

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2008-029

August 7, 2009

CALGARY POLICE SERVICE

Case File Number F3797

Office URL: www.oipc.ab.ca

Summary: The Complainant complained that the Calgary Police Service (the “CPS”) disclosed his personal information, as contained in police reports, to the Region 3 Calgary and Area Child and Family Services Authority (the “CFSA”), contrary to Part 2 of the *Freedom of Information and Protection of Privacy Act* (the “FOIP ACT” or the “Act”).

The Complainant also complained that the CPS disclosed this personal information to an Affected Party, a society for the prevention of domestic violence, pursuant to an information-sharing agreement, contrary to Part 2 of the *Freedom of Information and Protection of Privacy Act* (the “Act”).

On the basis of evidence provided by the CPS, the Adjudicator found that there had been a disclosure of the Complainant’s personal information to the CFSA. However, the Adjudicator was not able to determine, on the basis of this evidence, whether this disclosure had been by CPS itself, or by the Affected Party (of information obtained by it from the CPS).

On the basis of evidence provided by the Affected Party and the Complainant, the Adjudicator found that there had been a disclosure of the Complainant’s personal information, as contained in CPS police reports, by the CPS to the Affected Party, under the terms of the information-sharing agreement.

With respect to authority for the disclosure of the Complainant's personal information to the CFSA, the Adjudicator found that if the disclosure was by the CPS to the CFSA directly (rather than via the Affected Party after receiving the information from the CPS), the disclosure would be authorized by section 40(1)(f) of the Act, as it would be required by provisions in the *Child Welfare Act* (which had been in force when some of the information was disclosed) and the *Child, Youth and Family Enhancement Act*.

With respect to authority for the CPS's disclosure to the Affected Party, the Adjudicator held that this disclosure complied with section 40(1)(c) of the Act. She held that the purpose of the collection had been for law enforcement, policing, and preservation of the peace and prevention of crime, and that the sharing of the information with the Affected Party was for the same purpose, as well as for a use consistent with that purpose.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(h), 1(n), 33, 33(b), 33(c), 40, 40(1), 40(1)(a), 40(1)(c), 40(1)(d), 40(1)(f), 40(1)(h), 40(4), 41, 41(a), 41(b), 72; *Child Welfare Act* R.S.A. 2000, c. C-12 ss. 1(2)(g), 1(3)(a)(ii)(C); 3(1); *Child, Youth and Family Enhancement Act*, R.S.A. 2000 c. C-12, ss. 1(2)(g), 1(3)(a)(ii)(C), 4(1); *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 14(c), 20(b); *Police Act*, R.S.A., 2000 c. P-17, ss. 38(1), 41(1).

Authorities Cited: AB: Orders 2000-027, F2002-001, F2003-017, F2006-016.

I. BACKGROUND

[para 1] The Complainant made an earlier complaint to this office stating that an information-sharing agreement between the CPS and a society for the prevention of domestic violence (the Affected Party in this inquiry) was contrary to the Act.

[para 2] In Order F2006-016, I found that the Complainant had not provided adequate evidence that his own personal information had been disclosed to the Affected Party pursuant to the information-sharing agreement. As a complaint under the Act can be brought only with respect to collection, use or disclosure of a person's own personal information, I dismissed the complaint.

[para 3] On the basis of documentary evidence, which he says substantiates his complaint that the CPS disclosed his personal information contrary to Part 2 of the Act, the Complainant submitted a new request for an inquiry. The Complainant also complained that the CPS failed to advise him when and to whom the CPS disclosed the Complainant's personal information.

[para 4] This matter was set down for a written inquiry. The Notice of Inquiry identified the issue as whether the CPS had disclosed the Complainant's personal information contrary to Part 2 of the Act. Initially, this inquiry was limited to the issue of the CPS's disclosure to the CFSA. The Complainant and the CPS provided initial submissions and the Complainant provided rebuttal submissions.

[para 5] However, the CPS's initial submissions raised the issue of the CPS's disclosure to a society for the prevention of domestic violence. To expedite the process, rather than scheduling a separate inquiry pertaining to the disclosure to the society, I decided to name the society as an Affected Party in the present inquiry, and give it an opportunity to provide submissions. I also gave the Complainant and the CPS an opportunity to respond to these submissions. The Affected Party provided a submission and the Complainant provided a rebuttal submission in response.

[para 6] The Complainant has also requested an inquiry claiming that the CFSA collected his personal information contrary to Part 2 of the Act. That complaint is dealt with in the companion order, Order F2008-030 (Case File Number F3798).

II. RECORDS AT ISSUE

[para 7] As this matter involves a complaint regarding disclosures of the Complainant's personal information, there are no records directly at issue.

