ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2020-13

June 2, 2020

CALGARY POLICE SERVICE

Case File Number 000708

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request for all information held by the CPS in specified investigation files in which she had been involved, and provided details about the information. The CPS provided some information but some was redacted relying on a number of exceptions in the FOIP Act (sections 4(1)(k), 17(1), 20(1)(m), 21(1)(b), 24(1)(b) and 27(1)(a)), and some was withheld in its entirety. The CPS also provided copies of information it had given to the Applicant in response to earlier access requests. The Applicant requested a review and ultimately an inquiry.

As a preliminary matter in the inquiry, the Applicant objected that the CPS's representative (its Privacy Counsel and Access and Privacy Manager) was biased and had a conflict of interest relative to her, and should not have dealt with her case.

With respect to the substantive issues, the Applicant's request for review was based on her position that CPS had not provided records that she knew and could demonstrate had once been in its possession. In her submissions she provided extensive details about these records in order to demonstrate the CPS had possessed them formerly. She also objected to the redactions in the most recent response as well as in the earlier ones.

The Adjudicator did not accept the Applicant's arguments relative to bias and conflict of interest on the part of the CPS's representative.

With respect to adequacy of search, the Adjudicator held that the search that was conducted was thorough, but that the CPS had not given sufficient explanations, by reference to "the informational component" of its duty to assist under section 10, as to why it believed that records which had once been in its possession no longer were. She provided comments as to what type of information about the records the CPS might be able to give in order to fulfill this duty (while noting that the passage of time might make it impossible to provide detailed information for some of the records). The Adjudicator reserved jurisdiction to deal with the adequacy of the explanations to be given.

The Adjudicator upheld the redactions for some but not all of the records. She did not consider the redactions in the earlier responses as she held the CPS had not had a duty to provide these earlier responses a second time.

The Order contains a Table of Contents for the Discussion of Issues.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 4, 10, 17, 20, 21, 24, 27, 35, 55, 72

Authorities Cited: AB: Orders 99-028, F2004-026, F2005-009, F2006-015, F2006-030, F2007-012, F2008-006, F2008-024, F2009-004, F2009-038, F2010-008, F2010-029, F2012-28, F2013-13, F2015-29, F2018-18, F2018-72

BC: Orders F13-16, F13-18

NL: IPC Report A-2017-003

NT: Review Report 17-120

ON: Orders M-457, M-524, M-717, M-860, MO-1285, MO-3025-I, MO-3513-I, MO-3672, MO-3696, MO-3773, MO-3868, P-1115, PO-2381, PHIPA Decision 29

Court Cases Cited: *Imperial Oil Ltd. v. Quebec (Minister of the Environment)* (2003), 2003 SCC 58 (CanLII); *[the Applicant] v. The Law Society of Alberta*, 2010 ABQB 656; *University of Alberta v. Alberta (Information and Privacy Commissioner)* 2010 ABQB 89 (CanLII)

I. BACKGROUND

[para 1] On or near November 22, 2014, the Applicant made an access request to the Calgary Police Service ("CPS" or the "Public Body") for "[a]ll information obtained or created by the CPS for the investigation of", or in some cases for "[a]ll information obtained, provided to, or created by the CPS that related to the investigation of" a number of specified CPS files, and two RCMP files, as well as for such materials contained in any other files held by any district of the CPS. She provided further specific details as to the type of information she was seeking.[1] In

[1] The Notice of Inquiry quoted only the first portion of the Applicant's access request. However, in its submissions, the Public Body dealt with the entirety of her request, and its response to it.

some cases she also specified the device on which such material had been provided, or the format in which she wished to receive it.

[para 2] There were further communications and clarifications about this request between the Applicant and the CPS Disclosure Analyst. The CPS located records and provided its response to the Applicant on January 22, 2015. The Records at Issue that it provided to this office indicate that it located 142 pages of responsive records and provided 41 of these pages to the Applicant. The CPS told the Applicant it was denying access to information relating to RCMP file 2011691476 on the basis that it was the subject of an ongoing prosecution. It redacted some of the 41 provided pages, saying it was relying on sections 21(1)(b), 17(1), 20(1)(m), 24(1)(b), and 27(1)(a).

[para 3] As well the CPS provided the Applicant with copies of responses to a number of access requests that it had given to her earlier (citing its file numbers 2011-P-0970, 2011-P-1050 and 2012-P-0986 – except that in the case of the response in 2011-P-1250, the records differ slightly from the records that were originally provided in that response).

[para 4] The Applicant requested a review of the CPS's response.

[para 5] Subsequently, on May 21, 2015, the CPS provided the Applicant with an additional response, which consisted of 35 pages of records and a USB drive.

[para 6] A Notice of Inquiry was issued on July 27, 2017. The Applicant communicated with the office indicating that there were errors in the Notice of Inquiry, including that the Notice did not take the additional response and records into account. The Applicant also objected that the Notice did not state all the issues that she believes need to be addressed. As well, the Applicant objected that the Index of Records was inaccurate in that it did not correctly state the exceptions to disclosure that had been applied, and did not include the records from the second response. The previous adjudicator in this matter declined to amend the Notice, informing the Applicant that she could make her objections in the course of making her submissions in the Inquiry.

[para 7] The Applicant submitted a very large number of documents for the Inquiry. I have reviewed the following:

- the "Detailed Request for Review Further to the Apr 2/15 Request for Review Form faxed April 2/15" (131 pages) plus the four-page Addendum to this Submission received May 9, 2015
- Addendum #3 (the submission respecting the May 21, 2105 response (consisting of 130 pages))
- the Rebuttal Submission (131 pages)
- the Final Submissions of the Applicant (71 pages)

as well as some of the material referenced in those submissions.

