ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2008-009

August 19, 2008

CALGARY POLICE SERVICE

Case File Number 3843

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Summary: Under the *Freedom of Information and Protection of Privacy Act* (the "Act"), the Applicant asked the Calgary Police Service (the "Public Body") for access to disciplinary decisions involving its members. The Public Body refused access under section 17 of the Act, on the basis that disclosure would be an unreasonable invasion of the personal privacy of third parties.

The Public Body argued that the records relating to one disciplinary decision, which was under appeal, was excluded from the Act's application under section 4(1)(k), on the basis that the records related to a prosecution and all proceedings in respect of it had not been completed. The Adjudicator found that the Act applied to the records because the internal disciplinary proceeding was not a "prosecution" within the meaning of section 4(1)(k).

The Adjudicator found that there were presumptions against the disclosure of personal information in the records at issue under sections 17(4)(a) (medical or psychological information; but in some cases only), 17(4)(d) (employment history) and 17(4)(g) (name plus personal information) of the Act. He also noted the following relevant circumstances, under section 17(5), that weighed in favour of withholding the personal information of the charged or cited officers: refusals to consent to disclosure (where the officer's views were known), unfair exposure to harm (in some cases), unfair damage to reputation (in some cases), information supplied implicitly in confidence (where the

hearing was closed), and the police chief's decision to close a hearing (but this had limited relevance).

The Adjudicator found that the relevant circumstances weighing in favour of disclosure were the practices of other police forces to grant access to disciplinary decisions (this had limited relevance) and the desirability of public scrutiny (relevant in all cases).

In considering the presumptions and weighing the relevant circumstances, the Adjudicator concluded that the desirability for public scrutiny outweighed the factors against disclosure. The Applicant established that, in cases where there have been criminal charges and/or a formal disciplinary hearing involving a police officer, disclosure is warranted in order to scrutinize the conduct of the individual officer, as well as the Public Body's processes and its resolution of the allegations. This is regardless of whether the allegations are substantiated, proven to be unfounded, or withdrawn.

The Adjudicator concluded that disclosure of most of the personal information in the records at issue would not be an unreasonable invasion of a third party's personal privacy and accordingly ordered the Public Body to give access to the Applicant. The Adjudicator made exceptions with respect to some of the personal information of the cited officers, and the personal information of complainants and members of the general public contained in the disciplinary decisions. The Applicant had not shown that disclosure of this particular information was necessary for public scrutiny.

Statutes and Regulations Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n), 1(n)(i), 1(n)(iv), 1(n)(vi), 1(n)(vii), 4(1), 4(1)(k), 3(a), 5, 17, 17(1), 17(2), 17(2)(e), 17(4), 17(4)(a), 17(4)(d), 17(4)(g), 17(5), 17(5)(a), 17(5)(e), 17(5)(f), 17(5)(h), 30(1)(b), 30(4)(c), 67(1)(a)(ii), 69(3), 71(1), 71(2), 72, 72(2)(a) and 72(2)(b); *Police Act*, R.S.A. 2000, c. P-17; *Police Service Regulation*, A.R. 356/90, ss. 5(1)(e)(i), 16(1)(a) and 17. **BC:** *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165, s. 3(1)(h); *Police Act*, R.S.B.C. 1996, c. 367.

Authorities Cited: AB: Orders 97-002, 97-011, 2001-020, F2002-022, F2002-024, F2003-005, F2003-014, F2004-015, F2004-028, F2005-016, F2006-008, F2006-030; *University of Alberta v. Pylypiuk*, 2002 ABQB 22; *Alberta (Attorney General) v. Krushell*, 2003 ABQB 252; *Beaton and Calgary Police Services v. Logar and Shah* (13 December 2007), Calgary 0701-08459, Alta. Q.B.; *In the matter of Shah* (3 July 2007), Calgary Police Service. **CAN:** *Trimm v. Durham Regional Police*, [1987] 2 S.C.R. 582. **BC:** Orders 13-1994, 71-1995, 202-1997 and 290-1999. **ON:** Order P-634 (1994). **Other:** Office of the Information and Privacy Commissioner (Alberta), *Practice Note 4* (Edmonton: March 2, 1997).

I. BACKGROUND

[para 1] In a request dated August 16, 2006 to access information under the *Freedom of Information and Protection of Privacy Act* (the "Act" or "*FOIP Act*"), the

Applicant, representing a newspaper, asked the Calgary Police Service (the "Public Body") for the following information:

> *Disciplinary decisions involving Calgary Police Service members subjected to formal investigations and subsequent hearings; as well, any disciplinary decisions involving officers charged and/or convicted of a criminal offence. In each case, we are seeking the officer's name, the particulars of the allegations, the sanction (if any) and the reasons for the decision. […]*

[para 2] The Applicant requested the records for decisions and/or hearings held in "2006 year-to-date." As his request was made on August 16, 2006, the relevant time period in respect of the requested information is January 1 to August 16, 2006.

[para 3] By letter dated September 11, 2006, the Public Body advised the Applicant that it had notified third parties to whom the information related and would respond to his request shortly. By letter dated October 5, 2006, the Public Body refused the Applicant access to the requested information, on the basis that disclosure would be harmful to the personal privacy of third parties under section 17 of the Act.

[para 4] On October 11, 2006, the Applicant requested that this Office review the Public Body's decision to refuse access. Mediation was authorized but was not successful. The matter was therefore set down for a written inquiry.

[para 5] The Public Body and Applicant each provided initial submissions. The Public Body also made submissions *in camera*, as they contained the personal information of third parties. I accepted the *in camera* brief but asked the Public Body to repeat – in supplementary open submissions that would be provided to the Applicant – the substance of certain arguments (without the personal information), as I found that the arguments themselves should not have been made *in camera*. The Public Body complied and a copy of its supplementary initial submissions was provided to the Applicant. The Applicant then provided rebuttal submissions, but the Public Body did not.

[para 6] In the course of the inquiry, I arranged for this Office to notify all of the police officers who were the subject of the disciplinary decisions in question. Those officers were, in my opinion, affected by the Applicant's request for review under section 67(1)(a)(ii) of the Act. They were therefore given a copy of the request for review and, in accordance with section 69(3), an opportunity to make representations during the inquiry.

II. RECORDS AT ISSUE

[para 7] The records at issue, which the Applicant was denied in their entirety, include a table indicating the names of officers subject to disciplinary hearings under the

Police Act between January 1 and August 16, 2006, and the charges or citations they faced. The records at issue also include a written decision or transcript of an oral decision, as the case may be, in respect of each disciplinary hearing, which decision would include the sanction imposed, if any.

[para 8] The table also includes the following information: whether the disciplinary hearing was open or closed, the file number, the name of the complainant (if there was one), an identification number associated with each officer, the date the matter was concluded, whether it was appealed to the Law Enforcement Review Board, and whether the hearing resulted in a written decision or a transcript of an oral decision. This information was not specifically requested by the Applicant, but most of it also appears in or may be ascertained from the resulting decision, which the Applicant did request. Other information in the table, such as whether a matter has been appealed, has been raised by the Public Body as being relevant to this inquiry. As the Public Body itself submits that the table is one of the records at issue, I will consider the entire table to be responsive to the Applicant's request.

