ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2009-040

May 18, 2010

EDMONTON POLICE SERVICE

Case File Number F4310

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Summary: Under the *Freedom of Information and Protection of Privacy Act* (the "Act"), the Applicant asked the Edmonton Police Service (the "Public Body") for the names of police officers involved in certain investigations of alleged misconduct, the particulars of the charges against them, and the written submissions that the Public Body made to the Edmonton Police Commission explaining the delay in completing certain other investigations and the reasons for requesting extensions to complete them. The Public Body withheld all of the information, relying on section 17 (disclosure harmful to personal privacy), section 20 (disclosure harmful to law enforcement), section 23 (local public body confidences) and section 29 (information available to the public).

The Adjudicator found that the Public Body properly withheld the names of the police officers in question under section 29(1)(a) of the Act, as the names were readily available to the public in an online report.

The Adjudicator found that the Public Body did not properly withhold the particulars of the charges against the police officers under section 29(1)(a), as the publicly available report did not contain this information. It contained only the generally-stated charges, without any further facts or details. As the Public Body misconstrued the Applicant's request for the particulars of the charges, and the particulars were not contained in the records at issue submitted in the inquiry, the Adjudicator ordered the Public Body to provide a response to the Applicant's request for the particulars.

The Adjudicator found that the Public Body properly withheld, under section 23(1)(b) of the Act, the written submissions that the Public Body made to the Edmonton Police Commission, as disclosure could reasonably be expected to reveal the substance of deliberations of a meeting of the Edmonton Police Commission that was held, and was authorized to be held, in the absence of the public. Specifically, the information would reveal the substance of the Commission's deliberations on whether or not to grant the Public Body's requests to extend the time to complete its investigations. The Adjudicator confirmed the Public Body's decision not to disclose the information under section 23. It became unnecessary to review the application of section 20 of the Act to the same information.

The Adjudicator reviewed the application of section 17 of the Act to the information relating to the requests to extend the investigations, finding that disclosure of some of the information would be an unreasonable invasion of the personal privacy of the police officers being investigated. He therefore required the Public Body to withhold it.

Statutes, Regulations and Bylaws Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(h)(ii), 1(i)(x)(B), 1(j)(iii), 1(n), 1(n)(i), 1(n)(iv), 2(e), 12, 17, 17(1), 17(4)(b), 17(4)(d), 17(5)(a), 17(5)(h), 20, 20(1), 23, 23(1), 23(1)(b), 23(2), 29, 29(1), 29(1)(a), 32, 32(1)(b), 71(1), 71(2), 72, 72(2)(b), 72(2)(c) and 72(3)(a); *Freedom of Information and Protection of Privacy Regulation*, Alta. Reg. 186/2008, s. 18, 18(1), 18(1)(b), 18(1)(e) and 18(2); *Police Act*, R.S.A. 2000, c. P-17, s. 27(1); *Police Service Regulation*, Alta. Reg. 356/90, ss. 7, 7(4) and 17; *The City of Edmonton Bylaw 14040*, arts. 1 and 9(b).

Authorities Cited: AB: Orders 97-002, 2001-040, F2004-015, F2004-024, F2004-026, F2005-016, F2008-006, F2008-020 and F2008-028; *In the Matter of Plimmer* (Decision No. 008-2002 of the Law Enforcement Review Board); *University of Alberta v. Pylypiuk*, 2002 ABQB 22; *Calgary Police Service v. Alberta (Information and Privacy Commissioner)*, 2010 ABQB 82 (appeal to the Court of Appeal of Alberta filed May 5, 2010, Appeal No. 1001-0111 AC). **Other:** *Jurist Canada's browsable dictionary of basic Canadian legal terms*, retrieved May 12, 2010 from http://jurist.law.utoronto.ca/dictionary.htm; *Merriam-Webster online dictionary*, retrieved May 12, 2010 from http://www.merriam-webster.com/dictionary.

I. BACKGROUND

[para 1] In a letter dated September 5, 2007, the Criminal Trial Lawyers' Association (the "Applicant") made an access request to the Edmonton Police Service (the "Public Body") under the *Freedom of Information and Protection of Privacy Act* (the "Act" or "FOIP Act"). The Applicant had obtained a copy of a June 2007 Report to the Edmonton Police Commission from the Public Body's Professional Standards Branch (the "June 2007 Report"), and sought the names of police officers involved in certain investigations of alleged misconduct set out in the Report, the particulars of the charges against them, and the written submissions that the Public Body made to the Edmonton

Police Commission explaining the delay in completing certain other investigations and the reasons for requesting extensions to complete them.

[para 2] By letter dated October 30, 2007, the Public Body refused to grant access to any of the requested information under the Act, on the basis that it was excepted from disclosure under section 17 (disclosure harmful to personal privacy), section 20 (disclosure harmful to law enforcement), section 23 (local public body confidences) and section 29 (information available to the public).

[para 3] In correspondence received by this Office on December 10, 2007, the Applicant requested a review of the Public Body's response to its access request. When doing so, the Applicant also asserted that section 32 of the Act (disclosure in the public interest) required the Public Body to disclose the requested information.

[para 4] The Commissioner authorized a portfolio officer to investigate and try to settle the matter between the parties. This was not successful, and the Applicant requested an inquiry by letter dated March 4, 2008. A written inquiry was set down.

[para 5] Both parties made initial and rebuttal submissions. On February 24, 2010, I invited the parties to make supplemental submissions regarding a relevant case of the Court of Queen's Bench issued February 2, 2010. This case was *Calgary Police Service v. Alberta (Information and Privacy Commissioner)*, which dealt with the application of section 17 of the Act to police disciplinary decisions. Both parties to this inquiry made initial and rebuttal supplementary submissions regarding that case.

II. RECORDS AT ISSUE

[para 6] The records at issue consist of information responsive to six items set out in the Applicant's access request, which concern the Public Body's investigations of alleged police misconduct and its requests to the Edmonton Police Commission for extensions of the time to complete some of them. These items and the responsive information are further described in this Order, as they are discussed.

III. ISSUES

[para 7] The Notice of Inquiry, dated April 6, 2009, set out the following issues, although I have placed them in a different sequence for the purpose of discussion:

> Did the Public Body properly apply section 29 of the Act (information available to the public) to the records/information?
>
> Did the Public Body properly apply section 23 of the Act (local public body confidences) to the records/information?
>
> Does section 17(1) of the Act (disclosure harmful to personal privacy) apply to the records/information?

Did the Public Body properly apply section 20 of the Act (disclosure harmful to law enforcement) to the records/information?

Does section 32 of the Act (disclosure in the public interest) require the Public Body to disclose the records/information?

IV. DISCUSSION OF ISSUES

A. Did the Public Body properly apply section 29 of the Act (information available to the public) to the records/information?

