legal rights which fulfill the following four criteria:

- (a) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds;
- (b) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed;
- (c) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
- (d) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

[para 70] I find that these four criteria are not fulfilled in this inquiry. There is insufficient evidence that the information is relevant to a legal right drawn from the concepts of common law or statute law, that it is related to an existing or contemplated proceeding, that the personal information will have a bearing on or is significant to the determination of the right, or that the information is required in order to prepare for the proceeding or to ensure an impartial hearing.

e. Section 17(5)(g)

[para 71] The Applicant states that section 17(5)(g) is relevant circumstance that weighs in favour of disclosure. The Applicant states that the personal information in the records is inaccurate and unreliable. The Applicant states that she is concerned with information that was sent to the Crown Prosecutor's Office. The Applicant states that there were some inaccuracies and omissions and that the police seemed to "pick and choose what to report". The Applicant claims that the CPS has a poor reputation and alleges that the CPS did not conduct the investigation thoroughly or quickly enough. The Applicant also refers to several conversations the Applicant has had with various individuals, including some of the witnesses. The Applicant states that she believes the information she received from these individuals differs from what the CPS accepted as the facts of the case.

[para 72] Section 17(5)(g) reads:

*17(5) In determining under subsections (1) and (4) 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*

...

*(g) the personal information is likely to be inaccurate or unreliable*

[para 73] In Order 97-002, the Commissioner held that the word "accuracy" refers to a correct reflection of the information received or provided. In other words, the word "accuracy" refers to the accuracy of transcription and not accuracy of the comments recorded.

[para 74] As previously mentioned, the Applicant assumes that section 17(5)(g), if fulfilled, would weigh in favour of disclosure. However this assumption is incorrect. If personal information in the records is found to be inaccurate or unreliable, this factor would weigh against disclosure. The rationale behind this principle is based on the nature of information at issue under section 17. Section 17 addresses an Applicant's request for another person's (a third party's) personal information. As such, it is logical that if the information about a third party is inaccurate or unreliable, this factor would weigh against disclosure. In this regard, it is important to remember that section 17 does not address an Applicant seeking access to the Applicant's own personal information but, rather, the Applicant seeking access to another person's information.

[para 75] Furthermore, the criteria under section 17(5)(g) are not fulfilled. I find that there is insufficient evidence that the information within the records is likely to be inaccurate or unreliable. The Applicant states that several individuals, including some of the witnesses, provided the Applicant with information which often differed from what the CPS accepted as the facts of the case. In a police investigation, an individual, such as a witness, may only see or hear about a portion of the events. This could result in a different version of events among individuals. If I were to accept the Applicant's

argument, virtually every police file containing more than one account of an incident would fall under section 17(5)(g). I do not think that this is an appropriate interpretation of this section.

## 5. Conclusion

[para 76] I do not uphold the CPS decision to withhold the severed information on following pages of the CPS Police Report: 2, 15 (1<sup>st</sup> severed line), 29 (names and identification number of victim services members), 29A (names and identification numbers of victim services members). Furthermore, as there are no other mandatory sections that apply to this information and the CPS has not applied a discretionary exception to this information, I intend to order the CPS to disclose this information to the Applicant.

[para 77] I find that the Applicant has not met the burden of proof under section 71(2) for the information remaining at issue under section 17. I find that the information does not fall within section 17(2)(b) or 17(2)(c). I also do not find that sections 17(5)(b), and 17(5)(c) are relevant circumstances. I also do not find that section 17(5)(g), if fulfilled, would weigh in favour of disclosure. As such, I uphold the CPS's decision to withhold the information severed under section 17 on the following pages:

Police Report: pages 3-14, 15 (except for the 1<sup>st</sup> severed line), 16-28, 29(except for the names and identification numbers of victim services members), 29A (except for the names and identification numbers of victim services members)

CPS Investigative File: pages 16, 17, 19-23, 25-28, 30-35, 37, 38, 39, 42-45, 47, 48, 50, 55, 56, 57, 59, 60, 63, 79, 81, 86, 87, 89, 90, 92, 95, 99, 100, 102, 105, 110, 111, 113

[para 78] I also uphold the CPS's decision to withhold the following records under section 17:

CPS Investigative File: pages 116-137, 140-165

Five Audiotapes, One Videotape and One Compact Disk

### C. Did the CPS properly apply section 20 of the Act (law enforcement) to the records/information?

[para 79] The CPS states that sections 20(1)(c), 20(1)(d), 20(1)(g) and 20(1)(m) apply to the records. These sections read:

*20(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to*

...