[para 9] In his August 16, 2006 request to the Public Body, the Applicant asked not only for disciplinary decisions that followed a hearing, but also for decisions involving officers charged and/or convicted of a criminal offence (i.e., even if there was no hearing). I arranged for this Office to inquire as to whether the Public Body submitted all of the records at issue. The Public Body advised that all matters involving criminal charges proceed to a hearing and that there were therefore no other records at issue.

III. ISSUES

[para 10] The Notice of Inquiry, dated November 6, 2007, set out the following issue:

> Does section 17 of the Act (disclosure harmful to personal privacy) apply to the records at issue?

[para 11] An additional issue was raised by the Public Body in its supplementary initial submissions. I have framed it as follows:

> Does section 4(1)(k) of the Act (records relating to a prosecution) apply to certain information in the records at issue?

[para 12] If a record falls within section 4(1)(k), it is excluded from the application of the Act. Although this issue has been raised at a late stage of the inquiry, I must address it, as it involves a jurisdictional question (Order F2002-024 at para. 11). Although the Applicant did not respond to this jurisdictional question in his rebuttal submissions – possibly because it was not previously identified as an issue in the inquiry – my consideration of it does not prejudice him, given my conclusions below.

IV. DISCUSSION OF ISSUES

A. Does section 4(1)(k) of the Act (records relating to a prosecution) apply to certain information in the records at issue?

[para 13] Section 4(1)(k) of the Act reads as follows:

> *4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:*
>
> *...*
>
> *(k) a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed;*

[para 14] Section 4(1) is a provision that limits my jurisdiction because, if a record falls within one of the provisions of section 4(1), the Act does not apply and the Public Body has no obligation to provide access to the record (Order F2002-024 at para. 11).

[para 15] The Public Body indicates that, at the time of processing the Applicant's access request, one of the disciplinary matters was under appeal to the Law Enforcement Review Board. The Public Body states that it excluded the records relating to this matter from consideration, on the basis that the records relate to a prosecution and all proceedings in respect of it have not been completed, as contemplated by section 4(1)(k) of the Act. It did, however, submit a copy of these records *in camera*.

[para 16] Section 4(1)(k) of the Act is intended to apply to records in a prosecution up until the time that the prosecution is completed; the purpose of the exclusion is to insulate Crown counsel from requests for access until a prosecution is complete (Order F2002-022 at paras. 31 and 32, citing B.C. Order 202-1997; this aspect of Order F2002-022 was not subject to judicial review in *Alberta (Attorney General) v. Krushell*).

[para 17] In a B.C. Order interpreting a provision identical to section 4(1)(k), it was concluded that an internal disciplinary proceeding under B.C.'s *Police Act* was not a "prosecution" within the meaning of section 3(1)(h) of B.C.'s *Freedom of Information and Protection of Privacy Act*, so as to exclude the related records from the Act's application (B.C. Order 290-1999 at para. 20; I note that this B.C. Order is subject to an application for judicial review but the application has not yet been heard). In the context of B.C.'s access legislation, it was determined that "prosecution" means a prosecution of a criminal or quasi-criminal offence (at para. 34).

[para 18] I similarly find that a police disciplinary hearing under the *Police Service Regulation* in Alberta is not a "prosecution" within the meaning of section 4(1)(k) of the *FOIP Act*. Police disciplinary proceedings have been found to be neither criminal nor quasi-criminal, particularly if they involve no penal consequences (*Trimm v. Durham*

Regional Police at para. 5). Under section 17 of the *Police Service Regulation*, a cited officer may be subject to a variety of penalties, but this does not include a fine or imprisonment. In Alberta, a police officer faces no "conviction" on being found guilty of misconduct under the *Police Service Regulation*.

[para 19] Even if the disciplinary proceedings occur as a result of criminal charges against a police officer, the disciplinary hearing is not itself a prosecution for a criminal or quasi-criminal offence. The criminal charges give rise to the possible offence of "discreditable conduct" under section 5(1)(e)(i) of the *Police Service Regulation*. The charge of "discreditable conduct" remains an employment or disciplinary matter, not a criminal or quasi-criminal matter.

[para 20] As I find that the disciplinary decision against the police officer in question and the general information relating to that police officer in the table do not relate to a "prosecution", I conclude that the information does not fall within section 4(1)(k) of the Act. Accordingly, the Act applies to the information.

[para 21] Practice Note 4 of this Office discusses the application of section 4(1). It indicates that where the Commissioner (or his delegate) finds that a record comes within the Act, the normal practice will be to remit the record in question back to the public body to consider it under the Act and to respond to the applicant on the basis of the exceptions to disclosure contained in the Act. In this inquiry, I do not find it necessary to remit the records relating to the officer whose matter is/was under appeal back to the Public Body. This is because the Public Body made alternative submissions regarding the application of section 17 of the Act (disclosure harmful to personal privacy) to those records. I see nothing to be gained from sending them back for renewed consideration, and I do not believe that the Public Body (or the affected officer) is prejudiced by my decision not to do so.

B. Does section 17 of the Act (disclosure harmful to personal privacy) apply to the records at issue?

[para 22] Section 17 of the Act requires a public body to withhold personal information if disclosure would be an unreasonable invasion of a third party's personal privacy. The provisions of section 17 that are relevant to this inquiry are as follows:

> *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.*
>
> *(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if*
>
> *…*
>
> *(e) the information is about the third party's classification, salary range, discretionary benefits or employment responsibilities as an officer,*

employee or member of a public body or as a member of the staff of a member of the Executive Council,

...

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

(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,

...

(d) the personal information relates to employment or educational history,

...

(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,

...

(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

(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny,

...

(e) the third party will be exposed unfairly to financial or other harm,

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

...

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant,

...

[para 23] Under section 71(1) of the Act, the Public Body has the burden of proving that the Applicant has no right of access to the information that it has withheld. In the context of section 17, the Public Body must establish that the severed information is the personal information of a third party, and may show how disclosure would be an

unreasonable invasion of the third party's personal privacy. Section 71(2) states that if a record contains personal information about a third party, it is up to the Applicant to prove that disclosure would not be an unreasonable invasion of the third party's personal privacy. Because section 17 is a mandatory exception to disclosure, I must also independently review the information, and determine whether disclosure would or would not be an unreasonable invasion of personal privacy.

1. Personal information of third parties

[para 24] Section 1(n) of the Act defines "personal information", in part, as follows:

> *1(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,*
>
> *...*
>
> *(iii) the individual's age, sex, marital status or family status,*
>
> *(iv) an identifying number, symbol or other particular assigned to the individual,*
>
> *...*
>
> *(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 25] I find that the records at issue contain the personal information of third parties, as defined above. In respect of officers charged with misconduct (who are referred to in the *Police Act* as "cited officers"), the table discloses their names and identification numbers, which are personal information under sections 1(n)(i) and 1(n)(iv), respectively. As each officer is identified, the other information in the table summarizing the proceedings against them is "recorded information about an identifiable individual." The disciplinary decisions likewise disclose the identities of the cited officers and other information about them.