[para 8] Section 29 of the Act reads, in part, as follows:

> *29(1) The head of a public body may refuse to disclose to an applicant information*
>
> *(a) that is readily available to the public,*
> …

[para 9] 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 withheld under section 29.

[para 10] The Public Body applied section 29(1) (and no other section of the Act in the alternative) to the information requested in items 2 to 5 of the Applicant's access request of September 5, 2007. These items, along with item 6, were as follows:

> 2. *In relation to [file number] it is indicated that the member has been charged. Please provide us with the name of the member;*
>
> 3. *It is indicated that Cst. [name], Cst. [name], Cst. [name], and Cst. [name] have all been charged. Please provide us with copies of the record which particularizes the charges;*
>
> 4. *Then there are 44 files where 2 of them are pending the scheduling of a disciplinary hearing. Please provide us with the names of the officers involved and the particulars of the charges;*
>
> 5. *Then there are 51 files where 4 of them are pending a disciplinary hearing scheduling. We request the same information;*
>
> 6. *Then there are 4 files pending scheduling of disciplinary hearings. Please provide us with the same information.*

[para 11] The Public Body applied section 29(1)(a) to the information requested in items 2 to 5 above, on the basis that the information was contained in the June 2007

Report, which was and is publicly available on the website of the Edmonton Police Commission. The Applicant does not dispute that the Report is publicly available, but argues that the requested information is not actually in the Report.

[para 12] The Public Body submits that it is unable to determine which hearings the Applicant is referring to in item 6 above. I find that items 5 and 6 are requesting the same information, being the names of the officers involved, and the particulars of the charges against them, in relation to four files for which disciplinary hearings are pending. These files are listed on page 18 of the June 2007 Report under the heading "Files Pending Scheduling of Disciplinary Hearings: 4". I considered whether item 6 was instead referring to four files listed on page 19 of the Report under the heading "These Files are at the Crown or Before the Courts: 4". However, because item 6 clearly refers, although in a repetitive fashion, to "files pending scheduling of disciplinary hearings" rather than to files at the Crown or before the Courts, I find that the Applicant did not request information relating to the four files on page 19.

[para 13] As items 5 and 6 of the Applicant's access request asked for the same information, I will refer to and deal with those two items together in the discussion that follows.

1. Does the information at issue fall within section 29(1)(a)?

[para 14] As reproduced above, item 2 was a request for the name of a police officer who had been charged in relation to a particular file. Parts of items 4 to 6 were requests for the names of particular officers for whom the scheduling of a disciplinary hearing was pending. All of these names are found in the June 2007 Report, although it is necessary to trace the relevant file number on one page to a different page where the name is given (which is possibly why the Applicant did not see that the names were already in the Report at the time of its access request). In its submissions, the Applicant does not dispute that the names are in the Report. I find that the names of the various police officers fall within section 29(1)(a) of the Act.

[para 15] Item 3 was a request for "copies of the record which particularizes the charges" against four police officers. Apart from the requests for the names just discussed, items 4 to 6 were requests for "the particulars of the charges" against several police officers for whom the scheduling of a disciplinary hearing was pending.

[para 16] The June 2007 Report sets out the charges against the aforementioned police officers, variably, as "unlawful or unnecessary exercise of authority", "neglect of duty", "insubordination", "deceit" and "corrupt practice". The Applicant argues that this does not sufficiently respond to its access request:

> *The record does not particularize the charges. For example, with respect to the charge against Cst. [name] it is said that the complaint was "neglect of duty and insubordination" but there are absolutely no particulars in relation to when the alleged misconduct occurred or what*

> *the misconduct was about. The Edmonton Police Service will be in possession of the "Notice and Record of Disciplinary Proceedings" which sets out the details of the charges and "Particulars of the Alleged Misconduct," which provides further details in relation to the charges, including a list of witnesses and statements of their evidence.*

[para 17] In response, the Public Body submits that the Applicant did not specify in its access request that that it was seeking the "Notice and Record of Disciplinary Proceedings" in relation to the police officers in question, and that those particular records are therefore not responsive and not at issue. It says that if the Applicant wishes to access these records, it may submit a new access request.

[para 18] I note that, between the time of its initial access request and this inquiry, the Applicant made a second access request dated March 4, 2008, specifically asking for the "Notice and Record of Disciplinary Proceedings and the particulars of the alleged misconduct". The Public Body indicates, in its submissions, that it sought clarification as to what was being requested, but received no further correspondence from the Applicant. The Applicant, in turn, notes that it did provide clarification, by letter dated March 27, 2008. None of the foregoing has any bearing on this inquiry, as the access request of March 4, 2008 is not before me. Having said this, the March 4, 2008 request for "particulars of the alleged misconduct" appears to be the same as, or similar to, the September 5, 2007 request for the "particulars of the charges", so some of my comments in this Order may be found by the parties to be relevant to part of the subsequent access request of March 4, 2008.

[para 19] In its access request of September 5, 2007, the Applicant asked for the record that "particularizes" certain charges and the "particulars" of various other charges. The question is therefore whether the June 2007 Report already sets out those "particulars". An online legal dictionary defines "particulars" as "detailed information or 'particulars' of facts alleged in a more general pleading, or in a criminal charge" [Particulars (n.d.) in *Jurist Canada's browsable dictionary of basic Canadian legal terms*]. I adopt this definition.

[para 20] I find that the information that is publicly available in the June 2007 Report – being the references to unlawful or unnecessary exercise of authority, neglect of duty, insubordination, deceit and corrupt practice – amounts only to the generally-stated charges against the police officers, not the particulars of those charges, as there is no detailed information and no specific facts alleged. There is further support for this finding in a decision of the Law Enforcement Review Board, where the "particulars of the charge" against a police officer were read into the record. There, the general charge was "unlawful or unnecessary exercise of authority", yet the particulars set out the date of the alleged contravention, the individual with whom the police officer interacted, and various details of what was alleged to have transpired (*In the Matter of Plimmer*, Decision No. 008-2002 at p. 2 or para. 4).

[para 21] As the particulars of the charges that the Applicant requested in items 3 to 6 of its access request are not found in the June 2007 Report, and are therefore not readily available to the public, they do not fall within section 29(1)(a) of the Act. I conclude that the Public Body did not have the discretion to refuse to disclose that information in reliance on that section.

[para 22] In its response to the Applicant's access request, the Public Body applied only section 29 of the Act to the particulars of the charges against the police officers. However, it makes submissions in this inquiry to the effect that section 17 (disclosure harmful to personal privacy) also applies, referring to particulars set out in 24 pages of records submitted as the records at issue in this inquiry. However, on my tracing of the file numbers in relation to which the Applicant requested particulars of the charges (which file numbers are found on pages 5 to 9 of the June 2007 Report under the heading "Pending Disciplinary Hearings"), it would not appear that these file numbers are those set out in the records submitted by the Public Body (which file numbers are found on pages 10, 14 and 15 of the Report under the headings "Intake Investigations Extension Requests" and "Major Case Section Extension Requests").