III. ISSUES

[para 8] The issue stated in the Notice of Inquiry is as follows:

Did the Public Body [the CPS] disclose the Complainant's personal information in contravention of Part 2 of the Act?

[para 9] In his submissions, the Complainant states the issue for this inquiry as, "Did the Public Body collect the Complainant's personal information in contravention of Part 2 of the Act?" Possibly, the Complainant understood the Public Body in this inquiry to be the CFSA, rather than the CPS, and for this reason he addresses the collection of his personal information by the CFSA from the CPS. However, the Notice of Inquiry for this inquiry (Case File Number F3797) clearly states that the Public Body in this inquiry is the CPS. Case File Number F3798 relates to the collection of the Complainant's personal information by CFSA, and is, as noted above, the subject of a separate companion order, Order F2008-030. In that order, the Public Body is the CFSA.

[para 10] As well, the Complainant's submissions state that his personal information was disclosed to third parties and that when he requested access to his personal information from the CPS he was not informed of when his information was disclosed, to whom his information was disclosed, and why his personal information was disclosed. While it is possible for the Complainant to make an access request for records containing this information from the Public Body, and while he may (or may not) have done so in conjunction with the access request to which he refers, the present inquiry relates to a complaint of improper disclosure rather than to a refusal to provide access to information. I will therefore not deal with questions of access in this order.

[para 11] I also note that the Complainant in his submissions referred to various other sections of the Act that have no bearing on the question of the authority of the Public

Body (the CPS) to make the disclosures of the Complainant's personal information that are at issue here. For example, (in part by incorporating his submissions from an earlier inquiry), he cited the sections dealing with the disclosure of business information (section 16) and personal information (section 17) to someone making an access request for such information, as well as other provisions pertaining to access requests, and also those dealing with the notice a public body is required to give under section 30 when it is considering that it may provide information to someone who is requesting access.¹ He also cited the provisions respecting the proper collection and use and the proper securing of information. As well, in one of his rebuttal submissions he included extensive case law relating to bias and discrimination, which appears to relate to his concern that the Public Body and the Affected Party, through the Domestic Violence Protocol, predetermine, according to gender, who is the victim and who is the perpetrator of domestic violence. Finally, he complained that the Public Body failed to keep track of its information disclosures, and that it had earlier willfully concealed from him that it had disclosed his information.

[para 12] I have reviewed these submissions but I have not addressed most of them in this decision. For the purpose of this decision, I have considered only the parts of the Complainant's submission that relate and are relevant to the issue that was stated in the Notice of Inquiry for this case – whether the Public Body [the CPS] disclosed the Complainant's personal information in contravention of Part 2 of the Act - as this is the only issue on which the parties have had an opportunity to make submissions in this inquiry.

DISCUSSION OF ISSUES

A. Did the CPS disclose the Complainant's personal information?

[para 13] In support of his complaint in the present inquiry, the Complainant attached several letters, dated between May 16, 2006 and August 16, 2006, that he had sent to the FOIP Coordinator for Alberta Human Resources and Employment (who responds to information requests on behalf of the CFSA). These letters include requests for access to various categories of his personal information and that of his children. The letter of July 31 states the following: "Please enclose, in the documentation, the list of documents not being included, like the police report you referred to, in our last phone conversation". The letter of August 16, 2006 repeats this request (which was apparently not complied with when other documents were provided), and also states: "In our conversation yesterday, the existence of these police reports to Children's Services is a violation of FOIP, which I will be addressing with the Privacy Commissioner". As well, this letter states: "Not all the information within the files were released", and goes on to list particular items of information, including

¹ As discussed further below, the Complainant may be under a misapprehension as to the relationship between Part 1, under which public bodies may disclose information to persons who have requested access, and section 40, the latter of which permits public bodies to disclose personal information on their own motion, and without consent (except if relying on section 40(1)(d)), under any of the circumstances specified in that provision.

- Where is the request of the police reports, who requested it, etc.?
- Where are the police reports?

The list also refers to particular investigation reports relating to specified subjects.

[para 14] In his submission, the Applicant also attached a document that lists nine case file numbers, with associated dates, times, “user” numbers, and names. The following paragraph appears above this list at the top of the page:

The following is a list of [Affected Party] members who accessed case files on the Calgary Police Service CASE system which contained information of [the Complainant]. Please see the attached sheet explaining CASE inquiries.

The attachment referred to was not provided, and the Complainant did not make known in his submission to whom this statement is to be attributed, nor how he obtained the list.

[para 15] In Order F2003-017, the Commissioner determined that there is an initial, evidential burden of proof on the Complainant to provide evidence that his own personal information was disclosed by the Public Body. If a complainant is able to do this, the onus to prove that the disclosure was justified will shift to the public body (Order F2003-017 at para 21).