[para 8] I have *not* reviewed a 790-page Addendum, and five supporting Addendums, which the Applicant provided on March 6, 2016, despite the fact the Applicant refers to it as part of her submissions in her document entitled "Outline For Submissions in OIPC Inquiry 000708" as

well as in her Final Submission, and states that it is relevant to the "false and misleading statements" in the records at issue in this inquiry and the associated one (Case File 001826).[2] In her Final Submission the Applicant describes this document as dealing in detail with the records at issue in the associated inquiry in Case File 001826. I did not regard it as reasonably possible to review this document to try to ascertain how it might be relevant to the present matter. The 463 pages of densely-worded submissions described above, and relevant associated attachments, were in themselves exceptionally voluminous, time-consuming to review, and challenging to comprehend and try to retain in memory during the course of writing the order.

II. RECORDS AT ISSUE

[para 9] The records at issue consist of the records that were withheld and redacted from the 142 page document in Response 1280. The records at issue do not include those that were withheld on the basis of section 4(1)(k) of the Act (which are now the records at issue in the inquiry in the associated OIPC Case File 001826).

[para 10] As well, the Applicant believes more records exist or existed that were not provided.

III. ISSUES

[para 11] The issues set out in the Notice of Inquiry were as follows:

Issue 1. Did the Public Body meet its obligations required by section 10(1) of the Act (duty to assist applicants)?

In this case, the Commissioner/Adjudicator will consider whether the Public Body conducted an adequate search for responsive records.

When the issues at inquiry include adequacy of search, it is helpful for the Public Body to include in its initial submission, direct evidence such as an affidavit regarding the search conducted for records responsive to the Applicant's access request. In preparing the evidence, the Public Body may wish to consider addressing the following:

- *The specific steps taken by the Public Body to identify and locate records responsive to the Applicant's access request.*
- *The scope of the search conducted, such as physical sites, program areas, specific databases, off-site storage areas, etc.*
- *The steps taken to identify and locate all possible repositories where there may be records relevant to the access request: keyword searches, records retention and disposition schedules, etc.*

[2] I accessed this document but saw that it appears to consist of a submission to the federal Privacy Commissioner. In her Final Submission the Applicant says it was provided to the "CRCC" for the purpose of supporting "a hold" on her CRCC complaints. I believe "CRCC" is a reference to the RCMP Civilian Review and Complaints Commission.

Issue 2. Does section 17(1) of the Act (disclosure an unreasonable invasion of personal privacy) apply to the information to which the Public Body applied this provision?

Issue 3. Did the Public Body properly apply sections 20(1)(c) and (m) of the Act (disclosure harmful to law enforcement) to the information it severed from the records under these provisions?

Issue 4. Did the Public Body properly apply sections 24(1)(a) and (b) (advice from officials) to the information it severed from the records under these provisions?

Issue 5. Did the Public Body properly apply section 27(1)(a) (privileged information) and section 27(1)(b) (information prepared by or at the direction of a lawyer) to the information it severed from the records under these provisions?

[para 12] These issues are not entirely accurate.

[para 13] First, as already noted, the CPS's response to the Applicant of January 22, 2015 stated that it was withholding information relating to RCMP File 2011691476 under section 4(1)(k) of the Act, which permits withholding of records in relation to a prosecution if all proceedings in respect of the prosecution have not been completed.

[para 14] The records withheld under section 4(1)(k) are the records that were identified as records at issue in the related inquiry in OIPC Case File 001826. I will deal with those records in that inquiry (including with the audio file). I note that the Applicant objected to which records the CPS identified as falling under that exception. I decided not to address this question in the present inquiry. Since all records responsive to this request that are not dealt with in this inquiry will be deal with in the associated one, the final result will be the same.

[para 15] As well the January 22, 2015 response letter indicates that CPS applied section 21(1)(b) to the records that consisted of the results of CPIC police information searches. As well, while the CPS did not indicate in this response letter that it had applied section 20(1)(c) or section 24(1)(a), redactions under these provisions do appear in the Index of Records, and are addressed in the CPS's submissions.

[para 16] With respect to section 21(1)(b), I note that in response to my recent question about this, the CPS has explained that it did not collect RCMP records (the results of CPIC searches) in the course of responding to the search, since it says it is prohibited from disclosing such records in an access request. However, I believe this is not a conclusive answer: there is an issue as to whether withholding of such CPIC records that have already been accessed can be reviewed under the Act. Therefore, I will discuss this issue below.

[para 17] With respect to section 20(1)(c), it appears the CPS's submissions under this section are in relation to pages 80 and 106 of the 142 located records, which were withheld under section 4(1)(k) and are not at issue in the present inquiry. Pages 25, 66 and 67, to which,

according to the CPS in its submissions, section 24(1)(a) was applied, were also withheld in their entirety under section 4(1)(k) and are not records at issue in this inquiry.

[para 18] As well, in addressing section 10 of the Act, I will deal with the Applicant's contention that the CPS's representative should not have been involved in her access request, given her view that he was in a conflict of interest position relative to her, and demonstrated bias against her.

IV. TABLE OF CONTENTS for DISCUSSION OF ISSUES

Issue 1: Did the Public Body meet its obligations required by section 10(1) of the Act (duty to assist applicants)?

In this case, the Commissioner/Adjudicator will consider whether the Public Body conducted an adequate search for responsive records.

1. The Applicant's concerns about the CPS's representative in this Inquiry.

2. The Applicant's concerns arising from comparisons between responses to her earlier requests and the present response (Response 1280)

2.1 Records provided in Response 1280 that the Applicant believes should have been provided earlier

2.2 Only a single version of records provided

2.3 Records provided to the Applicant in earlier responses that were not provided in Response 1280

2.4 Differing versions of the same Report

3. Adequacy of the search / duty to assist for Response 1280

3.1 The Applicant's evidence regarding records she believes have not been provided either in earlier responses or the present one

3.1(a) Email exchanges between the Applicant and Detective B:

3.1(b) Materials the Applicant supplied to the CPS as evidence for its investigation files

3.1(c) Notes by Detective B that the Applicant believes would have been created given developments in the files

3.1(d) Event chronologies for CPS Investigation files Numbers 95168061; 972227060; 04068170; 04124301

3.1(e) Adequacy of search relative to the access request resulting in Response 2011-P-1050