[para 23] As the Public Body misconstrued the Applicant's request for the particulars of the charges, incorrectly believing that the June 2007 Report contained the responsive information, and the particulars actually requested are not in the records before me, I intend to order the Public Body to provide a proper response, under section 12 of the Act, to the Applicant's request for the particulars set out in items 3 to 6 of its access request. In so doing, the Public Body may disclose the responsive information, or rely on a section of the Act to withhold all or part of it.

[para 24] The foregoing said, for the sake of expedience and in order to possibly obviate the need for another request for review and inquiry, I will provide guidance to the Public Body, later in this Order, on whether or not the particulars of the charges might be subject to section 17(1) of the Act. I am in a position to do so because the particulars found in the records submitted in this inquiry are presumably comparable to the particulars actually requested by the Applicant, the decision of the Court of Queen's Bench in *Calgary Police Service v. Alberta (Information and Privacy Commissioner)* provides guidance, and the parties made submissions on the application of section 17 and the relevance of the aforementioned decision in this inquiry.

2. Did the Public Body properly exercise its discretion not to disclose?

[para 25] I found above that the names of the police officers that the Applicant requested in item 2 of its access request, and in parts of items 3 to 6, fell within section 29(1)(a) of the Act. I must now consider whether the public body properly exercised its discretion in refusing to disclose the information. A public body exercising its discretion relative to a particular provision of the Act should consider the Act's general purposes, the purpose of the particular provision on which it is relying, the interests that the provision attempts to balance, and whether withholding the records would meet the

purpose of the Act and the provision in the circumstances of the particular case (Order F2004-026 at para. 46).

[para 26] The Public Body submits that it chose not to disclose the names of the police officers because the information was contained in the June 2007 Report, which is publicly available. It says essentially the same thing in an affidavit sworn on its behalf. This, however, merely explains that the information falls within section 29(1)(a), not why the Public Body exercised its discretion not to disclose the information in this particular case. There will be times where a public body should provide information in response to an access request, even though the requested information is publicly available somewhere. For instance, it may be very easy for a public body to provide the requested information where there are only a few pages, or an applicant may not have the resources to obtain information that is publicly available online.

[para 27] Despite the Public Body's lack of submissions regarding the exercise of its discretion not to disclose the names of the police officers in question, I find that it properly exercised its discretion. This is because the Applicant, at the time of its access request, was obviously already in possession of the June 2007 Report, as the Applicant's review of the Report is what led it to make the access request in the first place. A public body reasonably exercises its discretion not to disclose information that is publicly available when it knows that the applicant already has the information. Such exercise of discretion is in keeping with the Act's general purposes and the purpose of section 29(1)(a).

[para 28] I conclude that the Public Body properly applied section 29(1)(a) of the Act to the names of the police officers requested by the Applicant.

B. Did the Public Body properly apply section 23 of the Act (local public body confidences) to the records/information?

[para 29] Section 23 of the Act reads as follows:

> *23(1) The head of a local public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal*
>
> *(a) a draft of a resolution, bylaw or other legal instrument by which the local public body acts, or*
>
> *(b) the substance of deliberations of a meeting of its elected officials or of its governing body or a committee of its governing body, if an Act or a regulation under this Act authorizes the holding of that meeting in the absence of the public.*
>
> *(2) Subsection (1) does not apply if*

> *(a) the draft of the resolution, bylaw or other legal instrument or the subject-matter of the deliberation has been considered in a meeting open to the public, or*
>
> *(b) the information referred to in that subsection is in a record that has been in existence for 15 years or more.*

[para 30] 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 withheld under section 23. Here, the Public Body specifically relied on section 23(1)(b) (and sections 17 and 20 in the alternative) to withhold the information that the Applicant requested in item 1 of its access request. That item was as follows:

> 1. *Under the "2003 - 2004 - 2005 Outstanding File Summary" [in the June 2007 Report] there are two files which were opened in 2003, 8 in 2004 and 13 in 2005. This means that there are 2 files where at least 3.5 years have passed from the date of the complaint with no conclusion and 8 files where at least 2.5 years have past [sic] since the date of the complaint. Would you please provide me with copies of the written submissions made to the Edmonton Police Commission explaining the delay and explaining why the extension is required? Would you also please explain what the Edmonton Police Commission is doing about this unacceptable delay?*

[para 31] The last sentence above is not a request for information, but rather a question. A public body does not have a duty under the Act to answer questions about how matters arising from records were dealt or not dealt with (Order F2008-006 at para. 58). I find here that the Public Body does not have to explain what the Edmonton Police Commission is doing about the delays relating to the matters cited by the Applicant.

[para 32] As for the Applicant's request for the "written submissions made to the Edmonton Police Commission explaining the delay and explaining why the extension is required", the Public Body submitted 24 pages of records *in camera*. These consist of "Intake Investigation Extension Requests" and "Major Case Extension Requests" provided to the Edmonton Police Commission by the Public Body (the "Extension Requests"). However, I find that some of the information on these pages is not responsive to the Applicant's access request.

[para 33] Specifically, the details of the complaints and allegations against the police officers, found under two particular headings in the Extension Requests, do not explain the delay in completing the matters or explain why extensions are required. Likewise, information that happens to appear on the fourth line of pages 8, 9 and 16 of the records submitted by the Public Body is not responsive.

[para 34] Rather, the delays and reasons for the extension requests are explained in descriptions of the investigative steps already taken by the Public Body, the steps to be taken in order to complete the investigations, and the justifications for the extensions in each particular case. This responsive information is found on approximately the lower half of each page. I note that the complaint and/or allegations against the police officers are sometimes referenced in the context of describing the investigative steps taken or to be taken, in which case I include it within the responsive information on the basis that it is background explaining the delay or need for the extension. I also find that the file numbers, date of the complaint, name of the investigator and number of previous extension requests (found toward the top of each page) is responsive to the Applicant's access request, as this information either links the explanations for the delay and the extension request to the specific matters for which the Applicant wanted the information (i.e., the file numbers), or provides further information about the investigative steps (i.e., the names of the investigators) or about the delay itself (i.e., the date of the complaint and the number of previous extension requests).

[para 35] Given the foregoing, the information at issue in this part of the Order consists of everything in the records submitted by the Public Body *in camera*, except the information under headings that set out the complaints and allegations against the police officers, and the information on line 4 of pages 8, 9 and 16.

1. Does the information at issue fall within section 23(1)(b)?

[para 36] Section 23(2) of the Act states that section 23(1) does not apply if the subject-matter of the deliberation has been considered in a meeting open to the public, or the information is in a record that has been in existence for 15 years. Therefore, I must first decide whether section 23(1)(b) can even apply at all.