[para 16] Therefore, the first issue is whether there was a disclosure of the Complainant’s personal information by the CPS. The inquiry now involves both the alleged disclosure by the CPS to the Affected Party, as well as the original allegation in this inquiry of a disclosure by the CPS to the CFSA.

[para 17] As noted above, in his submission in the earlier inquiry, the Complainant did not provide evidence that his own personal information had been disclosed by the CPS to a third party. On the basis only of the information the Complainant provides in the present inquiry, I would still have difficulty concluding that there had been such a disclosure or disclosures. With regard to the disclosure to the Affected Party, the Complainant’s evidence consists of the document mentioned at para 14. However, the Complainant provides no evidence as to the source of the information in the list or to whom the words in the paragraph above it are to be attributed, which creates uncertainty as to its reliability. With regard to the alleged disclosure to CFSA, the Complainant’s evidence consists only of his reference to a statement in a phone conversation with the FOIP Coordinator in which, according to the Complainant, the FOIP Coordinator mentioned a police report or reports (which, based on the context and the questions the Complainant posed in the August 16 letter, possibly was or were in CFSA’s possession).

[para 18] However, the submissions of the CPS contain an affidavit sworn by an executive director of the Affected Party. In the affidavit, the executive director states that on July 7, 2004 one of the Affected Party’s former employees received a copy of police report case number 04197260 pursuant to its information-sharing agreement with the CPS. In the document provided by the Complainant referred to at para 14, the

information relating to report number 04197260 closely corresponds with the information provided in the Affected Party's affidavit.

[para 19] Police report file number 04197260 is before me as evidence in the companion Case File Number F3798. I have reviewed this report, and find that it contains personal information about the Complainant as defined in section 1(n) of the Act, including the Complainant's name, address, phone number, occupation, employer, driver's license number, physical description and condition, marital status, race, and relationship with others who were involved, together with a synopsis of the incident which was reported to and investigated by the CPS, and what police action was taken. It also contains personal information of other persons who were present.

[para 20] I do not have evidence before me as to exactly how this CPS report came into the possession of the Affected Party - whether on request, or by way of the Affected Party's permitted use of the CPS CASE system (as outlined in the information-sharing agreement provided to me by the parties). However, the method of disclosure is not material. Given the Affected Party's evidence that it came into possession of the CPS police report pursuant to its information-sharing agreement with the CPS, I find that the Complainant's personal information was disclosed by the CPS to the Affected Party.

[para 21] With respect to the disclosure of the Complainant's personal information to the CFSA, again, while the Complainant's evidence is inconclusive, evidence provided by the CPS and the Affected Party indicates that the CFSA was in possession of personal information of the Complainant that originated with the CPS. The affidavit of the Affected Party, which is included the submission of the CPS, states that the CFSA was in possession of three police reports – numbers 04197260, 04239216 and 04386166, all of which involved the Complainant. All these files are on the list (described at para 14) which the Complainant provided in his submission. All of the reports are also before me as evidence submitted by the CFSA in the companion Case File Number F3798, as are CFSA "screening reports" which appear to be associated with these files. However, the CPS was unable to attest to whether the information was disclosed to the CFSA directly, or whether it was first disclosed to the Affected Party, which in turn provided it to the CFSA. Rather, the CPS says in its submission that the disclosures of the reports could have happened in either of these two ways. First, it says that as the Complainant was involved in several domestic violence incidents where his children were present, the Affected Party's caseworkers would have provided police report information to CFSA pursuant to the *Child, Youth and Family Enhancement Act* and the Interagency Domestic Violence Protocol, including the reports mentioned above. Second, it says that the reports may have been provided to CFSA directly by a member of the CPS's Child at Risk Response Team. Although in the absence of any suggestion as to how the CFSA might otherwise have obtained the reports, I can conclude that it happened in one of these ways, this is not a conclusion that the CPS disclosed the information to the CFSA. Nevertheless, as all the parties have had an opportunity to comment on this question, I will comment on whether, if the disclosure happened in the latter of the two ways (that is, by the CPS directly to the CSFA), it was authorized under the Act.

[para 22] Based on the Complainant’s evidence, I conclude he did not consent to these disclosures of his personal information.

[para 23] Before concluding my findings of fact, I note that the Complainant states in his rebuttal submission of February 20, 2008 (at the bottom of page 4 and top of page 5), with respect to the Public body’s evidence as to the reasons why the Complainant’s information would have been disclosed to the CFSA, that the Public Body has failed to provide facts or evidence “to support their claim” and asks that the Public Body “provide the true facts of said incidents” (which he then describes), concluding that the Public Body’s statements about these facts are biased and misleading. In this regard, I note that the Public Body’s statement about the facts is that the Complainant “was the subject of several domestic violence incidents where his children were present”. No conclusion about the Complainant’s role in these incidents can be drawn from this statement beyond the fact that the Complainant had some involvement in them. In any event, the role played by the various persons involved does not affect the outcome of the matter before me.