*(c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement,*

*(d) reveal the identity of a confidential source of law enforcement information,*

...

*(g) reveal any information relating to or used in the exercise of prosecutorial discretion*

...

*(m) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system*

[para 80] The CPS applied section 20(1) to the following records:

Police Report: pages 15, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 28

CPS Investigative File: pages 13, 20, 21, 22, 23, 31, 32, 33, 34, 36, 38, 39, 43, 48, 56, 59, 65, 68, 70, 74, 77, 105, 106, 109, 116-165

Five Audiotapes, One Videotape and the One Compact Disk

[para 81] A portion of the following records remain at issue under section 20:

Police Report: page 26

CPS Investigative File: pages 13, 36, 56, 65, 68, 70, 74, 77, 105, 106, 109

## **1. Section 20(1)(m)**

[para 82] The CPS states that section 20(1)(m) applies to the records. The CPS states that disclosure of the records would harm the communications system and codes used by the CPS by damaging the secure process through which law enforcement records are identified and communicated within investigation and day-to-day operations.

[para 83] The Applicant states that section 20(1)(m) does not apply.

[para 84] I find that the CPS properly withheld, under section 20(1)(m), the following records that were severed under section 20(1). I also find that the CPS properly exercised its discretion in that regard:

Police Report: page 26

CPS Investigative File: pages 13, 36, 56, 65, 68, 70, 74, 77, 105, 106

[para 85] However, I do not find that page 109 of the CPS Investigative File falls within section 20(1)(m). The severed portion of this page delineates what the CPS

include in a Defense disclosure package. There is no evidence before me that the disclosure of this information would harm the security of any property or system. However, as the CPS's submission applied section 20(1)(c), 20(1)(d) and 21 to this page, I will address this page under those sections.

## **2. Section 20(1)(c)**

[para 86] The only page that remains at issue under section 20(1)(c) is page 109 of the CPS Investigative File.

[para 87] The CPS states that the records contain information such as codes and methods which are used in law enforcement and are not generally known to the public. The CPS states that the disclosure of these codes and methods would reduce their usefulness, effectiveness and success.

[para 88] The Applicant states that section 20(1)(c) does not apply to the records. The Applicant states that this section only serves to "hide the procedure these detectives used and protect them".

[para 89] In Orders 99-010 and 2000-027, the Commissioner said that the harms test in this section precludes the refusal of basic information about well-known investigative techniques. This section will apply to information that discloses information about actual investigative techniques and procedures that relate directly to their continued effectiveness.

[para 90] I find that page 109 does not fulfill the requirements of this section. The CPS has not provided any evidence as to how the disclosure of this information could harm the effectiveness and procedures currently used or likely to be used in law enforcement.

## **3. Section 20(1)(d)**

[para 91] The only page that remains at issue under section 20(1)(d) is page 109 of the CPS Investigative File.

[para 92] The CPS states that section 20(1)(d) applies to the records.

[para 93] The Applicant states that the disclosure would not reveal a confidential source of law enforcement information.

[para 94] In Order 99-010, the Commissioner stated that three criteria must be fulfilled under section 19(1)(d). There must be (a) law enforcement information, (b) a confidential source of law enforcement information, and (c) information that could reasonably be expected to reveal the identity of a confidential source.

[para 95] I find that page 109 does not fulfill section 20(1)(d). The disclosure of this information would not reveal the identity of a confidential source of law enforcement information.

#### **4. Section 20(1)(g)**

[para 96] The CPS states that section 20(1)(g) applies to pages 138 and 139 of the CPS Investigative File. However, as I have found that the CPS properly withheld these pages under section 27(1)(b), I will not address whether these records fulfill section 20(1)(g).