3.1(f) Adequacy of search relative to request resulting in Response 2003-P-0076

3.1(g) Adequacy of search relative to request resulting in Response 2011-P-0970

3.1(g)(i) CPS File No. 04068170

3.1(g)(ii)) CPS File No. 04124301

3.1(g)(iii) CPS File No. 10411004

3.1(g)(iv) CPS File 11292557

3.1(g)(v) CPS File 12309731

3.1(g)(vi) CPS File 12309809

3.1(g)(vii) CPS File 14157448

4. Further explanations required

a) Emails the Applicant sent to or received from the CPS.

b) Evidence the Applicant supplied to the CPS in support of her complaints and allegations against other people, which Detective B undertook to return to and keep in the "Property Room".

c) Event chronologies for CPS Investigation files Numbers 95168061; 972227060; 04068170; 04124301.

d) A written statement by the Applicant that she attended to complete in CPS File 95168061, and a related "Property Unit" section in the Report for the file, dating from 1995, or alternatively, documents authorizing destruction.

e) A written statement that was taken from the Applicant by Sgt. P, as well as a three-inch binder of materials that she provided to him, as documented in the Synopsis in Report 04068170, dated February 2004) (the Applicant says that possibly this was contained in Ex 230327, which was destroyed).

f) In the event it can be determined that the Applicant's statement documented in the Synopsis in Report 04068170, discussed under the preceding heading, was *not* part of Exhibit 230237 (which was destroyed), documentation as to removal or destruction of that statement. The same type of information respecting "two volumes of material and a CD" provided on the same date (again, if it can be determined this material was not part of Ex 230327).

g) Documentation regarding authorization for the destruction of Ex 230237.

h) A series of emails between the Applicant and Sgt. P, relating to File 04124301from April, May and November of 2004, or documentation as to their destruction.

i) Recorded information regarding a series of telephone calls and voicemail messages relating to File 04124301, including but not limited to calls from February, October and November of 2005, taking place between or among herself and CPS members or between or among the members themselves, and any related materials.

j) A statement of Nov 3/04 recorded on a CD the Applicant sent to Sgt P relating to File 04124301, any related CPS documentation related to processing, storage and destruction, and covering correspondence.

k) A version of the Report in File 10411004 that documents the return of the exhibits to the "Property Room".

l) An email from A/S/Sgt M of approximately March 24/11 to Detective B related to File No. 10411004.

m) An email from A/S/Sgt M of approximately of April/11 to Detective B related to File No. 10411004, attaching a court decision.

n) A Report and any related materials, including a Briefing Note, submitted by Detective B to A/S/Sgt M, and all documents in the "File" reviewed by CPS lawyers.

o) An email from Detective B indicating that an email from the Applicant would be provided to a legal adviser, and any pages in Detective B's notebook that may contain information relating to the Detective's response to an email she sent to him setting out her concerns about the involvement in her file of a particular prosecutor.

p) Communications between Detective B and the CPS legal advisor related to File No. 10411004, regarding her concerns about the prosecutor, and regarding materials to be reviewed at a meeting.

q) Materials related to the insertion of "charging section" CC 264(3) into the Report in File 11292557, including "an Information", "a Prosecutor's Information Sheet", and "A Criteria for Detention of Accused".

r) Three pages of the notebook of a CPS member (Cst S) who responded to the complaint in File 11292557, dated August 4, 2011.

s) Notes of prime investigator Cst H relative to his attendance at the location of the complaint in File 11292557.

t) All material related to the listing of the Applicant's home address, which is set out both in the Report in File 11292557 (as being valid on Aug 4, 2011), and in the notes of Cst S.

u) The source for the references to "Law Society File Number LS #0016", as this appeared in Cst S's notes and in the Report in File 11292557.

v) Materials (phone messages, letters, or other communications) provided by the person who made the complaint in File 11292557.

w) Any written information relied on by Cst H to form his views in the Professional Opinion in the Report in File 11292557.

x) Written information that would reveal how CPS became aware of the Law Society proceedings in which the Applicant had been involved, and which formed the basis for the assertion in the Professional Opinion in the Report in File 11292557 that she had been "sanctioned by the Law Society and disbarred in Alberta".

y) Exhibits 581582 and 595236 referenced in the "Property Unit" section of Report in File 11292557.

z) "[L]etters which were apparently from [the Applicant]" referred to under the heading "Investigative Details" in File 11292557.

aa) PIMS check results which were the foundation for the statement "PIMS Offdr shows 2011 Criminal harassment suspect, court order suspect" under "Remarks" in the Report in File 12309731.

bb) Materials relating to the Applicant's arrest, bail hearing and release, including emailed communications held by CPS or between CPS and the RCMP.

cc) Materials related to a PIMS check, including the results, as referenced in the Report in File 12309809.

dd) Materials related to a CPIC check, including the results, as referenced in the Report in File 12309809.

ee) Entry in a page titled "Event Information" for file 14157448 under the heading "Remarks" (the entry states "Call Review By PSC SGT T…"), which the Applicant believes is related to a CPS legal team review.

ff) Materials forming the basis for the Applicant's former name appearing in the "Alias name" field in the Report in File 14157448.

gg) Additional records documenting entry of the materials as exhibits in the Report in File 14157448.

hh) Emails from Cadet M to Detective M, and from Cst W to an unknown recipient referenced in the Report in File 14157448.

ii) "Info Report" referred to in handwritten notes of Detective B (as a document that is to be created and provided "to Inspector"), unless it is a copy of the "Briefing Note" that was provided as 31 of 41.

jj) Destruction documentation in relation to a particular RCMP file (as described at page 26 of the Applicant's Addendum 3).

kk) Missing email correspondence with Detective B from 2013.

ll) Emails exchanged with Detective B on November 5, 2010 and parts of emails of March 10, 2011 and Dec. 4, 2100, and any materials related to those emails; missing email from Detective B of October 25, 2010 and additional missing emails from 2011 and 2012 (under the headings Response G, I and J in Addendum 3).

mm) Destruction documentation with respect to emails exchanged with Detective P and Detective B in 2004 and 2010.

nn) An "Info Report" referenced in the notes of Cst W; a copy of the "Follow-up Report" referenced in the notes of Cst W, which seems to refer to the report of placing a green USB drive provided by the Applicant in a hold locker; a copy of the email referenced in the notes of Cst W sent to Detective B; a copy of the email referenced in the notes of Cadet M, sent to Detective M.

oo) A "cut-off" part of a regimental number of a CPS member (on page 27/35 of the May 21, 2015 response).

pp) Notes of phone calls between the Applicant and named members of the CPS.