[para 26] Much of the information in both the table and the decisions also constitutes information about the officers' employment and possibly criminal histories, which is specifically personal information under section 1(n)(vii) of the Act. Further, I

note that there is information about certain individuals' psychological health, which is specified as personal information under section 1(n)(vi).

[para 27] The table and some of the decisions disclose the names of complainants, which is the personal information of the complainants. Some of the decisions also disclose the names of other officers, or members of the public, who were involved in events giving rise to the charges and/or were witnesses in the proceedings. In addition to names, there is other recorded information about all of these individuals, as the decisions disclose their activities and conduct at the time of the relevant incidents.

[para 28] The records contain the names of other officers or employees of the Public Body who were present at the disciplinary hearings (i.e., the presiding officer, presenting officer, recording secretary and police members observing the proceedings), which is the personal information of those persons. The same is true for the names of the agents representing the cited officers. However, while the names of all of these individuals are their personal information, the fact that they acted in their representative capacities, or carried out particular functions, is not (Order F2006-030 at para. 12).

[para 29] In the context of determining an appropriate punishment, some of the disciplinary decisions cite earlier disciplinary decisions involving other police officers, both of the Public Body and other bodies. Where the names of these officers are indicated, there is recorded information about identifiable individuals and therefore personal information about them.

[para 30] Other information in the disciplinary decisions is or is not personal information, depending on the content. As already indicated, information about the cited officers, members of the public and other officers involved in the events in question is the personal information of these persons. However, statements by a presiding or presenting officer that do not disclose information about any individual is not personal information (e.g., procedural matters at the hearing). In addition, dates, most headings and the names and addresses of businesses are not personal information. As section 17 requires there to be personal information, the Public Body has no authority under that section to withhold this non-personal information in the records at issue.

[para 31] Finally, I note that two of the disciplinary decisions (under Tabs 4 and 11 of the records submitted by the Public Body *in camera*) refer to unnamed staff of particular businesses. In two instances, I do not find that there is personal information of any identifiable individuals, given the number of staff who would be employed by the businesses and the inability of a reader of the decision to know which particular staff members are being referred to. In a third instance (also under Tab 11), the names of two staff members are given, which constitutes personal information.

2. Presumptions and relevant circumstances

[para 32] Section 17(2) of the Act enumerates situations where disclosure of a third party's personal information is *not* an unreasonable invasion of personal privacy. Neither

of the parties has argued that section 17(2) of the Act applies to any of the information in the records at issue. However, some of the information in the disciplinary decisions is arguably about the "employment responsibilities" of individuals under section 17(2)(e) – including the cited officers, non-cited officers and employees of other public bodies – in which case disclosure would not be an unreasonable invasion of their personal privacy. To the extent that an officer or employee's title discloses their "classification", disclosure might also not unreasonably invade privacy.

[para 33] Although I raise the possibility that section 17(2) applies to some of the information in the records at issue, it is not necessary for me to decide, given my other conclusions in this Order.

[para 34] Section 17(4) of the Act sets out presumptions against the disclosure of a third party's personal information. The Public Body submits that there is a presumption of an unreasonable invasion of the personal privacy of the cited officers, if the records at issue are disclosed, because their personal information relates to employment history [section 17(4)(d)]. It also submits, with respect to the cited officers as well as other individuals, that there is a presumption against disclosure because the information consists of the names of third parties appearing with other personal information about them, or the disclosure of the names themselves would reveal personal information about the third parties [section 17(4)(g)].

[para 35] I agree that there is a presumption of an unreasonable invasion of personal privacy in respect of the cited officers under section 17(4)(d) of the Act. The term "employment history" describes a complete or partial chronology of a person's working life such as might appear in a personnel file, and this can include a record of disciplinary action (Order F2003-005 at para. 73). Further, the results or conclusions of an investigation may be part of a personnel file and therefore of a person's employment history (Order F2004-015 at para. 83). I take this to include the results or conclusions of a hearing, including results or conclusions that are favourable to the employee. In this inquiry, even where charges were not substantiated, I believe that the fact that a formal disciplinary hearing occurred (or began if later discontinued) would make it part of an individual's employment history.

[para 36] Certain of the affected officers likewise submitted that their privacy should be maintained because the information requested by the Applicant is found in their personnel records and in the context of the employer-employee relationship. One of them appears to believe, however, that there is a definitive "rule" against the disclosure of information in a personnel record. Section 17(4)(d) sets out a presumption only.

[para 37] I also find that there is a presumption of an unreasonable invasion of the personal privacy of third parties under section 17(4)(g) of the Act. In the case of the cited officers, officers involved in surrounding events, complainants and members of the general public, their names appear with other personal information about them and/or disclosure of their names would reveal personal information about them, such as the fact that they were charged, made a complaint or conducted themselves in a particular way.

[para 38] Although the Public Body did not specifically cite section 17(4)(a) of the Act, I find that disclosure of certain information in the disciplinary decisions is presumed to be an unreasonable invasion of personal privacy under that section, as the information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation. One of the affected officers indicates that he made medical disclosures during his disciplinary hearing, which I intend to take into account – as I will with any of the officers whose medical or psychological information appears in the records at issue.

[para 39] In determining whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy – even where there is a presumption – all of the relevant circumstances must be considered under section 17(5) of the Act. The Public Body argues against disclosure on the basis that the cited officers will be exposed unfairly to harm [section 17(5)(e)] and disclosure of the records at issue may unfairly damage their reputations [section 17(5)(h)]. The Applicant argues in favour of disclosure on the basis that it is desirable for the purpose of subjecting the activities of a public body to public scrutiny [section 17(5)(a)].

[para 40] The list of relevant circumstances under section 17(5) of the Act is not exhaustive and the parties have raised other factors that they believe should be considered in determining whether the records at issue should be disclosed. I have also identified enumerated factors that neither party specifically cited.

(a) Refusals to consent to disclosure

[para 41] On receipt of the Applicant's access request, the Public Body notified most of the cited officers under section 30(1)(b) of the Act. As contemplated by section 30(4)(c), some of them made representations to the Public Body explaining why the information should not be disclosed. The Calgary Police Association, which is the union representing the cited officers, also wrote a letter dated September 20, 2006, in which it objected to disclosure of the disciplinary decisions. All of these representations were submitted in this inquiry by the Public Body *in camera*.

[para 42] The refusals on the part of the officers to consent to the release of their personal information are a relevant circumstance to consider under section 17(5). A third party's refusal to consent to the disclosure of his or her personal information is a factor weighing against disclosure (Order 97-011 at para. 50; Order F2004-028 at para. 32).