[para 37] The information at issue here has not been in existence for 15 years. I also find that the relevant subject-matter – being the explanation for the delays in the investigations and the reasons for the extension requests – has not been considered in a meeting open to the public. The Public Body explains that its June 2007 Report to the Edmonton Police Commission was provided in the open portion of a meeting of the Commission on July 18, 2007, but that the Extension Requests were provided in a closed portion of that meeting. Although the June 2007 Report indicates publicly that various Extension Requests were being made, the details of those Extension Requests, as found in the information at issue, were not considered during the public meeting. In other words, the general subject-matter regarding the fact of the Extension Requests is not the same as the more specific subject-matter regarding the reason for the delays and why the extensions were being requested.

[para 38] I conclude that the application of section 23(1)(b) by the Public Body remains possible in this case. For section 23(1)(b) to apply, each of the following questions (adapted from Order 2001-040 at para. 9) must be answered in the affirmative:

(i) Was there a meeting of elected officials, a governing body or a committee of a governing body of a local public body?

(ii) Does an Act, or a regulation under the FOIP Act, authorize the holding of that meeting in the absence of the public?

(iii) Could disclosure of the information reasonably be expected to reveal the substance of deliberations of that meeting?

[para 39] The Public Body has satisfied me that the above requirements are met with respect to the information at issue in this part of the Order.

(a) Was there a meeting of elected officials, a governing body or a committee of a governing body of a local public body?

[para 40] The Public Body is the relevant local public body, as its head is the person who refused to disclose information under section 23. The Public Body is a "local public body" under the Act, as it is defined as such as a result of section 1(j)(iii) ["local public body" means "a local government body"] and section 1(i)(x)(B) ["local government body" means "any police service as defined in the *Police Act*"].

[para 41] The Edmonton Police Commission is a governing body of the Public Body, given section 27(1) of the *Police Act*. That provision requires a municipality that has assumed responsibility for establishing a municipal police service to establish and maintain an adequate and effective municipal police service "under the general supervision of a municipal police commission". The Public Body also submitted a copy of *The City of Edmonton Bylaw 14040*, article 1 of which states that the Edmonton Police Commission "provide[s] civilian oversight for the police service within the city of Edmonton."

[para 42] Finally, there was a meeting of the Edmonton Police Commission on July 18, 2007.

(b) Does an Act, or a regulation under the FOIP Act, authorize the holding of that meeting in the absence of the public?

[para 43] As indicated above, a portion of the July 18, 2007 meeting of the Edmonton Police Commission was held in the absence of the public, being the portion during which the Commission received and presumably considered copies of the Public Body's Extension Requests. The Public Body submits that the Edmonton Police Commission had the authority to hold that part of the meeting in the absence of the public under section 18 of the *Freedom of Information and Protection of Privacy Regulation* (the "FOIP Regulation"), which reads, in part, as follows:

18(1) A meeting of a local public body's elected officials, governing body or committee of its governing body may be held in the absence of the public only if the subject-matter being considered in the absence of the public concerns

…

(b) personal information of an individual, including an employee of a public body,

…

(e) a law enforcement matter, litigation or potential litigation, including matters before administrative tribunals affecting the local public body, or

…

(2) Subsection (1) does not apply to a local public body if another Act

(a) expressly authorizes the local public body to hold meetings in the absence of the public, and

(b) specifies the matters that may be discussed at those meetings.

[para 44] Section 18(2) of the FOIP Regulation states that section 18(1) does not apply if another Act sets out the authority to hold meetings in the absence of the public. I am not aware of any such legislation in this case, and the parties have not drawn any to my attention. I note that article 9(b) of *The City of Edmonton Bylaw 14040* incorporates section 18 of the FOIP Regulation, by reference, when it sets out procedures governing the meetings of the Edmonton Police Commission.

[para 45] The Public Body submits that sections 18(1)(b) and 18(1)(e) of the FOIP Regulation apply in this case. I find that some – but not all – of the subject-matter considered by the Edmonton Police Commission, during its closed meeting, concerned the personal information of individuals, including employees of a public body, under section 18(1)(b) of the FOIP Regulation. Specifically, parts of the Extension Requests concern the personal information of the police officers being investigated, such as the nature of the allegations against them and whether or not they were charged with a criminal offence. Other parts of the Extension Requests do not concern anyone's personal information, as where the Public Body's explanations for delays and its justifications for extensions are set out in such a way that no personal information is revealed. Section 18(1)(b) of the FOIP Regulation therefore did not authorize the Edmonton Police Commission to consider *everything* in the Extension Requests in the absence of the public.

[para 46] However, I find that section 18(1)(e) of the FOIP Regulation grants the Edmonton Police Commission the authority to hold the meeting in question in the absence of the public, on the basis that consideration of everything in the Extension Requests concerns law enforcement matters. Under section 1(h)(ii) of the Act, "law enforcement" means "a police, security or administrative investigation, including the

complaint giving rise to the investigation, that leads 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". Here, the matters for which extensions were requested were police and/or administrative investigations that could lead to a penalty or sanction under section 17 of the *Police Service Regulation*, which penalty or sanction could be imposed by the Public Body (Order F2008-020 at para. 35). As all of the information in the Extension Requests concerns law enforcement matters, the whole of the subject-matter considered by the Edmonton Police Commission in relation to those Extensions Requests was authorized to be considered in the absence of the public.

[para 47] The Applicant argues that the Edmonton Police Commission should not have considered the Extension Requests *in camera*, as the Commission claims to have an open and transparent process and should not keep the information at issue secret from the public. This argument is not relevant to the inquiry. Provided that the Commission had the authority to hold the meeting in question in the absence of the public, as I have found here, it does not matter that the Applicant believes that it should not actually have been held in the absence of the public.

(c) Could disclosure of the information reasonably be expected to reveal the substance of deliberations of that meeting?

[para 48] The Applicant submits that the information at issue could not be expected to reveal the substance of deliberations, although it does not explain further. The Public Body submits that the information at issue in the Extension Requests could reasonably be expected to reveal the substance of deliberations, on the basis that the Public Body must seek the approval of the Edmonton Police Commission to extend the time period for investigating complaints against police officers. Specifically, section 7(4) of the *Police Service Regulation* grants the Edmonton Police Commission the authority to extend the time limits within which the Public Body must charge a police officer with a contravention of that Regulation following a complaint, and within which the Public Body must commence a disciplinary hearing if one is to be held. The Public Body says that it provided the information at issue in order to justify its requests for extensions.

[para 49] As the Edmonton Police Commission must approve extensions of time limits under the *Police Service Regulation*, I presume that the Edmonton Police Commission deliberated on whether or not to grant the extensions requested by the Public Body. Here, the information at issue consists of the Public Body's explanations for the delays and its explanations of why the extensions were required, all of which would have formed part of the Commission's deliberations on whether or not to grant the extensions. I find that disclosure of the information at issue could reasonably be expected to reveal the substance of deliberations of the meeting of the Edmonton Police Commission that was held to consider the Extension Requests.