Issues 2 – 5: Application of Exceptions under Sections 17(1), 20(1)(m), 21(1)(b), 24 and 27(1)(a)

1. Redactions in Response 1280

1.1 Refusal to provide RCMP file

1.2 Redactions in the 41-page file provided in Response 1280

1.2(a) Partial redactions on pages provided to the Applicant in reliance on section 17 (and in some cases as unresponsive information)

1.2(b) Redactions of entire pages in reliance on section 17

1.2(c) Redactions in reliance on section 20(1)(m) – harm to security of a system

1.2(d) Redactions in reliance on section 21(1)(b) – CPIC searches

1.2(e) Redactions in reliance on section 24(1)(b) (and in some cases, of unresponsive information)

1.2(f) Redactions in reliance on section 27(1)(a)

1.3 Redactions from the May 21, 2015 release

1.3(a) Redactions in reliance on section 17 (and in some cases as unresponsive information)

1.3(b) Redactions in reliance on section 24

2. Redactions from earlier responses

3. Summary regarding redactions

V. DISCUSSION OF ISSUES

Issue 1: Did the Public Body meet its obligations required by section 10(1) of the Act (duty to assist applicants)?

In this case, the Commissioner/Adjudicator will consider whether the Public Body conducted an adequate search for responsive records.

[para 19] Before turning to the adequacy of the CPS's search, I will first address the Applicant's contentions and concerns regarding the CPS's representative in this Inquiry.

[para 20] I will also review and comment on some of the Applicant's general concerns about records that were or were not provided to her in her most recent requests, in some cases by reference to records that were or were not provided in responses to her earlier requests.

1. The Applicant's concerns about the CPS's representative in this Inquiry.

[para 21] The Applicant made an application to the previous Adjudicator to have the CPS's representative removed from this matter. The previous Adjudicator decided that she had no ability to direct the CPS as to who would represent it in the inquiry. I agree with this decision. As well, for the reasons set out below, I find that any bias or conflict would be cured by the present proceeding, and that no bias or conflict has been demonstrated in fact.

[para 22] The Applicant provided a lengthy rebuttal submission in which she set out the basis for her idea that the CPS's representative (its Privacy Counsel, and Manager, Access and Privacy) has a conflict of interest or bias relative to her and ought to have removed himself from involvement in this file, as she says she asked him to do. She says this conflict of interest arose as a function of, or is demonstrated by, the following:

- The representative's involvement as a Bencher with the Law Society of Alberta (insofar as he had duties to the LSA Board of Directors and loyalties to individual LSA members against whom the Applicant has made complaints and whom she alleges misrepresented the facts in her case during a criminal investigation);
- the fact that she made complaints against other CPS members.

[para 23] In addition to these allegations relating to the representative's involvement with the Law Society and the police service, the Applicant also alleges demonstrated bias, which she believes is indicated by the following of his actions in this and other matters before this office:

- in addressing a correction request the Applicant subsequently made, the representative removed the material the Applicant alleged was incorrect rather than annotating it (in all materials in its possession) with her objection, thereby making the original inaccurate material unavailable to others involved in investigations relative to her CPS files, and perpetuating the inaccurate material;
- the representative did not report another LSA member to the Law Society, relative to what the Applicant believes is evidence of the other member's misrepresentation of the facts about her status with the Law Society during the course of a criminal investigation;
- the representative did not provide her with legal advice that a complaint to the Law Society was a remedy available to her;
- in subsequent access requests (including requests for administration files relating to earlier requests) the representative did not include material the Applicant knows to exist (some of which she provided to him), and material that she believes must necessarily exist or have existed (such as material relied on by the Disclosure Analyst in preparing the detailed affidavit describing his search[3]);
- the representative redacted some records as unresponsive [presumably the Applicant disagrees];
- the representative made an error by dealing with materials relating to an access request by some other person.

[para 24] Assuming for the moment that any of these things could be said to suggest or reveal bias or a conflict on the part of the CPS's representative, the question arises whether his role in the Applicant's matters in the present case could be said to give rise to a failure by the CPS to fulfill the duty to assist under section 10 of the Act. It must be remembered that the decisions I am reviewing are those made in January and May, 2015 by the Disclosure Analyst. It does not appear the representative made the initial decisions as to what information to withhold (although he made the submissions in this inquiry explaining the reasons the exceptions – both the mandatory and the discretionary ones – were applied). While I am considering these submissions, I am not reviewing them, but only the disclosure decision. I am also unaware as to the relationship, if any, between the representative and the Disclosure Analyst – whether the timing, the CPS management structure, and the nature of any reporting relationship, would be such that the representative might have had some influence on the initial decisions of the Disclosure Analyst. However, for the purposes of the present discussion, I will assume that the relationship and timing were such that there *could* have been some influence.

[para 25] Earlier orders of this office have responded to, and rejected, the suggestion that where the public body employee who responds to an access request has a conflict of interest with the Applicant, this can mean the duty to assist was not met. In Order F2007-012, the Adjudicator stated (at para 18):

[3] The Applicant suggests in the alternative that the representative prepared and commissioned an affidavit by the Disclosure Analyst which must have been false given its level of detail and the absence of any material recording this detail in her later requests for the administrative files. The theory that the details of the search were fabricated is outside the range of reasonable possibility in my view.