[para 43] Two of the cited officers (one whose matter was under appeal and one whose charges were withdrawn) were not notified by the Public Body under section 30(1)(b) of the Act, as it was not considering giving access to their particular personal information. However, I named all of the cited officers as affected parties in this inquiry, including those not previously notified by the Public Body. Those officers who chose to do so made representations to the Public Body and/or this Office against the disclosure of their personal information. Their views are noted below where relevant.

(b) Unfair exposure to harm

[para 44] The Public Body submits that disclosure of information in the records at issue will unfairly expose third parties to harm, which is a relevant circumstance under section 17(5)(e) of the Act. It argues that disclosure of the personal information of the cited officers would cause a re-occurrence of the pain, embarrassment and stress that they suffered at the time of the charges and hearings. The Public Body submits that a public "rehashing" of the disciplinary proceedings would subject the officers to further and unwarranted punishment. Some of the officers, in their representations to the Public Body following the access request and/or their submissions in this inquiry, described the stigma and personal harm that they – and in some cases, their families – would experience if the information were disclosed. Some of them also submitted that the release of their disciplinary decisions would affect their careers, whether inside or outside the police service.

[para 45] I agree that the psychological harm identified by the Public Body, and the harms raised by the affected officers, are types of "other harm" within the meaning of section 17(5)(e). However, the test under this section is whether disclosure would result in *unfair* harm to a third party (Order 2001-020 at para. 37). Where an officer was found guilty of misconduct, I do not believe that the harm associated with revisiting the disciplinary hearings is necessarily unfair. Where an officer was exonerated or the charges were withdrawn, there is a better argument that the harm is unfair and I will accordingly take that into account as a factor weighing against disclosure. One of the affected officers specifically pointed out that his disciplinary hearing cleared him of any wrongdoing.

[para 46] In respect of some of the hearings, the Public Body submits that disclosure of the information would particularly harm the officers involved because of personal events occurring in their lives at the time of the incidents that gave rise to the charges. I do not believe that this fact, alone, means that there would be unfair harm on disclosure. Rather, I believe that if the decision discloses the nature of those personal events, there may be unfair harm. Where the existence of personal events is mentioned but they are not described, there is no greater degree of harm associated with disclosure than the harm associated with revisiting the disciplinary proceedings generally.

(c) Unfair damage to reputation

[para 47] The Public Body submits that disclosure of information in the records at issue may unfairly damage the reputation of the cited officers, which is a relevant circumstance under section 17(5)(h) of the Act. It applies this circumstance in respect of all of the charges and hearings, regardless of whether the allegations were substantiated, proven to be unfounded, or withdrawn. It also argues that there would be unfair damage to reputation in the cases of individuals whose matters were heard some time ago, or who have resigned and are no longer police officers. Some of the affected officers also made submissions to the effect that their reputations would be damaged if the records at issue were disclosed, including an officer who has since retired from the police service.

[para 48] The focus of what is now section 17(5)(h) of the Act is *unfair* damage to reputation (Order 97-002 at para. 75). In this inquiry, I do not find that disclosure of personal information would unfairly damage reputation in those cases where the police officer was found guilty of misconduct. This is regardless of whether the officer continues to be a police officer and the lapse of time since the disciplinary decision, as the decisions are still relatively recent. Disclosure of the consequences that flow from a proper process may negatively affect reputation but it is not unfair (Order F2004-015 at para. 100).

[para 49] I note that unfair damage to reputation may be shown where an investigation has found that the person did not violate any legislation or regulations, the person was exonerated, and no formal action was or would be taken (Order 97-002 at para. 81, citing Ontario Order P-634). In other words, the disclosure of unsubstantiated allegations may unfairly damage reputation (Order 97-002 at para. 85, citing B.C. Order 71-1995). There may also be unfair damage to reputation where allegations are contained in a "preliminary" or "interim" report, as opposed to a final one following an opportunity for the affected individual to make a defence (Order 97-002 at paras. 86 and 87).

[para 50] In this inquiry, I do not find that disclosure of the decisions that were favourable to the officers charged would necessarily damage their reputation, as their exoneration significantly decreases the risk of such damage. While I have considered the principles in the preceding paragraph, I distinguish situations in which allegations are unsubstantiated, because they have not been formally addressed, from situations where they are *proven* to be unsubstantiated following a formal proceeding. In the latter situation, there is much less damage, if any, to reputation because the allegations have been shown to be unfounded. The individual has had the opportunity to make a defence and has been successful.

[para 51] I do recognize, however, that even where an officer has been exonerated, there may be damage to reputation simply because charges were laid in the first place, and surrounding events may be described in a way that negatively characterizes the officer. In this respect, I agree that there may be unfair damage to reputation, which I will take into account in determining whether information should be disclosed in the appropriate cases.

[para 52] The Public Body states that, in respect of one hearing, the disciplinary charges were withdrawn because the cited officer retired and the chief of police therefore lost jurisdiction over the matter. As the allegations were both unproven and unaddressed, I agree that there may be unfair damage to reputation if they are disclosed and will take this into account.

(d) Open versus closed hearings

[para 53] Certain of the affected police officers argue against disclosure of their personal information because their disciplinary hearings were closed to the public. One of them points out that the allegations against him were also addressed in court

proceedings, which were open to the public and already subject to media attention. These submissions of the affected parties suggest, on the one hand, that their personal information should not be disclosed *if previously not disclosed*, and on the other hand, that their personal information should not be disclosed *if previously disclosed*.

[para 54] The Public Body makes similar arguments. First, it submits that the public interest in relation to police disciplinary hearings is addressed by the scheme set out in the *Police Act* and *Police Service Regulation*. In particular, section 16(1)(a) of the latter provides that "the chief of police shall direct that the hearing be conducted in public or private whichever he determines to be in the public interest." The Public Body argues that where the chief of police decides to hold a closed hearing, the *Police Act* and *Police Service Regulation* contemplate no review of that decision. As a result, it suggests that disclosure cannot now occur under the *FOIP Act*. Conversely, where there has been an open hearing, the Public Body argues that the public has already had an opportunity to learn the evidence, arguments and decision, so that no further disclosure is warranted.

[para 55] I do not accept the foregoing arguments. First, section 5 of the *FOIP Act* states that the Act prevails where inconsistent or in conflict with another enactment, unless the other enactment expressly says that the other enactment prevails. Neither the *Police Act* nor the *Police Service Regulation* states that any provision of them prevails despite the *FOIP Act*. This means that, although a police chief's decision to hold a disciplinary hearing in private may be a relevant circumstance under section 17(5) of the Act, it does not preclude disclosure altogether.

[para 56] Second, section 3(a) of the *FOIP Act* states that the Act is in addition to and does not replace existing procedures for access to information or records. This means that, even if the public has already had an opportunity to learn information in the context of an open disciplinary hearing or court proceeding, an applicant is not precluded from also gaining access to the same information under the Act. Again, the fact that a proceeding was open may be a relevant factor under section 17(5) of the Act, but it does not preclude disclosure altogether.