B. Did the CPS have the authority to disclose the Complainant’s personal information under Part 2 of the Act?

[para 24] Section 40 of the Act allows a public body, such as the CPS, to disclose personal information, without consent of the Complainant, in prescribed circumstances. The CPS relies on the following portions of section 40(1) in order to justify its disclosure:

40(1) A public body may disclose personal information only

...

(c) *for the purpose for which the information was collected or compiled or for a use consistent with the purpose,*

...

(f) *for any purpose in accordance with an enactment of Alberta or Canada that authorizes or requires the disclosure,*

....

[para 25] I note from the Applicant’s submissions that possibly he believes that section 40 operates in such a manner that an access request must be made, and consent given by the person whose information is involved, before information can be disclosed under the section. This is not the case. Section 40 permits public bodies to make disclosures on their own motion. Subsection 40(1)(d) permits disclosure where consent has been given in the prescribed manner, and section 40(1)(a) permits disclosure on an access request where none of the exceptions in Part 1 apply, but information may equally be disclosed by a public body, without consent, and in the absence of an access request, in accordance with any of the other subsections that apply in a given case.

1. Disclosure to the Affected Party:

[para 26] The CPS relies on section 40(1)(c) as authority for its disclosure to the Affected Party. It argues that it disclosed the CPS police reports to the Affected Party for

the purpose for which the information was collected or for a use that is consistent with that purpose.

What was the purpose of the CPS's collection of the Complainant's personal information?

[para 27] To determine if its disclosure of the Complainant's personal information to the Affected Party was authorized under section 40(1)(c), it is necessary to first determine the CPS's purpose for collecting the information.

[para 28] The collection of personal information by a public body is governed by section 33 of the Act which states:

33 No personal information may be collected by or for a public body unless

- (a) the collection of that information is expressly authorized by an enactment of Alberta or Canada,*
- (b) that information is collected for the purposes of law enforcement, or*
- (c) that information relates directly to and is necessary for an operating program or activity of the public body.*

[para 29] Law enforcement is defined under section 1(h) as follows:

1(h) "law enforcement" means

- (i) policing, including criminal intelligence operations,*
- (ii) a police, security or administrative investigation, including the complaint giving rise to the investigation, that lead or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the investigation or by another body to which the results of the investigation are referred, or*
- (iii) proceedings that lead or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the proceedings or by another body to which the results of the proceedings are referred.*

[para 30] Although the Act does not define "policing," in Order 2000-027, the former Commissioner defined policing as "...those activities carried out, under the authority of a statute, regarding the maintenance of public order, detection and prevention of crime or the enforcement of law." (para 16). Police officers are charged by statute with the preservation and maintenance of the public peace and the prevention of crime.²

² Under the *Police Act*, R.S.A. 2000, c. P-17,

38(1) Every police officer is a peace officer and has the authority, responsibility and duty

- (a) to perform all duties that are necessary*
 - (i) to carry out the police officer's functions as a peace officer,*
 - (ii) to encourage and assist the community in preventing crime,*

[para 31] As indicated in the evidence of the Public Body and by the police reports that are before me in the companion inquiry, Case File Number F3798, the personal information of the Complainant that was disclosed was collected in the course of, and for the purpose of, investigations into incidents of domestic conflict and alleged domestic violence. The CPS provided an excerpt from its Domestic Conflict policy, which states that:

It is the responsibility of the Service to respond to and investigate all reported incidents of domestic conflict. This response will stress enforcement of the laws to protect the victim, and will communicate to our community that violent behaviour in the home is criminal behaviour, which will not be tolerated. Our goal is to reduce incidents of domestic conflict by providing an effective and sensitive response to the needs of the victims of domestic conflict.

The reduction of incidents of domestic conflict conforms with the statutory goals of preserving the peace and preventing crime.

[para 32] The CPS Domestic Conflict policy also requires the filing of an Occurrence Report with offender and victim information for each response to reported incidents of domestic conflict. The Complainant's information that was collected during a number of investigations was included in the police reports. The information that was disclosed to the Affected Party was contained in such reports.

[para 33] The CPS collected the Complainant's information for the purpose of law enforcement, which includes (as in this case) investigations into matters (alleged domestic assault) that could lead to a penalty or sanction, as well as policing, which includes preservation of the peace and prevention of crime. (Though the collection of the information by the CPS is not an issue for this inquiry, I note that this collection was authorized under section 33(b) of the Act.)