> I do not agree with the Applicant's argument that a conflict of interest results in a failure to meet the Public Body's duty to assist. Under the Act, the head of the public body is accountable for any failures or omissions of the public body in responding to an access request. The head of a public body, by the very nature of the position, will often have duties to the public body that may compete with the head's duties under the Act. Delegating the head's responsibility to respond to an access request to an employee such as a FOIP coordinator does not mitigate the potential for conflict of interest. For this reason, the Act provides individuals who have made access requests the right to an independent review of the head's decisions by a neutral third party, the Information and Privacy Commissioner. The independent review rectifies any issues of conflict of interest or potential bias. As the Applicant in this case has exercised his right to request an independent review, any miscarriage of natural justice he perceives will be remedied by the review.[4]

[para 26] I note, however, that a number of decisions of the Information and Privacy Commissioner in Ontario seem to have taken the position that a conflict of interest or bias could invalidate a decision respecting access.[5] This line of cases rests on the following idea:

> The [Ontario] Commissioner's office, in its capacity as an administrative tribunal with certain legislative functions, is required to ensure that the rules of natural justice govern the access to information regime in Ontario.[6]

[para 27] The test applied in these cases to determine whether there is a conflict of interest on the part of a person responding to an access request is as follows:

> (a) Did the decision-maker have a personal or special interest in the records?
>
> (b) Could a well-informed person, considering all of the circumstances, reasonably perceive a conflict of interest on the part of the decision-maker?

[para 28] With respect, I prefer the analysis set out at para 25 above. I believe there are many situations in which a public body that has received an access request will have some interest in whether records are disclosed or not, yet will be tasked with making a decision as to how the provisions of the Act apply.[7] Further, other than in a situation in which there is some reason to

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[4] See Order F2018-72 at paras 42-43.

[5] See, for example, Order MO-3672; Interim Order MO-3513-I.

[6] See Ontario Order P-1115. I note, however, that there is nothing in the provisions of the legislation in either Ontario or Alberta which speaks directly to the power to ensure natural justice in the access to information regime, nor any provision which is obviously subject to interpretation as conferring such a power. It is also notable that of the many Ontario decisions that I reviewed that raise this or closely-related issues (approximately 20) in only three was a finding of bias or conflict of interest made (Order M-524, M-457 and Order MO-1285), and in the last of these cases, the adjudicator held that the conflict of interest did not interfere with the decision making in the case.

[7] Even in Ontario, the standard relating to conflict of interest for administrative decision makers is not the same as the (higher) standard for quasi-judicial decision makers. In Ontario Order PO-2381, the adjudicator said: "However, the requirement for impartiality in the actions of an administrator is not the same as for an adjudicator. To treat an administrator the same as an adjudicator "overlooks the contextual nature of the content of the duty of impartiality which, like that of all of the rules of procedural fairness, may vary in order to reflect the context of a decision-

order the re-exercise of discretion in applying an exception (in which case the decision must be sent back to the original decision maker) the remedy for a finding that there was a conflict or bias in the initial decision maker would be to have the adjudicator in the subsequent inquiry make a new decision, which is what happens in any event regardless of any bias or conflict.

[para 29] As just discussed, in the present case, even if the facts raised by the Applicant could be said to suggest or reveal a conflict or bias, the questions I have to decide would be the same. That is, quite apart from bias, I must decide whether the search for records was adequate, based on the steps to locate the records which the Disclosure Analyst took as he described in his sworn affidavit, and the related explanations given to me and to the Applicant. Second, I must decide whether the exceptions were properly applied. These are the same decisions I would have to make if I were to find bias or conflict. Put differently, any existing bias or conflict would be cured by the present independent review and associated orders.

[para 30] Arguably, there is one set of circumstances that constitute an exception to this generalization – in which the application of the Ontario approach could lead to a different result. Where the decision maker is making a discretionary decision, the decision is not mine to make, and if I were to find it had not been made properly, it would be appropriate for me to send it back, and this would have to be to a new decision maker if the original one were biased.

[para 31] In the present case, had the representative had some influence with respect to the exercise of discretion in the application of the discretionary exceptions set out in sections 21(1)(b) and 24(1)(b), a conflict of interest or bias on his part might be relevant to these discretionary decisions.

[para 32] I have reviewed the records that, according to the Index of Records, were withheld on the basis of these discretionary exceptions. Most of them were also withheld on the basis of mandatory exceptions. Having found below that these mandatory exceptions were properly applied in any event, there would be no reason to require a re-exercise of discretion under the discretionary ones that were also applied.

[para 33] I turn to the information/records withheld on the basis *only* of discretionary exceptions. These are pages 26, 32 and 39 of 41[8] in the records provided in the January 22, 2015 response (section 24(1)(b) was applied to the first two and section 20(1)(m) to the third one), and pages 22 and 26 of 43 in the records provided in the May 21, 2015 response (to which section 24(1) was applied).[9]

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maker's activities and the nature of its functions". The obligations of such a decision-maker "are not equivalent to the impartiality that is required of a judge or an administrative decision-maker whose primary function is adjudication." *Imperial Oil Ltd. v. Quebec (Minister of the Environment)* (2003), 2003 SCC 58 (CanLII), 231 DLR (4th) 577 at paragraphs 31 and 34 (SCC).

[8] These are parts of pages 33, 39 and 136 of 142 in the unredacted records at issue that were provided for my review.

[9] Seven records were withheld on the basis of section 27(1)(a), solicitor-client privilege. While this was enacted as a discretionary exception, the courts as well as earlier orders of this office have held that the exercise of discretion with respect to such privileged records can be presumed to be appropriate on the basis that disclosing privileged records can have a chilling effect on obtaining legal advice. See, for example, F2018-18 at para 11 and at note 2.

[para 34] I find below that section 24(1)(b) does not apply to the information that was redacted in records 26 and 32. There is therefore no question of sending it back to the decision maker to have discretion re-exercised.