[para 57] Because the nature of the disciplinary hearing may still be a relevant circumstance, I believe that the fact that a police disciplinary hearing was held in private weighs against disclosure. Although the Public Body did not cite it, section 17(5)(f) of the Act indicates that the disclosure of personal information may be an unreasonable invasion of personal privacy if the information was supplied in confidence. In their representations to the Public Body, some of the cited officers said that they understood that the information they provided during the hearings would remain confidential. Their union representative made a similar argument in its letter of September 20, 2006.

[para 58] While I do not find that any personal information was supplied in confidence during the open hearings, it may have been implicitly supplied in confidence during the closed hearings. The context in which third party personal information is given during an investigation can make it reasonable to conclude that it was supplied in

confidence, and that there was an expectation of confidentiality sufficient to weigh in favour of non-disclosure under section 17(5)(f) (Order F2003-014 at para. 18).

[para 59] However, I do not believe that there is a proper expectation of confidentiality in respect of a disciplinary decision itself. In my understanding, a closed hearing is usually or primarily ordered to protect or encourage the testimony of witnesses, and exchanges between the parties and decision-maker. In other words, a closed hearing is intended to protect the content of the testimony itself, or to encourage full and frank disclosure. The final decision is not necessarily meant to be closed or confidential, although I acknowledge the possibility of closed testimony finding its way into the decision.

[para 60] The foregoing is to say that I accord limited relevance to the fact that a hearing was held in private when determining whether the resulting decision should be disclosed. Except to the extent that a record at issue contains or summarizes testimony that was implicitly supplied in confidence, I do not believe that a closed hearing automatically means that the resulting decision should be withheld.

[para 61] Whether a disciplinary hearing was held in public or private may also be a factor relating to the need for public scrutiny under section 17(5)(a) of the Act, which I discuss in greater detail below. Where a hearing was open, information has already been disclosed, which may mean that further public scrutiny is not warranted. Where a hearing was closed, at least one person – the police chief – was of the view that it was in the public interest to close the hearing, which may have been because the chief believed that public scrutiny was not desirable. However, I must still decide for myself – in the specific context of section 17 of the Act and on review of all of the relevant circumstances before me in this inquiry – whether the information in the records at issue should be withheld or disclosed.

(e) The practices of other police forces

[para 62] In support of his position that the information in the records at issue should be disclosed, the Applicant states that the Edmonton Police Service publishes, on its website, all written decisions resulting from open disciplinary hearings. He further indicates that the Royal Canadian Mounted Police complies with his requests for access to disciplinary decisions, although he recognizes that the RCMP is subject to federal access legislation rather than Alberta's *FOIP Act*.

[para 63] In my view, the disclosure practices of other police forces are only relevant in this inquiry to the extent that they suggest that other individuals, apart from the Applicant, believe that disclosure of police disciplinary decisions does not amount to an unreasonable invasion of the personal privacy of the officers involved. In other words, I limit the relevance of this factor in the same way that I limit the relevance of a decision of a police chief to hold a hearing in private. Regardless of the views or practices of others, I must make my order after considering all of the relevant circumstances in this inquiry and bearing in mind the purpose, scheme and specific provisions of the Act.

(f) The desirability of public scrutiny

[para 64] A factor weighing in favour of disclosure of the personal information of third parties is that disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny, under section 17(5)(a) of the Act. For the section to apply, there must be evidence that the activities of the public body have been called into question, which necessitates the disclosure of personal information to subject the activities of the public body to public scrutiny (Order 97-002 at para. 94; Order F2004-015 at para. 88).

[para 65] In determining whether public scrutiny is desirable, the following may be considered: (1) whether more than one person has suggested that public scrutiny is necessary; (2) whether the applicant's concerns are about the actions of more than one person within the public body; and (3) whether the public body has previously disclosed a substantial amount of information or has investigated the matter in issue (Order 97-002 at paras. 94 and 95; Order F2004-015 at para. 88). However, it is not necessary to meet all three of the foregoing criteria in order to establish that there is a need for public scrutiny (*University of Alberta v. Pylypiuk* at para. 49). What is most important to bear in mind is that the reference to public scrutiny of government or public body activities under section 17(5)(a) requires some public component, such as public accountability, public interest or public fairness (*University of Alberta v. Pylypiuk* at para. 48; Order F2005-016 at para. 104).

[para 66] The Public Body suggests that public scrutiny has already occurred in those cases where the cited officer's disciplinary hearing was open, and that where the hearing was closed, the chief of police already concluded that public scrutiny was not warranted. It further points out that many of the hearings, including those that were closed, were exposed to media attention in the past. One of the affected officers submits that there are already sufficient oversight, hearing and appeal processes established by legislation to oversee police disciplinary proceedings.

[para 67] In his submissions, the Applicant specifically addresses the tests and criteria that have been developed for the purpose of determining whether public scrutiny is desirable. As evidence that the activities of the Public Body have been called into question, and by more than just himself, he cites third party conclusions that the Public Body did not follow proper procedure in respect of a disciplinary proceeding in the past. Specifically, a presiding officer concluded that charges against a police officer were a nullity because, by improperly extending a time limit to lay charges, the Public Body did not follow the disciplinary process laid out by the *Police Act* and *Police Service Regulation* (*In the matter of Shah* at p. 18). A judge of the Court of Queen's Bench upheld this decision, stating that the Public Body had improperly "rewritten" the requirements of the legislation, fettered it discretion, and moreover, conducted itself in secret (*Beaton and Calgary Police Services v. Logar and Shah* at pp. 9 and 10).

[para 68] In pointing to the fact that the Public Body has previously followed improper procedure, the Applicant raises the possibility that it may have done so, or will

do so, in other cases. He also cites the views of political parties that have called for the creation of a separate, independent provincial body to investigate allegations of misconduct involving police officers. He attaches documentation to his submissions, in which a political party states that "[p]olice should not investigate themselves when allegations or complaints involving criminal misconduct are made." The suggestion is that police misconduct is a serious matter, and there might be something questionable in how the Public Body resolves allegations against its own members.

[para 69] I take the Applicant's submissions as pointing to two principal concerns. One involves the alleged misconduct of individual officers and the other involves the extent to which the Public Body is properly resolving those allegations. I find that he has established that the activities of the Public Body have been called into question by more than one person, and that the concerns are about the actions of more than one person within the Public Body. Further, there is a public component to allegations of police misconduct and disciplinary hearings, in that there is a desire for public accountability on the part of the Public Body, and there is legitimate public interest in knowing the outcome of allegations of misconduct, including the nature of the penalty imposed, if any.

[para 70] Even where the activities of a public body have been called into question, the disclosure of personal information must be necessary in order to subject the activities of the public body to public scrutiny. In order to subject the conduct of individual officers to public scrutiny, I believe that their personal information in the records at issue would necessarily have to be disclosed. In so far as there are concerns about the proper resolution of disciplinary matters by the Public Body, a lesser amount of personal information may need to be disclosed, but some of it must still be disclosed in order to understand the context in which allegations of misconduct are being resolved. Names might be unnecessary, but contextual information would have to be disclosed, which might identify the officers involved.