[para 34] The Affected Party also provided evidence, by way of informational material posted on its own website, that the CPS, together with the Affected Party, are part of a court program that consists of a specialized court housing a cross-disciplinary team, which also includes "specialized crown, probation, legal aid, and the defence bar". This is reflected in the information-sharing agreement between CPS and the Affected Party, which states in part:

-
- (iii) *to encourage and foster a co-operative relationship between the police service and the members of the community, and*
 - (iv) *to apprehend persons who may lawfully be taken into custody,*
and
 - (b) *to execute all warrants and perform all related duties and services.*

41(1) The chief of police of a police service established under section 24 or 27 is responsible for the following:

- (a) the preservation and maintenance of the public peace and the prevention of crime within the municipality;*

... WHEREAS the CPS and [the Affected Party] are working together on the Calgary Domestic Violence Courtroom Project (CDVCP) for the purpose of reducing domestic violence in the community.

AND WHEREAS the Domestic Violence Court Team (hereinafter called DVCT) is comprised of four Caseworkers whose role it is to assist victims through the criminal justice system by helping them to understand the court process, ensuring victims have the opportunity to provide information to the police and prosecutor's office, assisting with safety planning, assessing risk, and providing information and referrals.

According to the Affected Party, the goal of this program is to "ensure the court is aware of and has timely access to information and circumstances surrounding the criminal case before them", which "allows the court to make informed and appropriate decisions designed to mitigate the possibility of future abuse and violence". It thus appears that the CPS also collects information about incidents of domestic conflict for the purpose of participating in this "operating program or activity" of the CPS, which it operates together with other entities. The collection of such information relates directly to and is necessary for this operating program or activity of the CPS. There is no evidence before me as to whether the incident relative to which the present complaint arose was or will be channeled through this program. However, assuming the program was operational at the time the information was collected, it is reasonable to suppose that the collection of information about the incidents, including the Complainant's personal information, was in part for the purpose of possible use in this program. Thus the collection of the Complainant's personal information in this case is also authorized by section 33(c) of the Act.

What was the purpose of the disclosure to the Affected Party?

[para 35] The next step for determining if a public body has disclosed information to a third party in accordance with section 40(1)(c) is to determine the purpose of the disclosure.

[para 36] In his affidavit, the executive director of the Affected Party states that at the time of disclosure, the Affected Party had entered into an information-sharing agreement with the CPS under which the CPS would provide information to it regarding domestic violence reported to and investigated by the CPS. According to the affidavit, this information was used by it to contact victims of domestic violence and offer support and safety planning along with information about the court process. The Public Body also provided evidence that pursuant to the Agreement, the Affected Party's caseworkers received all police case file reports with an impending court date with Calgary's specialized domestic violence court.

[para 37] The purpose of the information-sharing agreement, as stated in clause 2.1, is, "...to provide access to the [Affected Party], located within the CPS Domestic Conflict Unit office, to the CPS PIMS system so as to assist the Caseworkers in improving service to the victims of domestic violence within the City of Calgary."

[para 38] The preamble in the information-sharing agreement that relates to the role of the Affected Party's caseworkers in the court process has already been quoted above. This preamble also contains the following clauses:

AND WHEREAS both parties agree that the sharing of information will assist in eliminating duplicity of work between the two agencies and assist the investigators in the Domestic Conflict Unit with assessing and determining the level of risk in violent domestic investigations."

[para 39] As well, the submissions of the CPS explain that the purpose of the information-sharing agreement, and of any sharing of information pursuant to it,

... is consistent with the stated responsibilities of the CPS to respond to and investigate incidents of domestic conflict, including their involvement with victims of domestic violence and the goal of reducing such incidents, and are necessary for allowing the [CPS] to fulfill its mandate under the *Police Act*, as stated in section 41(1)(a) thereof: "*the preservation and maintenance of the public peace and the prevention of crime within the municipality*".

[para 40] I accept the affidavit evidence of the executive director of the Affected Party as to the role of its caseworkers and the purpose of the CPS's sharing of information with them under the information-sharing agreement, as well as the submissions of the CPS on these points, and the documentary evidence cited above which confirms this role and these purposes. On the basis of this evidence, I find that the disclosure of the Complainant's personal information to the Affected Party, which the evidence shows was pursuant to the information-sharing agreement, was for the purpose of enabling the Affected Party's caseworkers to perform the roles described in the preceding paragraphs.

Was the disclosure in compliance with section 40(1)(c)?

[para 41] Under section 40(1)(c) the information can either be

- disclosed for the purpose for which it was collected or,
- disclosed for a use consistent with the purpose for which it was collected

(Order F2002-001 at para 23).

Was the disclosure of information to the Affected Party for the same purpose as that for which the information was collected?