[para 50] I conclude that the information at issue falls within section 23(1)(b) of the Act.

2. Did the Public Body properly exercise its discretion not to disclose?

[para 51] Section 23(1)(b) of the Act sets out a discretionary exception to disclosure. Principles regarding a public body's exercise of discretion to withhold information under the Act were set out earlier in this Order.

[para 52] In its submissions, the Public Body states that it chose not to disclose the information about the delays in its investigations and its extension requests in order to protect the confidentiality of the Edmonton Police Commission's deliberations. In an affidavit sworn on behalf of the Public Body, it is further stated that the deliberations involved the sharing of confidential information between the Public Body and the Commission, and that this confidentiality must be maintained because the information at issue consists of third party personal information and disclosure might cause harm to law enforcement.

[para 53] I find that the Public Body properly exercised its discretion in refusing to disclose the information at issue. In noting that the information relates to law enforcement matters (although I make no comment on whether there would be harm to those matters on disclosure) and that some of the information consists of the personal information of individuals the disclosure of which may be an unreasonable invasion of personal privacy, the Public Body has shown that it considered the Act's general purposes and the interests that section 23(1) of the Act (and, in turn, section 18 of the FOIP Regulation) attempts to balance. It considered that the purpose of section 23(1) is to protect local public body confidences, and that it was important to protect that confidentiality in this particular case, due to the nature of the information in question.

C. Does section 17 of the Act (disclosure harmful to personal privacy) apply to the records/information?

[para 54] Section 17 of the Act reads, in part, 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*
>
> *[various circumstances, none of which exist in this inquiry]*
>
> …
>
> *(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if*
>
> …

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

…

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

…

(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,

…

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

…

[para 55] 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 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. Having said this, 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 sets out a mandatory exception to disclosure – and section 2(e) of the Act provides for independent reviews of the decisions of public bodies – I must also independently review the information in the records at issue and determine whether disclosure would or would not be an unreasonable invasion of personal privacy.

1. The information explaining the delays and need for extensions

[para 56] In its response to the Applicant, the Public Body applied section 17 of the Act to the information set out in item 1 of the access request, which consists of the written submissions made to the Edmonton Police Commission explaining the delays in completing certain investigations and explaining why an extension is required. Earlier in this Order, I described this information at issue as being most, but not all, of the information in the Extension Requests submitted *in camera* by the Public Body. I also found that this information was properly withheld under section 23 (local public body confidences).

[para 57] Because section 23(1) sets out a discretionary exception to disclosure, a public body may grant access to information even if the section applies. Conversely, section 17(1) sets out a mandatory exception to disclosure, meaning that a public body must not grant access if the section applies. In this inquiry, I will therefore determine whether the Public Body properly applied section 17 to the information in item 1 of the Applicant's access request. I do this so that, in comparable situations, the Public Body has guidance as to whether it is *required* to withhold – as opposed to has the *discretion* to withhold or disclose – certain information explaining its delays in completing investigations of alleged police misconduct and justifying its requests for extensions.

(a) Some of the personal information at issue

[para 58] Under section 1(n) of the Act, "personal information" means "recorded information about an identifiable individual". I find that only some of the information at issue in the Extension Requests is personal information to which section 17(1) can apply.

[para 59] First, I considered whether there was any personal information of complainants and witnesses in the Extension Requests. As the names of complainants and witnesses are not mentioned, and other information about them is not sufficiently detailed, I find that most complainants and witnesses are not identifiable. To the extent that some of them may be identifiable to others who are familiar with the events giving rise to the investigations by the Public Body, I find that disclosure of their personal information would not be an unreasonable invasion of their personal privacy. With one exception, all that is revealed about complainants and witnesses is that they were contacted or interviewed by the Public Body (what they may have said is not indicated). The exceptional personal information is that of a complainant found on page 20. I find that section 17(1) applies due to the nature of that personal information.

[para 60] The names of the investigating detectives and the Chief of Police are their personal information under section 1(n)(i). Their job titles, as well as those of Staff Sergeants mentioned in the records at issue, are also personal information. However, because the foregoing individuals conduct their investigations and make their decisions in their work-related capacities, and their activities have no personal dimension, disclosure of their names and job titles would not be an unreasonable invasion of their personal privacy (see Order F2008-028 at paras. 53 to 55).

[para 61] The file numbers found in the Extension Requests are the personal information of the police officers associated with those file numbers under section 1(n)(iv) of the Act, as they are identifying numbers assigned to those individuals. These file numbers, in and of themselves or in conjunction with information in the June 2007 Report, reveal only that a particular police officer was the subject of an investigation, that it was an "Intake Investigation" or a "Major Case", and that the Public Body requested an extension to complete the investigation. As all of these facts are already publicly available in the Report, I find that disclosure of the file numbers would not be an unreasonable invasion of the personal privacy of the police officers in question.

[para 62] Because the police officers being investigated are identifiable by virtue of their file numbers (their names are not actually in the Extension Requests), other information at issue is their personal information. First, there is sometimes information about whether a police officer has been served with notice of the allegations and/or has responded to the allegations. However, I find that disclosure of the mere facts of being served and/or responding (the content of a response is never given) would not be an unreasonable invasion of the police officers' personal privacy under section 17(1). The fact of each investigation already appears in the June 2007 Report, and these other procedural facts simply flow from, and add nothing truly substantive to, that fact.

[para 63] Other information in the Extension Requests is nobody's personal information, such as where the information merely describes general processes of the Public Body or why an extension is required, without revealing any personal information. Section 17(1) therefore cannot apply.

[para 64] Given my findings thus far, the Public Body did not have the authority to withhold, under section 17 of the Act, any of the information at issue in the Extension Requests found on pages 1, 2, 3, 5 and 21 of the records submitted *in camera*. (Again, the information at issue does not include the information under headings setting out the complaints or the allegations, as this is not responsive to the Applicant's access request.)

(b) The remaining personal information at issue

[para 65] The remaining personal information at issue in the Extension Requests consists of the number and/or nature of the allegations against the police officer being investigated (i.e., where included as background in the explanation of the investigative steps taken), whether or not a particular policy was breached, whether or not criminal charges were considered and/or laid, the result of a trial if there was one (including whether charges were stayed), and information about the investigation or process that also reveals personal information about the police officer in question.

[para 66] The foregoing personal information is an identifiable part of a law enforcement record under section 17(4)(b) of the Act, and relates to employment history under section 17(4)(d), thereby giving rise to presumptions against disclosure. Disclosure of the information would also, according to the Public Body, unfairly damage the reputations of the police officers under section 17(5)(h). I agree that disclosure of some of their personal information would unfairly damage the reputations of the police officers, particularly the details of the allegations against them and information revealing that criminal charges against any of them were considered.