[para 35] With respect to page 39 of 41 (redaction of a cell phone number) – to which I hold below that section 20(1)(m) does apply – I acknowledge the information at issue related to a police officer, and that the representative was an employee of the police department. However, in the Ontario cases noted above in which an adjudicator concluded that the conflict meant the decision should not have been made by the decision maker, the decision maker was shown to have a personal or special interest in the particular records in question. In contrast, a FOIP coordinator in a police department is necessarily commonly dealing with records relating to police. Such a person cannot be said to have a "special interest" relating to police cell phone numbers in the sense developed in the Ontario cases. Therefore, I reject any suggestion of conflict or bias in relation to the exercise of discretion concerning the information redacted on page 39.

[para 36] For the foregoing reasons, I do not need to reach any further conclusions about the Applicant's allegations that the decisions to withhold this information from her in the present case were made impartially.[10] Even if bias were shown, there are no discretionary decisions to be returned to the CPS for reconsideration, and the decisions I must now make as to the adequacy of the search and the proper application of mandatory exceptions are the same regardless.

[para 37] Further, even if I needed to consider the Applicant's factual assertions and related contentions, I would not accept that the representative's actions have the significance she attributes to them.

[para 38] With respect to the correction request, I would not accept that the CPS representative's removal and destruction of the original wording which the Applicant asked to have corrected, to the extent these things occurred, or changes in the wording that he included in a letter to her, showed any negative intent or lack of objectivity towards her. The Applicant has not presented any reason for concluding anything other than that the representative was taking the steps which he believed would most effectively achieve the result which the Applicant appeared to be seeking – that her status with the Law Society not be misrepresented.[11] Moreover, substitution of correct for incorrect language was a very common means of correcting information until a recent series of orders suggesting that annotation is a more appropriate mechanism. The Applicant presents no basis whatever for her suggestion that the representative

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[10] This is not to say that I accept that the representative had a conflict relative to the remaining records. It is only to say that for the present purpose, such conflict, even if demonstrable, would be irrelevant to the outcome of this order.

[11] In her request for correction in Case File 004725, with respect to the information which she regarded as incorrect, the Applicant asked for "removal from the records of the CPS, wherever those records are held, and from the records of any other law enforcement body or non-law enforcement body or any other public body or third party which hold such records".

was trying to cover up the inaccurate content of the original records in order to undermine her ability to make complaints about this, or to protect the individuals who made or recorded inaccurate or imprecise statements and information about her.

[para 39] With regard to the representative's failure to report another individual to the Law Society on the basis that the latter violated the Code of Conduct, the Applicant has failed to establish that the statements allegedly made in the materials released in the associated case file were made by the LSA member (in contrast to being an inaccurate interpretation of these statements by the note taker). Nor has she shown that if they were made they constituted a Code of Conduct violation by the LSA member, or would have any of the effects she alleges (such as impacting witness statements), or that the representative had a Code of Conduct 'duty to report' in the circumstances. Even had the representative had such a duty which he did not fulfill, I do not believe this would establish bias against the Applicant or an inability to make decisions respecting disclosure of records impartially.

[para 40] Similarly, I do not accept the Applicant's contention that the representative had a duty to provide her with advice that she could make a complaint to the Law Society herself, or to provide her with any other advice outside of any advice that would assist her with her access request, or to advise her of possibly available remedies outside that context, or that his not doing so demonstrated bias.

[para 41] As to the alleged omissions in the CPS's responses to subsequent requests, making final decisions about these actions of the representative would constitute premature decision-making in matters which have become or may become the subject of a review and/or inquiry by this office. However, even if I accepted her contentions about such omissions they do not constitute sufficient evidence to persuade me that the representative was deliberately trying to impede or delay her requests, or that his actions involved deliberate destruction or concealment as she alleges. Attributing such motives and actions without more evidence is entirely speculative. The same comments apply to the representative's not clarifying the responses to her subsequent access requests, or not acknowledging communications, particularly having regard to the volume of material she provided to him.[12]

[para 42] Thus even if the records were of the kind to which the Applicant's allegation about the representative could apply, I would find that there is no evidence to establish her position that he ought to have removed himself from involvement in her matters.

[para 43] In any event, as discussed above, I believe the better view is that this office does not have the statutory authority to make findings of bias relating to the initial decision maker, and that bias on the part of a public body's decision maker or of someone in a position to influence that person can only be addressed by judicial review of that first-level statutory decision by a

[12] The Applicant complains, for example, that the representative included only six of the 400 attachments she provided to him to demonstrate the inaccuracy of CPS records in her correction request, even though he relied on them (or some of them) to make the requested corrections. In my view it seems probable the representative was trying to limit the material he included to make the file manageable in terms of clarity and comprehensibility.

court. Further, a court would not need to address this question where, as here, the present independent review cures any bias that might have existed.

2. The Applicant's concerns arising from comparisons between responses to her earlier requests and the present response (Response 1280)

[para 44] A large proportion of the Applicant's submissions for this inquiry that are contained in her "Detailed Request for Review" sets out the reasons she believes that records exist or once existed in the possession of the CPS that were not ever provided to her, either in former responses or in the most recent ones (of January 22, 2015 and May 21, 2015[13]). Much of the portion of this order that follows consists of a review and assessment of these submissions.

[para 45] However, in the opening portion of her initial submission, the Applicant also sets out her concerns with the fact that that some information *was* provided in the most recent response (Response 1280) though in her view it existed in the possession of the CPS at the time the earlier responses were made, so it should have been provided then. As well, she is concerned that certain records provided in responses to her earlier access requests were not provided in Response 1280 (which incorporated the responses to the Applicant's earlier access requests). Finally, she is concerned that there are some differences between some of the material that was provided formerly, from the material in the same files provided in Response 1280.

2.1 Records provided in Response 1280 that the Applicant believes should have been provided earlier

[para 46] As noted above, one of the Applicant's concerns is that particular records that were provided in Response 1280 were not provided to her in earlier responses (though she believes they ought to have been). These include the records provided in the "Folder 111207 Email" (see page 12, para 2 of her submission). They consist of 5 attachments to emails which she sent to the investigating detective (Detective B) in a complaint against three individuals (ZC, RP and KL) that she made on April 6/11. The Applicant provides the emails between herself and the detective that both conveyed and acknowledged attachments (as shown in Response 2011-P-0970 [referred to herein as "Response 0970"] at pages 60, 113, 125, 127, 126) and by which the detective forwarded them to another CPS member on Dec 7/11 (as shown in the most recent Response 1280, at 39 of 41).