[para 97] I also note that Alberta Justice applied section 20(1)(g) as a late issue to the Alberta Justice records. However, as I have found that Alberta Justice properly applied section 27(1)(b) to the Alberta Justice records, I do not need to address whether Alberta Justice properly applied section 20(1)(g) to those same records.

#### **D. Did the CPS properly apply section 21 (intergovernmental relations) to the records/information?**

[para 98] The only record that remains at issue under section 21 is page 109 of the CPS Investigative File.

[para 99] The CPS states that section 21(1)(b) applies to the records. Section 21(1) reads:

*21(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 relations between the Government of Alberta or its agencies and any of the following or their agencies:*

*(i) the Government of Canada or a province or territory of Canada,*

*(ii) a local government body,*

*(iii) an aboriginal organization that exercises government functions, including*

*(A) the council of a band as defined in the Indian Act (Canada), and*

*(B) an organization established to negotiate or implement, on behalf of aboriginal people, a treaty or land claim agreement with the Government of Canada,*

*(iv) the government of a foreign state, or*

*(v) an international organization of states,*

*or*

*(b) reveal information supplied, explicitly or implicitly, in confidence by a government, local government body or an organization listed in clause (a) or its agencies.*

[para 100] Section 21(4) states that section 21 does not apply to information that has been in existence for 15 years or more:

*21(4) This section does not apply to information that has been in existence in a record for 15 years or more.*

[para 101] The CPS states that the records include documents and information that were provided under agreements with a local government body and the Government of Canada. The CPS also states that these agreements were entered into with expectation that these documents and information would be exchanged and retained as confidential records.

[para 102] The Applicant states that this section does not apply.

[para 103] There are four criteria under section 21(1)(b) [see Order 2001-037]:

- (a) the information must be supplied by a government, local government body or an organization listed in clause 21(1)(a) or its agencies;
- (b) the information must be supplied explicitly or implicitly in confidence;
- (c) the disclosure of the information must be reasonably expected to reveal the information; and
- (d) the information must have been in existence in a record for less than 15 years.

[para 104] I find that page 109 does not fulfill the above criteria. There is no evidence before me that the information was supplied by a government, organization or agency listed in section 21(1)(a). There is also no evidence that this information was supplied explicitly or implicitly in confidence or that the disclosure of the information could reasonably be expected to reveal the information. There is also no evidence that the information has been in existence for less than 15 years.

[para 105] Furthermore, as no mandatory exceptions apply to page 109 and the CPS has not applied any further discretionary exceptions to that page, I intend to order the CPS to disclose this page to the Applicant.

**E. Did the CPS disclose personal information in contravention of Part 2 of the Act?**

[para 106] In March 2004, the CPS provided this Office with several copies of its submission for exchange with the other parties. On April 28, 2004, the CPS informed this Office that it had inadvertently disclosed to the parties, as part of its initial submission, some of the records at issue in request for review #2850. Due to the nature of this disclosure I have decided to address whether a third party's privacy was breached under Part 2 of the Act.

[para 107] The CPS states that the release of the third party personal information was an inadvertent departure from the CPS's standard FOIP procedure. The CPS states that steps were immediately taken to regain possession of the personal information once the CPS was notified of the release. The CPS states that it regained possession within two hours of the notification.

[para 108] The CPS also states that all necessary steps were taken to notify all Affected Parties and this Office of the release. The CPS states that all Affected Parties were provided with an explanatory letter and a copy of the portion of the document that contained their personal information. The CPS states that any privacy breaches were minimized and that appropriate steps were and have since been taken to prevent such a release in the future.

[para 109] I find that the CPS breached Part 2 of the Act when it disclosed some of the records to the parties as part of its earlier submission. Section 40 states that a public body may disclose personal information only in accordance with one of the enumerated subsections. The CPS did not identify a provision under section 40 that gave it the authority to disclose the information.

**VI. ORDER**

[para 110] I make the following Order under section 72 of the Act:

**Preliminary Issue- Page Numbers Severed and Withheld**

[para 111] The CPS severed and withheld several page numbers that were applied in error to records 110, 111, 112, 113, 114 and 115. I find that the CPS did not properly withhold these numbers from the Applicant. There are no mandatory exceptions that apply to these records and the CPS did not apply any discretionary exceptions. As such, I order the CPS to disclose the numbers to the Applicant.