[para 71] In response to the Public Body's submission that it has already made information available for public scrutiny where there have been open hearings, the Applicant argues that this unfairly places the onus on members of the public to find out when open hearings take place and to attend them. I agree with the Applicant that the fact that a hearing was open should not preclude subsequent access to information. I do not believe that a one-time opportunity for the public to have access to a particular police disciplinary hearing means that the Public Body has previously disclosed a substantial amount of information, so as to make the release of personal information, at this time, unlikely to be desirable for the purpose of subjecting the activities of the Public Body to public scrutiny. In my view, the criterion regarding previous disclosure means that public scrutiny might not warrant disclosure of further or additional information; it does not necessarily mean that a public body may withhold the very information that was previously disclosed.

[para 72] Although the Public Body has already investigated the misconduct of the cited officers, which militates against subjecting the matters to further scrutiny, there is an additional public concern, raised by the Applicant, regarding the Public Body's

handling and resolution of those matters. I find that this aspect of the activities of the Public Body cannot be subjected to public scrutiny without disclosure of information in the records at issue. With respect to information arising from closed hearings, the Public Body's process of resolving police disciplinary matters has never been subject to public scrutiny. Where the hearing was open, further scrutiny is desirable because I believe that a one-time opportunity for the public to have access to the process does not sufficiently permit it to evaluate the Public Body's resolution of alleged police misconduct.

[para 73] Moreover, disclosure of information relating to all of the cited officers and all of the resulting decisions – regardless of whether the allegations were substantiated, proven to be unfounded or withdrawn – would be necessary to subject the Public Body's resolution process to public scrutiny. The public would need to understand not only the extent to which charges have been proven, but also why they were withdrawn or found to be unproven in certain cases.

[para 74] Given all of the foregoing, I find that the Applicant has established that the disclosure of the personal information of third parties in the records at issue is desirable for the purpose of subjecting the activities of the Public Body to public scrutiny, under section 17(5)(a) of the Act. This accordingly weighs in favour of disclosing the personal information on the basis that it would not be an unreasonable invasion of personal privacy.

3. Weighing the relevant circumstances: personal information of the cited officers

[para 75] There are presumptions against disclosure of the personal information of the cited officers under section 17(4) of the Act, on the basis that the information relates to employment history (in all cases), consists of their names in conjunction with other personal information (in all cases), and there is medical or psychological information (in some cases). Under section 17(5), relevant circumstances in favour of withholding the personal information of the cited officers are: refusals to consent to disclosure (where the cited officers views are known), unfair exposure to harm (in some cases), unfair damage to reputation (in some cases), information supplied implicitly in confidence (where the hearing was closed), and the police chief's decision to close a hearing (limited relevance). Relevant circumstances in favour of disclosure are the practices of other police forces to grant access (limited relevance) and the desirability of public scrutiny (relevant in all cases).

[para 76] The Applicant submits that the desirability of public scrutiny outweighs the factors in favour of non-disclosure, regardless of the outcomes of the individual cases or proceedings. He argues that even where officers are exonerated, there is reason to scrutinize how the Public Body investigates allegations of misconduct. He states that the public has a right to know whether cases are concluded fairly, regardless of whether the outcome was in an officer's favour or against him or her. As where a member of the general public is charged with an offence but not yet found or never found guilty, he submits that the media has the capacity to present the details fairly and accurately, and

that right-thinking members of the public will draw the appropriate conclusions. He concludes that an open and transparent justice system is one of the cornerstones of our democratic society.

[para 77] As discussed earlier in this Order, I do not believe that *unfair* harm or *unfair* damage to reputation would result on disclosure of the personal information of those officers who were found guilty of misconduct. Conversely, there may be unfair harm or unfair damage to reputation if personal information were disclosed in cases where the charges against the officer were withdrawn or proven to be unsubstantiated.

[para 78] However, even where charges have been withdrawn or proven to be unsubstantiated, there may be reason to conclude that the personal information of the cited officers may nonetheless be disclosed. This is because, when contemplating disclosure in view of unfair damage to reputation – and unfair harm by extension – one should consider the nature of the allegations raised, the type of records at issue, and the position occupied by the individual whose conduct was being questioned (Order 97-002 at para. 81, citing Ontario Order P-634).

[para 79] In the matters involved in this inquiry, the allegations are serious, the hearing records are formal, and the individuals involved are police officers, who the public holds to a very high standard of conduct. The decision itself to charge or cite an officer – in conjunction with the fact that the charges were based on criminal misconduct and/or serious enough to result in a disciplinary hearing – warrants disclosure on the basis that the individuals involved are expected to uphold rather than contravene the law. It is desirable to publicly scrutinize the conduct of all of the cited officers identified in the records at issue because of their role in society, the seriousness of the allegations and the formality of the proceedings.

[para 80] Further, there is a justification for disclosing all of the proceedings, regardless of each particular outcome, because the public has an interest in evaluating whether established laws, policies and procedures relating to police conduct and discipline are followed. With access to the decisions, the public will be in a position to scrutinize the Public Body's resolution of alleged police misconduct, whether the ultimate decision was against or in favour of the cited officer. For instance, a reader will be able to understand how the Public Body weighed the evidence and reached its particular conclusions. I find that the fact that it is desirable to subject the process itself to public scrutiny outweighs the possibility of unfair harm or unfair damage to reputation that may result in certain cases. Alternatively, it may be construed that any harm or damage to reputation is not unfair.

[para 81] In a matter involving a request to access files regarding complaints against police officers, the former B.C. Commissioner characterized the need for public scrutiny as follows:

> In my view, the public has a right, under the *Freedom of Information and Protection of Privacy Act*, to know more and in greater detail about the

> functioning of the current system of making complaints against the police. If the media receive access to the basics of complaint records, they can decide what is newsworthy. But the media will have the benefit of making their own judgment rather than depending solely on the views of the Police Commission, the Complaints Commissioner, the Federation of Police Officers, or the Chiefs of Police. Greater disclosure of records about the process should, under the theory of this Act, promote enhanced perceptions of accountability to the public and hence confidence in the municipal policing system and the conduct of individual officers. (B.C. Order 13-1994 at "Discussion".)

[para 82] The former B.C. Commissioner stated that the privacy interests of police officers – referring in particular to information supplied in confidence and unfair damage to reputation – diminish as complaints progress through the resolution process. Although he concluded that the need for public scrutiny did not outweigh privacy interests where a complaint is unresolved or under investigation, he stated that if a complaint is found to be substantiated after a legal process, "the presumption should be in favour of disclosure of police officers' names." He also believed that the factor relating to reputation "would have significantly less weight" by the time a complaint reaches an internal disciplinary hearing.

[para 83] Although the B.C. matter involved an access request for complaint records rather than disciplinary records, I extend its conclusions to this inquiry. Even where a disciplinary hearing was closed due to a decision of the police chief, disclosure of personal information in the resulting decision is justified in order to subject the resolution process to public scrutiny, and despite any information supplied by the officers implicitly in confidence. Even where, in the end, charges were not sustained or were withdrawn, the fact that they involved criminal misconduct and/or reached the stage of a formal disciplinary hearing militates in favour of disclosure.