[para 47] The Applicant says these attachments were not provided to her in her earlier access requests (2011-P-0970 or 2011-P-1050 or 2012-P-0986), even though the events involving return of the materials predated the earlier responses to her requests, and even though the related information (including the emails that conveyed and confirmed receipt of these attachments, and the fact they were forwarded to another staff member) were provided to her.

[para 48] The Applicant seems right in her contention that since such records (as provided in the "Folder 111207 Email") have now been located, and thus presumably existed in the CPS's possession at the time of earlier requests, they should have been located and provided earlier.

[13] I will refer to the latter two responses together as Response 1280.

However, this inquiry is not dealing with the inadequacies of prior searches for which there is now no need to grant a remedy. While the earlier responses were also included in the most recent response, the Public Body was not obliged to do this, and I do not consider the review of the earlier searches to be part of the present inquiry; this inquiry is dealing only with the failure to provide documents in the most recent response – Response 1280 – that have never been provided. [14]

2.2 Only a single version of records provided

[para 49] The Applicant is also concerned that the records provided in the recent response that had not been provided earlier had been copied from only one of the sources/formats in which they had existed. (She had supplied these records in both Word format by email as well as in PDF format on a USB drive, and as well, Detective B indicated in handwritten notes that he had prepared a hard copy, as shown by Response 0970.) The Applicant says the folder "111207 Email" containing the five attachments (comprising the formal Statement/Complaint against ZC, RP and KL) is a digital email in Word form (see 39 of 41 of Response 1280).

[para 50] In her submissions the Applicant asks that a copy in the format (PDF) in which she provided it on a blue USB drive also be provided to her (together with a photo or photocopy of the drive). As well, she wants these attachments to be copied from the hardcopy form created by Detective B. As an alternative to receiving these materials in these additional formats, the Applicant says she wants documentation of their destruction (or removal from the location – the "Property Room" – in which they had been placed[15], because she wants to be assured that they were available to be reviewed or considered by CPS staff, presumably during the period in which investigations were being conducted. (At page 74 of her submissions the Applicant refers to a "Professional Opinion" developed by a particular CPS member for File 11292557, which she believes might have relied on this information had it been available.)

[para 51] It appears that the Applicant's most recent access request (which encompasses all information in investigations related to her) was made in part to obtain this type of information – whether records that she returned were restored to the "Property Room" and retained there (as evidence) in the format in which they were placed there, or if not, then when they ceased to exist in that location.

[para 52] In her original access request that is the subject of the present inquiry, *with certain exceptions that are noted immediately below*, the Applicant did not ask that the copies to be

[14] I do review information in some of the earlier responses where the Applicant referred to this information as evidence for points she is making in her submissions.

[15] The Applicant says SB9 is the blue verbatim USB drive of the Apr 6/11 Statement/Complaint and SB10 is the printed hard copy version. Both were entered as Ex 566304 in CPS File 10411004 (the investigation into a different matter – the Applicant's complaint alleging perjury by Law Society employee TG). This material was returned to the Applicant by the CPS and she then returned (or in the case of the hard copy, thinks she likely returned) it to Detective B, who, in November 2011, undertook to place these, and other materials she had also returned, in the "Property Room" to be kept indefinitely.

provided be copied from a particular storage device, or that they be copied from or provided in a particular format.

[para 53] As to locations, the Applicant asked for records relating to particular files or involving particular individuals, communications and events, and particular policing districts. However, while this indicated not only what kind of records she wanted but also where responsive records might be found, the Applicant did not (generally) specify that she wanted copies of the records only as they existed in particular locations.[16]

[para 54] As to the medium onto which information had been recorded, the Applicant listed a wide range of recording methods in her request (i.e., emails, faxes, texts, voicemails, notes, etc.). It would be reasonable to take from this that she wanted all responsive records regardless of the manner of their recording. However, generally, she did not say she wanted copies of the same record from *every* such source on which it might be accessed.

[para 55] The only file relative to which the Applicant specifically requested "USB drives" and materials "in all forms that they presently exist", or similar wording, or asked for files "held in" particular locations, is File 14157448. As well, in the concluding part of her request, under the heading "Any Additional CPS Files/Occurrence Statements/ Event files Etc. Held by any District of the CPS including But not Limited to District 6", she included in her list of the types of material sought "USB drives, DVDs, CDs". However, this final part of her request deals with "*any additional* CPS files/Occurrence Files/ Event files Etc., rather than with the specific files listed in the preceding parts of her request, and it would be reasonable to interpret this part of the request as not also covering all the information requested in relation to the specific files she had named earlier.

[para 56] However, the Applicant corresponded with the Disclosure Analyst subsequent to receiving the first response on January 22, 2015 and before receiving a second response on May 21. One of the emails (dated April 8, 2015) included a list of material the Applicant indicated she was a still seeking which included the following item:

> 3) all flashdrives, CDs, binders of materials, statements and evidence and exhibits in all files and matters including but not limited to CPS files/matters …. [a list of all the CPS files].

This paragraph arguably asks for copies of materials as they might be found on each of the mediums mentioned, even if they replicate the same information. (While it does not do so conclusively, access requests are to be interpreted liberally in favour of the requestor.[17])

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[16] The Applicant did specifically ask for documents "related to" materials from her placed by Detective B or anyone on his behalf *in the "Property Room"*, including evidence tracking records. However, this aspect of the request does not refer to those records themselves, but rather to documents "related to" them.

[17] I agree with the principle in Ontario Order MO-3868, which states: "Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour."

[para 57] To the extent this is the proper interpretation of the April 8, 2015 email, this request expanded the original one. Possibly at that stage it would have been open to the Disclosure Analyst to say he had already provided a response, and to ask the Applicant to make a new request for copies from the other specified sources. However, he did not do so, but rather took further steps to locate materials and provided a second response. Thus, although the April 8 email expanded the scope of the request, in my view, I will treat it as part of the request in this inquiry.