## **Preliminary Issue- Responsiveness of the Records**

[para 112] I find that the CPS properly severed the following records as non-responsive: CPS investigative file- pages 36, 37, 38, 39, 40, 70, 74 and 77.

### **A. Did the CPS and Alberta Justice properly apply section 27(1) of the Act (privileged information) to the records/information?**

[para 113] I find that Alberta Justice properly applied section 27(1)(b) to the Alberta Justice records and properly exercised its discretion in that regard.

[para 114] I also find that the CPS properly applied section 27(1)(b) and properly exercised its discretion to withhold pages 138 and 139 of the CPS Investigative File.

[para 115] As such, I uphold the decisions of these two public bodies to withhold these records from the Applicant.

### **B. Does section 17 of the Act (personal information) apply to the CPS records/information?**

[para 116] I find that section 17 applies to information severed under section 17 on the following records:

Police Report: pages 3-14, 15 (except for the 1<sup>st</sup> severed line), 16-28, 29(except for the names and identification numbers of victim services members), 29A (except for the names and identification numbers of victim services members)

CPS Investigative File: pages 16, 17, 19-23, 25-28, 30-35, 37, 38, 39, 42-45, 47, 48, 50, 55, 56, 57, 59, 60, 63, 79, 81, 86, 87, 89, 90, 92, 95, 99, 100, 102, 105, 110, 111, 113,

[para 117] In addition, I find that section 17 applies to the following records in their entirety:

CPS Investigative File: 116- 137, 140-165

Five Audiotapes, One Videotape and One Compact Disk

[para 118] As such, I uphold the CPS's decision to withhold these records from the Applicant.

[para 119] I do not uphold the CPS decision to withhold the severed information on following pages of the CPS Police Report: 2, 15 (1<sup>st</sup> severed line), 29 (names and identification number of victim services members), 29A (names and identification numbers of victim services members). Furthermore, as there are no other mandatory sections that apply to this information and the CPS has not applied a discretionary

exception to this information, I order the CPS to disclose this information to the Applicant.

**C. Did the CPS properly apply section 20(1) of the Act (law enforcement) to the records/information?**

Section 20(1)(m)

[para 120] I find that CPS properly applied section 20(1)(m) to the following records severed under section 20(1). I also find that the CPS properly exercised its discretion in that regard:

Police Report: page 26

CPS Investigative File: pages 13, 36, 56, 65, 68, 70, 74, 77, 105, 106

[para 121] As such, I uphold the CPS's decision to withhold these records from the Applicant.

[para 122] However, I do not find that the CPS properly applied section 20(1)(m) to page 109 of the CPS Investigative File. However, as the CPS applied sections 20(1)(c), 20(1)(d) and 21 to this record, I addressed that record under those sections.

Sections 20(1)(c) and 20(1)(d)

[para 123] I do not find that the CPS properly applied section 20(1)(c) and 20(1)(d) to page 109 of the CPS Investigative File. However, as the CPS applied section 21 to this record, I addressed that record under that section.

**D. Did the CPS properly apply section 21 (intergovernmental relations) to the records/information?**

[para 124] I do not find that the CPS properly applied section 21 to page 109 of the CPS Investigative File. Furthermore, as there are no mandatory exceptions that apply to the information in this record and the CPS did not claim any other discretionary exception in regard to this record, I order the CPS to disclose this record to the Applicant.

**E. Did the CPS disclose personal information in contravention of Part 2 of the Act?**

[para 125] I find that the CPS breached Part 2 of the Act when it disclosed some of the records as part of its earlier submission. I order the CPS to stop disclosing personal information in contravention of Part 2 of the Act. I order the CPS to take greater care in preparing its submissions and put the proper procedures in place to ensure that this type of error does not reoccur.

[para 126] I have attached to the CPS's copy of the Order, a copy of the records to be disclosed. On that copy I have highlighted the portion of the records that I have ordered the CPS to disclose. I further order the CPS to notify me in writing, within 50 days of receiving this Order, that the CPS has complied with this Order.

Dave Bell  
Adjudicator