[para 84] I find that the Applicant has established that the desirability of public scrutiny outweighs the factors that suggest that the personal information of the cited officers should not be disclosed in this inquiry (although I make some exceptions below). Where there has been alleged criminal misconduct and/or a formal hearing (even if the latter did not involve alleged criminal misconduct), disclosure of matters involving both founded and unfounded allegations are warranted in order to scrutinize the conduct of individual officers, the Public Body's processes and the soundness of its decisions. In other words, I find that the decisions should be disclosed because it is desirable to subject both the conduct of individual officers and the disciplinary process itself to public scrutiny.

[para 85] I specifically considered whether the names of cited officers should be disclosed in those cases where the charges were withdrawn or unproven. There is an argument that disclosure of the names themselves is unnecessary, on the basis that scrutiny in such cases would primarily be of the disciplinary and resolution process rather than the conduct of the individual officers. However, I agree with the Applicant that

even where allegations are not founded, scrutiny of the conduct of the individual officer is desirable on the basis that the allegations involved criminal misconduct and/or proceeded to a formal disciplinary hearing. In either case, the allegations were serious and a police officer was involved, who the public holds to a high standard of conduct. I believe that disclosure of the names of cited officers in all of the records at issue is therefore in the interest of public scrutiny, public interest and public accountability.

[para 86] I also carefully considered section 17(4) of the Act, according to which disclosure of much of the personal information of the cited officers is presumed to be an unreasonable invasion of their personal privacy – particularly in reference to the fact that the information relates to the officers' employment history. While the Applicant drew parallels between the internal proceedings that are the subject of this inquiry and court proceedings involving members of the general public, there is an important distinction in that this inquiry concerns disciplinary employment matters. They are therefore not entirely of the same nature as public proceedings in court. However, while I have borne in mind the presumptions of an unreasonable invasion of privacy under sections 17(4)(d) (employment history) and 17(4)(g) (name plus personal information), I conclude in favour of disclosure, based on other relevant facts and circumstances.

[para 87] Although I have concluded that the desirability of public scrutiny outweighs the factors against the disclosure of personal information in the records at issue, I find that there are exceptions. In five of the disciplinary decisions, there is certain personal information of the cited officers the disclosure of which would be an unreasonable invasion of their personal privacy. In four of them (under Tabs 5, 6, 11 and 12 of the records submitted by the Public Body *in camera*), the information is medical or psychological information falling within the presumption set out in section 17(4)(a) of the Act, and I do not find that other factors sufficiently weigh in favour of disclosure. In three of them (under Tabs 9, 11 and 12), there is personal information related to past allegations against the officer – rather than the specific allegations that are the subject of the hearing – and I find that disclosure of these past allegations would be an unreasonable invasion of personal privacy. In one case, the disciplinary action that arose out of the past allegations was to be expunged from the officer's record by a date that has now passed, so I believe that the details of those allegations may remain undisclosed (although not the general charges and the fact that there was discipline). In the other cases, the allegations appear not to have proceeded to charges and/or a disciplinary hearing at all.

[para 88] With respect to these five decisions, I find that it is not necessary to disclose the foregoing information in order to subject the police officers' conduct, or the Public Body's processes, to public scrutiny. Sufficient information about the facts of the cases, and the aggravating and mitigation factors relating to punishment, remains in the records to permit a reader to understand the officers' conduct and the rationale of the Public Body's decision.

4. Weighing the relevant circumstances: personal information of other individuals

[para 89] I do not find that disclosure of the names and titles of officers or employees of the Public Body who were present at the disciplinary hearings (i.e., the presiding officer, presenting officer, recording secretary and police members observing the proceedings) would be an unreasonable invasion of their personal privacy. The same applies to the agents representing the cited officers, which agents are acting in their capacity as representatives of another body. Disclosure of the names and titles of employees, acting in their formal representative capacities, is generally not an unreasonable invasion of their personal privacy (Order F2006-008 at paras. 42 and 46).

[para 90] I also apply the foregoing principle where a disciplinary decision refers to an officer or employee of the Public Body, or of another body, and merely conveys that the particular individual performed a task, carried out a function or did something in relation to the officer charged. There is no unreasonable invasion of privacy to disclose their names.

[para 91] I do not necessarily apply the foregoing principle to the officers who were witnesses or involved in the events that gave rise to the alleged misconduct of the officer in question. In some instances, the information about them reveals more than the fact that they acted in their capacity as members of the police, as it discloses a greater degree of details about their activities. Still, I do not find that disclosure of this personal information would be an unreasonable invasion of their personal privacy. I do not believe that factors relating to unfair harm and unfair damage to reputation apply to these non-cited officers, or there are other relevant circumstances sufficiently weighing against disclosure.

[para 92] Disclosure of the personal information of non-cited officers is justified because it is desirable to subject the Public Body's disciplinary process and its decisions to scrutiny, which requires an understanding of how it interprets events and relies on the testimony of witnesses (a good example is the decision under Tab 4 of the records submitted by the Public Body). I believe that part of this understanding necessitates the disclosure of the identities of officers who were witnesses in the proceedings and/or involved in the events. Disclosure permits the reader of a disciplinary decision to understand, among other things, the source and credibility of testimony, and the nature and reliability of factual evidence.

[para 93] Three of the disciplinary decisions disclose the identity of complainants and information about them. In the first two decisions (under Tabs 4 and 5), I find that the disclosure of the personal information of the complainants would be an unreasonable invasion of their personal privacy. This is due to the nature of the surrounding events, and the sensitivity of the personal information disclosed in that context, rather than the fact that they are identified as complainants. In other words, I do not believe that identifying an individual as a complainant in a police disciplinary proceeding necessarily means that personal privacy is unreasonably invaded.

[para 94] In this inquiry, the most expedient way of protecting the privacy of the complainants in the two matters just mentioned is to sever their names everywhere that they appear in the table and the decisions. Once their names are removed, I do not believe that the remaining information risks identifying them.

[para 95] In the third decision (under Tab 6), the complainants are government officials who were acting in their employment capacity during the events that gave rise to the complaint. I do not find that the disclosure of their names or other personal information would unreasonably invade their personal privacy. Only the fact that they made the complaint and information about the nature of the complaint is conveyed. As they were conducting government business, and there is no personal dimension to their activities, the information other than their names is not personal information at all (Order F2006-030 at para. 12).

[para 96] Two other disciplinary decisions (under Tabs 11 and 12) disclose the names of members of the public involved in events that gave rise to the charges against the cited officers. The transcripts reveal that these individuals – some of whom became witnesses in the proceedings – interacted with the cited officer because they were the perpetrators, victims or complainants of crime. As a result, I find that disclosure of their names would be an unreasonable invasion of their personal privacy. The Applicant made no specific submissions as to why the personal information of individuals who are not police officers should be disclosed, and I do not find that the need for public scrutiny of the police disciplinary process outweighs the presumption against disclosure under section 17(4)(g) of the Act (name plus personal information). Once names are removed, however, I do not believe that the remaining information risks identifying the members of the public.