[para 67] On the other hand, the Applicant argues that disclosure of the personal information of the police officers is desirable for the purpose of subjecting the activities of the Public Body to public scrutiny under section 17(5)(a). For public scrutiny to be a relevant circumstance, there must be evidence that the activities of the Public Body have been called into question, which necessitates the disclosure of personal information in order to subject the activities of the Public Body to public scrutiny (Order 97-002 at

para. 94; Order F2004-015 at para. 88). In determining whether public scrutiny is desirable, I may consider whether more than one person has suggested that public scrutiny is necessary; whether the Applicant's concerns are about the actions of more than one person within the Public Body; and whether the Public Body has not previously disclosed sufficient information or investigated the matter in question (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 desirability of 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 68] The Applicant argues that this inquiry raises important issues about public access to information concerning the administration of the *Police Act* by the Public Body and the Edmonton Police Commission. It says that there has been serious public controversy about the integrity of the process and about delays in the processing of complaints, and that it wants to uncover information about complaint files in order to comment on that process and inform the public. The Applicant's access request pointed out that there have been files where at least 3.5 years have passed from the date of the complaint with no conclusion, and eight files where at least 2.5 years have passed since the date of the complaint with no conclusion. Elsewhere in its submissions, the Applicant notes that the Public Body can lose jurisdiction to investigate a complaint of alleged police misconduct if it fails to meet the time limits under section 7 of the *Police Service Regulation.*

[para 69] The Applicant expresses concern about lengthy delays in the Public Body's investigations of alleged police misconduct, and its repeated need to request extensions from the Edmonton Police Commission in order to complete certain matters. This has a public component in the form of public accountability, in that the Public Body is responsible for ensuring that allegations of police misconduct are investigated and resolved in a timely manner. The Applicant represents a group of criminal law lawyers, which indicates that more than one person has suggested that public scrutiny of this aspect of the Public Body's activities is necessary. The Applicant's concerns are about the actions of more than one person within the Public Body. Although the Public Body has already released information about its Extension Requests in the June 2007 Report, the available information does not explain the reasons for the delays or the justifications for the extensions.

[para 70] Given the foregoing, I find that the Applicant has established that section 17(5)(a) applies in this case. I must therefore go on to consider whether the desirability for public scrutiny outweighs the presumptions against disclosure of the personal information remaining at issue, and outweighs my finding that disclosure of some of the information would unfairly damage the reputations of the police officers involved.

[para 71] 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 (Order 97-002 at para. 94; Order F2004-015 at para. 88). I find that disclosure of the personal information at issue in the Extension Requests is required in order to scrutinize the Public Body's delays and extensions. This information includes the allegations against the police officers (where it is included in the reasons for the delay or extension), facts about whether criminal charges were considered and/or laid, the results of any criminal trial, and procedural steps taken by the Public Body or the police officer being investigated. All of this sheds light on why there has been delay in the Public Body's investigations and why an extension is required.

(c) Weighing public scrutiny against unfair damage to reputation

[para 72] There are a few instances in the Extension Requests (e.g., at page 6 of the records submitted by the Public Body) where I find that disclosure of the personal information remaining at issue is not of a nature that would result in any damage to the reputation of the police officer in question under section 17(5)(h) of the Act, and there are no other circumstance weighing against disclosure. I find that the desirability of publicly scrutinizing the Public Body's delays and extension requests under section 17(5)(a) outweighs the presumptions against disclosure under section 17(4). The Public Body therefore did not have the authority to withhold the information under section 17.

[para 73] With respect to balancing the desirability for public scrutiny against unfair damage to reputation if the remaining personal information at issue were disclosed, I find various comments made by the Court of Queen's Bench in *Calgary Police Service v. Alberta (Information and Privacy Commissioner)* (the "*CPS* case") to be relevant.

[para 74] I first note that the present inquiry involves records created at the Public Body's investigative stage of dealing with complaints of alleged police misconduct, whereas the *CPS* case involved the disclosure of police disciplinary decisions following a disciplinary hearing. However, both matters concerned or concern the extent to which public scrutiny of a police service's resolution of alleged police misconduct outweighs damage to the reputation of police officers if their personal information is disclosed. In the *CPS* case, the Court reviewed the overall process of resolving allegations of police misconduct beginning with the initial complaint itself (at para. 14). It went on to conclude that there was already, generally speaking, an adequate level of public scrutiny and a proper balancing of public and private interests within the legislated scheme contained within the *Police Act* and *Police Service Regulation* (see para. 96). The Court further stated (at para. 94):

> The Commissioner also justified disclosure of all disciplinary decisions on the basis that it was necessary to scrutinize the CPS resolution process… Given the public component provided by the *Police Act*, as reflected by the public membership on the LERB and the Calgary Police Commission, their authority to independently conduct inquiries and attend disciplinary hearings as well as the Minister's authority regarding any matters that may

> involve federal or provincial offences, I see no basis for concluding that additional public scrutiny of the process by the media is "desirable".

[para 75] This inquiry involves public scrutiny of the Public Body's delays in investigating allegations of police misconduct and its justification for requesting extensions from the Edmonton Police Commission. As in the *CPS* case, there is already a public component provided by the *Police Act* and by the public membership on the Commission itself, which has the authority to review and grant the extension requests. I do not see, in this particular inquiry, how the desirability for public scrutiny under section 17(5)(a) weighs more heavily than in the *CPS* case, or how it should be balanced differently against the prospect of damage to the reputations of the police officers.

[para 76] Given the foregoing, I find that the principles in the *CPS* case apply in this inquiry. Having said this, there may be different inquires where the principles do not apply, depending on the particular activities of a police service that are desired to be scrutinized, the extent to which the *Police Act* already provides public scrutiny of those specific activities, and the presence of other factors weighing for or against disclosure of the personal information at issue.

[para 77] Turning now to the relevant principles set out in the *CPS* case, the Court made the following comments (at para. 101):

> Section 45(2)(a) and Section 46.1 [of the *Police Act*] concern complaints referred by the Chief [of Police] to the Minister of Justice and Attorney General because they may constitute a federal or a provincial offence. There is neither a hearing nor a CPS decision at this stage.
>
> If a decision to charge results from such a referral, or even without a referral, then disclosure of personal information limited to name and rank of the police officer so charged is justified along with the nature of the charge. There may be some reputational harm but no more so than to any member of the public in a sensitive position.
>
> Once a charge has been laid, the transparency of the justice system prevails. Public confidence in the system requires no less. Thus our open courts permit public scrutiny of the entire proceedings, subject only to court ordered restrictions on publication or access. The desirability for public scrutiny has been satisfied. For that reason, the disciplinary decision disclosure can be limited to the name and rank of the officer involved, and the nature of the charge.