[para 42] I have found that the CPS collected the personal information of the Complainant for its purpose of enforcing the law (including by way of its participation in the court process), policing, and reducing incidents of domestic conflict. Was the disclosure to the Affected Party for this same purpose?

[para 43] As described above, the role of the Affected Party is to provide support to victims in situations of domestic violence. To do this, the Affected Party's caseworkers must have enough knowledge to determine how to best approach a particular situation. As stated in the CPS's submission, they must be able to assess and determine the level of

risk. As well, as stated in the preamble to the information-sharing agreement, they are to assist with safety planning. The caseworkers must know enough about the incident, and the involvement of the alleged perpetrator and victim in the incident, to take such action as would as far as possible prevent or avoid further violence relative to the victim, and possibly, as well, to guard against risks to their own safety. When the CPS provides information to the caseworkers such as is contained in the police reports³, it is enabling the caseworkers to make choices for a given situation such as will preserve the peace and prevent crime to the greatest extent possible. It is reasonable to do this in every case involving or allegedly involving domestic violence, as in all such cases, information about the incident, the victim or victims, and the alleged perpetrator, are necessary to determine what measures are appropriate to address the situation.

[para 44] In saying this, I recognize that when the caseworkers take steps to preserve the peace and prevent crime, they are not themselves acting under statutory authority, nor are they “policing”. However, since they are enabled to take such steps by virtue of the information disclosure by the CPS, the disclosure is for the same purpose – maintaining peace and preventing crime - for which the CPS collected the information. Providing the information to the Affected Party’s caseworkers is one technique by which the CPS can accomplish its mandate of achieving these objectives.

[para 45] As well, as stated in the preamble to the information-sharing agreement, and in the submissions of the Affected Party, the role of the caseworkers includes providing support to victims through the court process. Again, by giving caseworkers the information they need to enable them to assist a victim in, for example, supporting the victim in becoming a witness in a prosecution, the CPS is enabling a successful prosecution in appropriate cases, and is disclosing the information for the purpose of law enforcement.

[para 46] On this basis of the foregoing, I find that the CPS complied with section 40(1)(c) when it disclosed the Complainant’s personal information to the Affected Party’s staff, in that it disclosed the Complainant’s personal information, as contained in police reports, for the purpose for which the information was collected.

[para 47] I have noted the concern of the Complainant in his submissions (incorporated from his submissions in an earlier inquiry) that the Affected Party is a private entity that is not bound by the provisions of the Act, that access by the Affected Party to CPS files pursuant to the information-sharing agreement is not limited, and that the information is not adequately secured. He appears to be concerned with the possibility that the information may be used for purposes other than those for which it is shared.

para 48] There is nothing in the evidence to suggest that the Affected Party is other than an independent entity (rather than an arm of the Public Body), and I agree, therefore, that it is not bound by the FOIP Act. However, I have reviewed the terms of the information-sharing agreement, provided to me by the Public Body and by the Affected Party, and I

³ I have described the contents of the reports in paragraph 19 above.

note that it contains strict provisions for limiting access to and use of the information, and for securing the information. Specifically, it provides the following:

- all caseworkers needing access must be authorized by the Sergeant of the CPS Domestic Conflict Unit prior to access being granted
- access is limited to four authorized caseworkers, who must sign a CPS Confidentiality Agreement as well as an Assumption of Risk and Indemnity Agreement
- access to PIMS (Police Information Management System) computers by caseworkers must be password protected; passwords must not be shared and computer terminals are housed at the CPS Domestic Conflict Unit offices, with entry restricted by card access
- personal information obtained from PIMS must be used solely for the purpose of assisting victims of domestic violence within the caseworker's role in the DVCT (Domestic Violence Court Team); unauthorized use, including disclosure to any other agency or person other than as expressly permitted in the agreement, is prohibited
- caseworkers are to shred all information received from CPS as soon as is practicable upon the resolution of a case
- misuse of personal information is to be dealt with by discipline, and notification of breaches is to be given to the CPS FOIP Coordinator and the Sergeant of the Domestic Conflict Unit, which will result in immediate termination of access
- the Chief of Police may immediately terminate the Agreement in cases of breach of security or non-compliance with the Agreement
- the society agrees to indemnify the CPS for damages arising from any breaches, negligence or willful misconduct.

[para 49] These provisions ensure that the caseworkers to whom access to personal information is given will use it solely for the purposes for which it was shared by the CPS, as described in the foregoing paragraphs. While I note that the Complainant appears to contest this by reference to the fact that the Affected Party has accessed his personal information as recently as September, 2008, he provides no proof for this assertion, nor any information about the surrounding circumstances that might give reason to believe that if this happened, it was for improper purposes. As well, he suggests that the Affected Party is not abiding by the Agreement insofar as it accessed his personal information, whereas its role is limited to providing services to victims. In this regard, I have explained that to effectively provide services to victims, the Affected Party's caseworkers need information about the circumstances and participants in alleged incidents of domestic conflict or violence.