[para 97] The foregoing conclusions do not necessarily mean that the names of complainants (who are not acting in a government capacity) and other members of the public should never be disclosed in comparable situations. The determining factor in this inquiry is that the Applicant did not establish that disclosure of this information was desirable for the purpose of subjecting the activities of the Public Body to public scrutiny, as he did with respect to the personal information of police officers. As section 17(5)(a) (public scrutiny) does not apply to the personal information of members of the general public in this inquiry, it does not outweigh the presumption against disclosure under section 17(4)(g) (name plus personal information).

[para 98] Two disciplinary decisions (under Tabs 8 and 9) cite other disciplinary decisions involving other police officers who are named and therefore identifiable. I do not find that disclosure of the names and other personal information of these officers would be an unreasonable invasion of their personal privacy. The information is of the same nature and involves the same relevant circumstances in respect of disclosure and privacy that are discussed in this Order generally. I extend my findings, regarding disclosure of the disciplinary decisions requested by the Applicant, to the disciplinary decisions cited within those decisions.

[para 99] Two disciplinary decisions (under Tabs 8 and 9) provide personal information about members of the cited officer's family, who are identifiable by virtue of the name of the officer. As I do not believe that disclosure of their personal information is necessary to subject the disciplinary decision to public scrutiny, I find that disclosure would amount to an unreasonable invasion of their personal privacy.

5. Conclusions under section 17

[para 100] I find that certain of the information in the records at issue is not personal information. As section 17 does not apply to non-personal information, the Public Body had no authority to withhold it under that section.

[para 101] While disclosure of certain personal information in the records at issue is presumed to be an unreasonable invasion of the personal privacy of third parties under provisions of section 17(4) of the Act, I find that the Applicant has rebutted the presumptions with respect to most of the information. Despite certain factors weighing against disclosure under section 17(5), he has established that they are outweighed by the relevant circumstance relating to the desirability of public scrutiny under section 17(5)(a). The Applicant has proven, as required by section 71(2), that disclosure of the information would not be an unreasonable invasion of the personal privacy of third parties.

[para 102] In a few instances, however, I find that disclosure of personal information would be an unreasonable invasion of the personal privacy of third parties. In the case of certain of the cited officers, this is where there is medical, psychological or other sensitive information, and the need for public scrutiny does not sufficiently weigh in favour of disclosure. In the case of members of the general public who are identifiable in the records at issue, some of whom were complainants and/or witnesses, the Applicant did not show that the factor relating to public scrutiny applies.

V. ORDER

[para 103] I make this Order under section 72 of the Act.

[para 104] I find that section 4(1)(k) of the Act (records relating to a prosecution) does not exclude the application of the Act to information in the records at issue. Accordingly, the Act applies to all of the records at issue.

[para 105] I find that disclosure of certain personal information in the records at issue would be an unreasonable invasion of the personal privacy of third parties under section 17 of the Act. Under section 72(2)(b), I confirm the decision of the Public Body to refuse the Applicant access to the following personal information in the records at issue (the Tabs refer to those in the Public Body's *in camera* submission):

> Table of information under Tab 3: the names of the complainants in the first and second lines of the table.

Decision under Tab 4: the name of the complainant (a member of the public) throughout the decision.

Decision under Tab 5: the name of the complainant (a member of the public) throughout the decision; all but the first five words of the sixth sentence in the large paragraph on page 2 (the information subject to section 17 is between "pointed out that" and "With respect to"); the last eleven words on the second-last line of page 2 (between the name of the cited officer and "reacted"); the second sentence in the last full paragraph on page 4 (between "performance history" and "This raises the").

Decision under Tab 6: all but the first ten words of the fifth-to-last sentence of the decision (between "the member has" and "I therefore"); the 14th word in the next sentence (between "a course of" and "training"); the 25th to 29th words in that same sentence (between "appropriate by the" and "Human Resources Section").

[I find no information subject to section 17 in the decision under Tab 7.]

Decision under Tab 8: the third and fourth statements in quotation marks on page 5 (between "was working in" and the name of the cited officer).

Decision under Tab 9: the last four words of line 24 on page 2, lines 25 to 31 on page 2, and lines 1 and 2 on page 3 (everything between "Professional Standards Section" on page 2 and "Your actions" on page 3); the last two words of line 23 and the first six words of line 24 on page 12.

[I find no information subject to section 17 in the decision under Tab 10.]

Decision under Tab 11: the names of the members of the public involved in surrounding events (on lines 20, 23 and 26 of page 2; lines 1, 4, 7, 20 and 26 of page 3; lines 1 and 8 of page 4; lines 22, 23, 25, 30 and 31 of page 6; line 8 of page 7; lines 9 and 31 of page 8; lines 3, 10, 12, 15 and 27 of page 9; lines 1, 18, 22, 23 and 29 of page 10); lines 1 to 3 and the first two words of line 4 on page 12 (up to "he was unable"); the last seven words of line 5 and the first five words of line 6 on page 12 (between "missed court" and the name of the cited officer); the names of the members of the public involved in other surrounding events (on lines 21, 26, 27 and 31 of page 13; lines 5, 10, 11 and 14 of page 14); the last six words of line 12, all of lines 13 to 17, and the first two words of line 18 on page 20 (between "finances" and "During my"); the last word of line 22 and the first five words of line 23 on page 20 (between "internally" and "It was upon"); the last two words of line 24, all of lines 25 and 26, and the first word of line 27 on page 20 (between "allegations" and "This"); the third word of line 27 on page 20 (between "This" and "has helped"); the last two words of line 6 and the first six words of line 7 on page 21 (between "maturity" and "to maintain"); the fourth to sixth words of line 13 on page 22 (between "in relation to" and "that he has").

Decision under Tab 12: the names of the members of the public involved in surrounding events (on lines 5 and 8 of page 2; line 27 of page 3; lines 1, 19 and 31 of page 4; line 25 of page 5); the last two words of line 1, all of lines 2 to 6, and the first six words of line 7 on page 9 (between "finances" and "During my"); the last five words of line 12 and the first word of line 13 on page 9 (between "internally" and "It was upon"); the last seven words of line 14, all of line 15, and the first six words of line 16 on page 9 (between "allegations" and "This"); the eighth word of line 16 on page 9 (between "This" and "has helped"); the last two words of line 26 and the first six words of line 27 on page 9 (between "maturity" and "to maintain").

[para 106] I find that the remaining information in the records at issue is not subject to the exception to disclosure under section 17 of the Act, either because the information is not personal information or because disclosure would not be an unreasonable invasion of the personal privacy of third parties. Under section 72(2)(a) of the Act, I order the Public Body to give the Applicant access to the remaining information in the records at issue.

[para 107] I further order the Public Body to notify me, in writing and within 50 days of receiving a copy of this Order, that it has complied with the Order.

Wade Riordan Raaflaub
Adjudicator