[para 78] I take the foregoing to mean that, in those cases where a police officer with personal information remaining at issue in the Extension Requests has been charged with a federal or provincial offence, disclosure of his or her identity and the nature of the charge would not be an unreasonable invasion of personal privacy. As some of the remaining personal information at issue reveals nothing more than the fact that a police

officer was charged with a federal or provincial offence, I find that section 17(1) does not apply to this information. I also find that section 17(1) does not apply to information indicating the results of a trial if there was one, or whether criminal charges were stayed, as this information reveals nothing that is not already available through the transparency of the justice system, and thus disclosure would not be an unreasonable invasion of personal privacy

[para 79] However, I find that disclosure of the remaining personal information of the police officers who were charged with a federal or provincial offence would be an unreasonable invasion of their personal privacy. In accordance with the *CPS* case, the desirability of publicly scrutinizing the delays in the Public Body's investigations and its requests for extensions does not sufficiently outweigh the damage to reputation that would result if the information were disclosed. The Public Body was therefore required to withhold, under section 17, the remaining personal information of the police officers who were charged with a federal or provincial offence.

[para 80] The Public Body submits that there is no justification to disclose the name of, and charge against, a police officer unless there was a *conviction* for a federal or provincial offence. In my view, this misinterprets the Court's conclusions in the *CPS* case. As reproduced above, the Court stated that disclosure of personal information limited to the name and rank of the police officer charged, along with the nature of the charge, is justified in the interest of public scrutiny if there has been "a decision to charge" or "once a charge has been laid". In the particular case before the Court, the disclosable records happened to all relate to matters that followed a conviction for a federal or provincial offence (see para. 103), but this does not mean that the Court was changing or restricting the principles that it had just previously articulated (at para. 101).

[para 81] The personal information of the other police officers that is found in the records at issue is in the context of an investigation for which there were no related charges for a federal or provincial offence. With respect to this information, the following comments of the Court in the *CPS* case (again at para. 101) are relevant:

> Section 45(2)(b) and Section 46.1(4)(b) [of the *Police Act*] concern complaints which may constitute contravention of regulations governing discipline or the performance of duty.
>
> In so far as such complaints have not fallen within Section 45(2)(a) or Section 46.1 it is my view that there is no added public scrutiny that is desirable. I have described the public component of the LERB [Law Enforcement Review Board] and the Calgary Police Commission both of which exercise oversight review in relation to the CPS. Many of these complaints would be primarily employment issues for which the legislature has provided a detailed process for resolution, while balancing the public interest in the well-managed police service with the private and public interest in protecting against unreasonable loss of privacy merely for wearing the uniform.

> The result then is that for this category of disciplinary decisions, Section 17(5)(a) of the Act does not weigh sufficiently against the presumption in Section 17(4) and so the right to the police officer's privacy remains.
>
> I conclude as well that for this category of disciplinary decisions, Section 17(5)(h) is engaged:
>
> > The disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.
>
> The disclosure of disciplinary decisions that do not involve or result from any federal or provincial offence would not warrant the resulting reputational damage, and serves no public interest and so would be unfair.

[para 82] Based on the above principles, I conclude that disclosure of the remaining personal information of the police officers that is at issue in the Extension Requests would be an unreasonable invasion of the personal privacy of those police officers. While the Applicant has shown that disclosure is desirable for the purpose of subjecting the activities of the Public Body to public scrutiny, this is outweighed by my finding that disclosure would unfairly damage reputations. The Public Body was therefore required, under section 17 of the Act, to withhold the remaining personal information of the police officers who were not charged with a federal or provincial offence.

[para 83] The Applicant makes the following comments, which criticize or distinguish the reasoning in the *CPS* case:

> My submission is that the decision is seriously flawed and I hope it will be appealed.
>
> It is internally inconsistent. After ruling that the IPC [the Information and Privacy Commissioner] erred in a "one answer fits all" approach was incorrect [sic], the Court did the same thing with respect to certain categories of complaints.
>
> There is no consideration of the need to scrutinize whether the disciplinary process proceeded with integrity and free of bias.
>
> […]
>
> It is impossible to adequately scrutinize the police in relation to how they investigate themselves if they can avoid scrutiny simply by dismissing the complaints. Indeed, such a proposition is contrary to controlling authority.
>
> The court in *CPS* failed to fully understand the scheme of the *Police Act.* In cases where the complaint is generated internally, there is no appeal available to the LERB. There are many complaints that are dismissed

> where a complainant gives up or cannot afford to go to the LERB. That something was not appealed does not make the result correct or unworthy of public scrutiny.
>
> It would appear that the Court was not provided with examples of situations that called into question the integrity of police investigations of themselves. *CPS* can be distinguished on that basis.
>
> There are serious problems that exist with the performance of police services in investigating complaints against their officers. Experience has shown that complaints have been dismissed for all sorts of reasons, none of which have to do with the merits of the complaint.

[para 84] Despite the Applicant's submissions – as well as its references to various cases that it believes were not drawn to the attention of the Court and that stand for the opposite conclusion from that reached by the Court – the decision in the *CPS* case is the current law, I find it applicable in this inquiry, and I am therefore bound by it (although I note that an appeal was filed on May 5, 2010). The Applicant argues that the Court overlooked the need to scrutinize the integrity of police investigations of alleged police misconduct, but the Court was mindful of this aspect of public scrutiny. It referred not only to public scrutiny that is already available by way of the Law Enforcement Review Board, but also by way of the Police Commissions. The Applicant argues that the Court overlooked the need for public scrutiny where complaints do not lead to a charge in relation to a federal or provincial offence, but the Court addressed this, finding that the desirability for public scrutiny did not outweigh damage to reputation.

[para 85] In short, while the Applicant may disagree with the reasoning of the Court in the *CPS* case, I find its reasoning to be applicable to the issue in this inquiry of whether disclosure of the personal information of the police officers in question would be an unreasonable invasion of their personal privacy.

2. The particulars of the charges

[para 86] The parties made submissions in this inquiry regarding the application of section 17 of the Act to the personal information of the police officers being investigated for alleged misconduct, which personal information would include the particulars of the charges that were requested by the Applicant in items 3 to 6 of its access request. As explained earlier in this Order, what follows is provided only as guidance to the parties, as the Public Body has not yet properly responded to the Applicant's request for the particulars of the charges, and the particulars actually requested are not among the records submitted in this inquiry. Because I make no order regarding the application of section 17 to the particulars of the charges, it will remain open to the Applicant to request a review of the Public Body's response to that aspect of its request, once it provides its response as ordered.