Was the disclosure of information to the Affected Party for a use consistent with the purpose for which it was collected?

[para 50] Section 41 provides that for the purposes of section 40(1)(c), a use or disclosure is consistent with the purpose for which the information was collected if the use or disclosure:

- (a) *has a reasonable and direct connection to that purpose, and*
- (b) *is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information.*

[para 51] I have already found that the disclosure at issue was for the same purpose as that for which the information was collected. I also find that disclosure to the caseworkers for their use was consistent with the purpose of law enforcement, policing, and reducing the incidence of domestic violence. The disclosure both had a reasonable and direct connection to the purpose of law enforcement, policing, and preservation of the peace and crime prevention, and it was necessary for the police to perform their statutory duties to the fullest extent possible. In the context of section 41(b), I find that “necessary” does not mean “indispensable” – in other words it does not mean that the CPS could not possibly perform its duties without disclosing the information. Rather, it is sufficient to meet the test that the disclosure permits the CPS a means by which they may achieve their objectives of preserving the peace and enforcing the law that would be unavailable without it. If the CPS was unable to convey this information, the caseworkers would be less effective in taking measures that would help to bring about the desired goals. Because such disclosures enable the caseworkers to achieve the same goals as the CPS has under its statutory mandate, the disclosure of the information by the CPS also meets the first part of the test under section 41(b).

[para 52] I also find that it is necessary for the CPS to disclose the information to the Affected Party to operate a legally-authorized program of the CPS. As described above, both the Affected Party’s staff (the Domestic Violence Court Team), and the CPS, are part of a court program that consists of a specialized court housing a cross-disciplinary team. Such a program is legally authorized, in my view, because it helps to achieve the statutory objectives of the CPS. The goal of this program is to “ensure the court is aware of and has timely access to information and circumstances surrounding the criminal case before them”, which “allows the court to make informed and appropriate decisions designed to mitigate the possibility of future abuse and violence”. I find that information disclosures such as those at issue are necessary for the Affected Party’s caseworkers to participate effectively in this program. Since the CPS is a participant in the program (which, in my view, is sufficient to satisfy the phrase “program of the CPS”), and since the effectiveness of the program would be enhanced by the effective participation of the Affected Party’s caseworkers, I find the disclosures in this case met the terms of the second part of section 41(b). Again, I find that “necessary” in this context does not mean “indispensable”, and is satisfied as long as the disclosure is a significant means by which to help achieve the goals of the program. As well, it is, again, not necessary to show that the incidents from which the present complaint arose were channeled through this program, because, assuming the program was operational, at the time the information was collected there was a possibility that it would be so channeled, and it was therefore reasonable to collect the information for the purpose of this possible use.

[para 53] Before leaving this part of the decision I wish to note the Complainant’s arguments that the Public Body violated various subsections of section 40 because the disclosures in this case did not meet the terms of these provisions. In this regard, as I

have already pointed out in para 25, compliance with any one of the provisions of section 40(1) is sufficient to establish compliance with the Act.

Was the Complainant's personal information disclosed only to the extent necessary to carry out the purpose?

[para 54] Under section 40(4), a public body,

...may disclose personal information only to the extent necessary to enable the public body to carry out the purposes described in subsection (1), (2) and (3) in a reasonable manner.

[para 55] I have accepted that disclosing the Complainant's personal information to the Affected Party was for the purpose for which it was collected, and consistent with the purpose for which it was collected, in accordance with sections 40(1)(c) and 41 of the Act. However, the CPS must still limit the disclosure to the Affected Party in accordance with section 40(4).

[para 56] The information provided to the Affected Party by the CPS includes a summary of the events that occurred, and information about those involved, including the victim, the alleged perpetrator, and witnesses, for each case. In my view, disclosure of all this information by the CPS is necessary for it to achieve its objectives of preserving peace and enforcing the law by enabling the Affected Party's caseworkers to carry out their role, which includes the same objectives, in as safe and effective a manner as possible. Thus I find that the disclosure was only to the extent authorized by section 40(4).

2. Disclosure to the CFSA

[para 57] The next issue is the potential disclosure by the CPS of the Complainant's personal information to another public body, CFSA. The CPS argues that if this disclosure did in fact happen, it was authorized by section 40(1)(f), as CPS was required to disclose the information to the director of the CFSA under section 4(1) of the *Child, Youth and Family Enhancement Act* R.S.A. 2000, Chapter C-12 ("CYFEA") which states:

4(1) Any person who has reasonable and probable grounds to believe that a child is in need of intervention shall forthwith report the matter to a director.

[para 58] Section 1(2)(g) of the CYFEA provides that "a child is in need of intervention if there are reasonable and probable grounds to believe that the survival, security or development of a child is endangered because the guardian of the child is unable or unwilling to protect the child from emotional injury." Section 1(3)(a)(ii)(C) defines a child as emotionally injured when there are reasonable and probable grounds to believe that "exposure to domestic violence or severe domestic disharmony" has caused emotional injury to the child.

[para 59] These provisions closely parallel sections 3(1) and sections 1(2)(g) and 1(3)(a)(ii)(C) of the *Child Welfare Act*, which was the predecessor of the CYFEA, and which was in force at the time the first two police reports were created, and received by the CFSA (as indicated by the dates on what appear to be associated CFSA “screening reports”). The third of the reports was created and appears to have been received by the CFSA after the CYFEA came into force.

[para 60] As stated in para 21, I have been unable to determine whether the CPS disclosed personal information of the Complainant directly to the CFSA. Thus I do not, strictly speaking, need to decide whether the conditions outlined in the two preceding paragraphs were met.

[para 61] However, I do note from my review of the reports that the situations that were investigated in this case appear to have met these conditions. There were children present at the time domestic violence or severe domestic disharmony occurred. In my view, this fact in itself triggers the reporting requirement. It constitutes reasonable and probable grounds for believing that the children were in need of intervention because their mental or emotional functioning or development was endangered by their parents’ apparent inability or unwillingness to protect them from such exposure. The provision does not require that emotional injury be demonstrated, only that circumstances are present which reasonably appear to jeopardize a child’s development. Thus, if I could conclude that the CPS did provide information directly to the CFSA in those situations, I would find that it did so in compliance with section 40(1)(f) of the FOIP Act, by reference to its obligations under the quoted provisions of the CYFEA or its earlier version, the *Child Welfare Act*.⁴ As well, I would find that the disclosure was also authorized by section 40(1)(h), as being necessary for the performance of the duties of officers or employees of the CFSA, as CFSA employees and officers have a duty to investigate situations in which they receive information that intervention or protective services may be needed for a child.⁵

[para 62] I note as well that if the disclosures happened via the Affected Party, and that if this body is an organization under the *Personal Information Protection Act* (PIPA), and if it is subject to that act, similar conclusions would likely follow in my opinion. The collection of the information by the Affected Party would be authorized by section 14(c) of PIPA (collection pursuant to a statute of Alberta (the FOIP Act) that authorizes disclosure by a public body to the organization), and the subsequent disclosure would be authorized by section 20(b) (disclosure pursuant to a statute of Alberta that requires the disclosure (the child welfare legislation)). There is also a significant likelihood that the

⁴ With respect to the earlier act (the CWA), the reporting requirement formerly called for an actual belief on the part of the reporter that the conditions of the provision were met, and it might therefore be necessary to obtain evidence from the reporting person as to whether they held such a belief. This requirement has been removed from the amended legislation.

⁵ Section 40(1)(h) authorizes disclosure to an officer or employee of the public body if the information is necessary for the performance of the duties of the officer or employee. The child welfare legislation (both that in force at the time the two earlier reports were created and received and that in force at the time of the creation and receipt of the third one) place duties upon the director, who receives information that a child may in need of intervention or protective services, to make assessments and conduct investigations and to take appropriate action. The related legislation is set out in the companion order, Order F2008-030.

Affected Party is a non-profit organization whose activities are not of a commercial character, and if that is the case, it is not at present subject to access and privacy legislation.

3. The information-sharing agreement

[para 63] In addition to his complaint about his own personal information, the Complainant asked that this office examine the information-sharing agreement between the CPS and the Affected Party generally. He also asked that the agreement be struck down as illegal.

[para 64] Section 72 of the Act empowers me to require that a duty imposed by the Act be performed. There is no express power to strike down an information-sharing agreement, although if such an agreement sanctioned information exchanges that were in contravention of the Act, I could express an opinion that such transfers pursuant to the agreement would also contravene the Act. However, for the reasons given above, I find that disclosing personal information of victims, alleged perpetrators, and witnesses by the CPS to the Affected Party, such as permits the latter to effectively and safely perform its functions, pursuant the information-sharing agreement, complies with Part 2 of the Act.

V. ORDER

[para 65] I make this Order under section 72 of the FOIP Act.

[para 66] I find that the CPS disclosed the Complainant's personal information to the Affected Party, and that it was authorized to do so under section 40(1)(c) of the Act. Therefore, I find that the Public Body did not disclose the Complainant's personal information in contravention of Part 2 of the Act.

[para 67] I make no finding as to whether the CPS disclosed the Complainant's personal information to the CFSA.

Christina Gauk, Ph.D.
Director of Adjudication