[para 87] Given the guidance provided by the Court of Queen's Bench in the *CPS* case, which I have found to be applicable in this inquiry, I believe (but do not actually decide) that disclosure of the particulars of the charges requested by the Applicant would likely be an unreasonable invasion of the personal privacy of the police officers in question. The Court found that the personal information of a police officer that could be disclosed without resulting in an unreasonable invasion of his or her personal privacy under section 17 was limited to name, rank and the nature of the charge where there has been a decision to charge the police officer with a federal or provincial offence. Where there has been a decision to charge, I do not believe that the Court intended for the "nature of the charge" to include the specific details or facts alleged.

[para 88] A dictionary defines "nature" as "the inherent character or basic constitution of a person or thing" [Nature (n.d.) in *Merriam-Webster online dictionary*]. In turn, "inherent" is defined as "involved in the constitution or essential character of something" [Inherent (n.d.) in *Merriam-Webster online dictionary*]. Given these definitions, I believe that the phrase "nature of the charge" refers to the basic or essential charge, rather than the more specific particulars. Accordingly, I believe that the Court in the *CPS* case meant that, where its reasoning applies, only the generally-stated charge or charges against a police officer may be disclosed in the interest of public scrutiny without resulting in an unreasonable invasion of personal privacy. Providing any greater detail about the underlying alleged facts would presumably unfairly damage the reputation of the police officer in a manner that would require the personal information to be withheld under section 17 of the Act.

D. Did the Public Body properly apply section 20 of the Act (disclosure harmful to law enforcement) to the records/information?

[para 89] The Public Body applied section 20(1) of the Act to the information that the Applicant requested in item 1 of its access request, on the basis that disclosure would be harmful to law enforcement under certain subsections of section 20. Because I found earlier in this Order that the information in item 1 was properly withheld under section 23(1)(b) (local public body confidences), which is an alternate discretionary exception to disclosure, it is not necessary for me to decide whether the Public Body also properly applied section 20.

E. Does section 32 of the Act (disclosure in the public interest) require the Public Body to disclose the records/information?

[para 90] Section 32 of the Act reads, in part, as follows:

> *32(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people, to any person or to an applicant*

> *(a) information about a risk of significant harm to the environment or to the health or safety of the public, of the affected group of people, of the person or of the applicant, or*
>
> *(b) information the disclosure of which is, for any other reason, clearly in the public interest.*
>
> *(2) Subsection (1) applies despite any other provision of this Act.*
> …

[para 91] The Applicant submits that section 32 applies to the records at issue. It says that it is important for the public to know what justifications have been provided to the Edmonton Police Commission by the Public Body in obtaining extensions to complete investigations characterized by gross delay on the part of the Public Body. The Public Body submits that section 32 does not apply in this case.

[para 92] The only possibility in this inquiry is that disclosure is warranted under section 32(1)(b), on the basis that it would be "clearly in the public interest". However, for section 32(1)(b) to apply, there must be circumstances *compelling* disclosure, or disclosure *clearly* in the public interest, as opposed to a matter that may be of interest to the public (Order F2004-024 at para. 57). My review of the information in the records at issue before me does not lead me to conclude that any of it should be released on the basis that there is a clear or compelling public interest in disclosure. I therefore find that section 32 does not require the Public Body to disclose the records/information.

V. ORDER

[para 93] I make this Order under section 72 of the Act.

[para 94] I find that the following information in the Extension Requests submitted by the Public Body is not responsive to the Applicant's access request, as the information does not explain the delay in completing the investigations or explain why extensions are required, and the information is not about the police officers in relation to whom the Applicant requested the particulars of charges:

- the details of the complaints and allegations found under two particular headings in each Extension Request; and
- the information in line 4 of pages 8, 9 and 16 (the information is between the words "Request" and "Request").

[para 95] I find that the Public Body properly applied section 23 of the Act to the information that the Applicant requested in item 1 of its access request, on the basis that disclosure could reasonably be expected to reveal the substance of deliberations of a meeting of the Public Body's governing body, being the Edmonton Police Commission, and a regulation under the Act authorizes the holding of that meeting in the absence of

the public. Under section 72(2)(b), I confirm the Public Body's decision to refuse access to the information that the Applicant requested in item 1 of its access request.

[para 96] I find that disclosure of some of the information requested in item 1 of the Applicant's access request would also be an unreasonable invasion of the personal privacy of the police officers being investigated (and, in one instance, a complainant) under section 17 of the Act. Under section 72(2)(c), I require the Public Body to refuse the Applicant access to the following information in the Extension Requests (all of which also falls within the discretionary exception to disclosure applied by the Public Body under section 23):

- the information between "2005" and "A second" in the third bullet on page 4;
- all of the numbers in the third bullet on page 10;
- the second last word in the second line of the third bullet on page 10;
- the fifth word in the third line of the third bullet on page 10;
- the second sentence in the fifth bullet on page 10;
- the two words between "Given the" and "allegations" in the first line of the sixth bullet on page 10;
- the word between "the" and "allegations" in the third line of the sixth bullet on page 10;
- the information in the third bullet on page 11;
- the information before "the matter" in the fourth bullet on page 11;
- the information in the third bullet on page 12;
- the information after "Investigation" in the fourth bullet on page 12;
- the information between "Investigation" and "has been" in the fifth bullet on page 12;
- the information between "file" and "is" in the third bullet on page 14;
- the information in the third and fourth bullets on page 15;
- the information before "on January" in the fourth bullet on page 16;
- the information between the name of an individual and "directed" in the fourth bullet on page 16;
- the information between "made" and "allegations" in the sixth bullet on page 16;
- the information between "due to the" and "allegations" in the seventh bullet on page 16;
- the information in the twelfth bullet on page 17;
- the information in the twelfth bullet on page 18;
- the information in the third and fourth bullets on page 19;
- the information in the third and fourth bullets on page 20;
- the information in the second sentence in the fifth bullet on page 20;
- the information in the third bullet on page 22;
- the information between "report" and "should" in the fifth bullet on page 22; and
- the information in the third, fourth and fifth bullets on page 24.

[para 97] I find that the Public Body properly applied section 29 of the Act to the names of the police officers that the Applicant requested in items 2, 4, 5 and 6 of its

access request, on the basis that the names are readily available to the public. Under section 72(2)(b), I confirm the Public Body's decision to refuse access to the names of the police officers.

[para 98] I find that the Public Body did not properly apply section 29 of the Act to the particulars of the charges that the Applicant requested in items 3, 4, 5 and 6 of its access request. Under section 72(3)(a), I order the Public Body to properly respond to the Applicant's request for the foregoing information, as it misconstrued the Applicant's request and therefore has not yet properly responded.

[para 99] I find that section 32 of the Act does not require the Public Body to disclose any of the information in the records at issue before me in this inquiry, as disclosure is not clearly in the public interest.

[para 100] I order the Public Body to notify me in writing, within 50 days of being given a copy of this Order, that it has complied with the Order.

Wade Riordan Raaflaub
Adjudicator