[para 58] The question thus arises whether, given the Applicant should be taken as having specifically requested such information, the CPS was obliged to search for and provide copies of documents from each the sources/mediums in its possession.

[para 59] In my view, whether or not a response requires copies from multiple sources depends on the wording of an access request. Thus, for example, if an applicant simply asks "information", or for "a record", the request is fulfilled if a copy of the information or of the record is provided. Similarly, if an applicant requests, for example, a manual or a policy used by a public body, it is reasonable and sufficient to provide a single version rather than all the versions possessed by individual public body employees. Conversely, however, if an applicant specifically asks for a copy of each copy of a manual or other record possessed by a public body, then (unless this aspect of the request is frivolous or vexatious within the terms of section 55 of the FOIP Act and can be disregarded for that reason) each copy is responsive, though fees would be chargeable for each copy.

[para 60] There is nothing in the FOIP Act to preclude requests for a copy of a record or records existing in a specific storage location or on a specific storage device. In such a case, only such a copy would be responsive and meet the terms of the request. Apart from section 55, it is also open to an Applicant to ask for multiple copies of records each existing in multiple specified locations, or for copies of each of more than one specified source/recording device/format.

[para 61] This is not meant to suggest that there is a duty in a public body to keep information in any particular location, recording device/format, etc.. It is up to the public body to decide how to store information that it requires for its operational purposes, and what is most efficient and operationally feasible in this regard.[18] (The CPS's policies respecting the retention of evidence in

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[18] This question was discussed in an Ontario Information and Privacy Commissioner Decision, PHIPA Decision 29. The Assistant Commissioner held that an entitlement to access a record did not entail the entitlement to access the original paper version. The Assistant Commissioner said (at paras 41 to 43):

> … The right of access under section 52 of the *Act* applies to a "record" of personal health information, and the duty of a health information custodian in responding to a request for access is to make the "record" available for examination, or to provide a copy. None of these provisions require that patients be given the original paper records of their patient files. Rather, they require that a record be made available for examination or a copy provided. Further, as discussed below, they do not impose an obligation on a custodian to preserve patient records in their original format and do not prohibit the custodian from converting paper records to electronic format.
>
> Supporting this conclusion is section13(2) of the *Act* , which speaks to the obligation of a custodian to retain personal health information that is the subject of an access request:
>
> > …a health information custodian that has custody or control of personal health information that is the subject of a request for access under section 53 shall retain the

investigations doubtless takes into account factors other than the FOIP Act, such as the need for authenticity and continuity; possibly, documents classified as exhibits are routinely stored in their original form for such reasons.)

[para 62] In any event, where, as here, the April 8, 2015 email should be taken as asking for versions of documents in all the forms in which they were supplied to or were held by the CPS at one time, then all such records are responsive to the request. Thus, the Public Body was obliged to search for them, as it did.

[para 63] As well, according to earlier orders of this office (discussed further at para 75 below), section 10 of the Act requires that to the extent a public body cannot locate records that demonstrably were once in its possession, it is also obliged to explain why they no longer are. Given that the Applicant has shown that the records on the USB drive and a hardcopy were once in its possession but no longer are, the Public Body is obliged to explain to the extent it is possible for it to do so why they are not. I will deal further below with the kind of explanation that I believe is required.

[para 64] With respect to the Applicant's request to the Public Body that it take and provide photographs or photocopies of the storage device on which these records had been stored, there is no provision in the Act imposing a duty on a public body to make and provide visual images of storage devices. However, a hand-written or printed label would be "information", which might be responsive to an access request, depending on its wording.[19]

2.3 Records provided to the Applicant in earlier responses that were not provided in Response 1280

[para 65] The Applicant points out that 5 pages of the CPS's May 6/03 Response 2003-P-0076 consisting of officer notes in occurrence File 97227060, were provided in response to the earlier access request, but were not provided in its most recent response (1280).

[para 66] There is no right under the Act to have information that has already been provided on an earlier access request produced a second time. There do not appear to be cases directly addressing this issue in earlier orders of this office. However, I agree with the approach taken in BC Order F13-16 and the cases cited therein. The Adjudicator held as follows:

> information for as long as necessary to allow the individual to exhaust any recourse under this Act that he or she may have with respect to the request.
>
> Notably, the obligation extends to the preservation of "information", as opposed to the "record" of personal health information. This supports the conclusion that the Legislature did not intend to require preservation of an original record, as opposed to an accurate copy of the personal health information in that record, pending an access request.

The requirement for retention of information in section 35 of the FOIP Act also relates to retention of "information", not to retention of a particular "record". I agree, therefore, that the Act does not require the CPS to retain copies of the original versions of records of personal information in its possession, nor does it require that the information be stored on any particular medium nor in any particular format (such as PDF or Word).

[19] I have noted that the Applicant says she labelled some of the USB drives – that she returned to Detective B after he returned material to her – with black markers.

> The School District also requests authorization to disregard any access request made by the respondents to the extent that the request covers records that have already been the subject of a request to which the School District has responded. Previous orders have found that FIPPA does not require public bodies to disclose copies of records that they have already provided to the applicant, either through a previous request or another avenue of access. ... Therefore, the School District does not require authorization under s. 43 to deal with such requests, and I decline to order such relief. I expect the School District will be able to respond to any repeat requests by making it clear when such records were previously provided. If no responsive records exist, the School District need only inform the respondents of that fact.

See also BC Order F13-18 at para 41; NL IPC Report A-2017-003.

[para 67] A similar approach was taken in Nunavut Review Report 17-120, as follows:

> "… the specific records requested should be provided, to the extent that they exist, unless those records have already been disclosed, either in the litigation discovery process or under a previous ATIPP request. If they have already been provided under either of these processes, the Applicant should be referred to the relevant records."

[para 68] A similar approach was also taken in Ontario Order M-717, in which the adjudicator said: "In my view, in the particular circumstances of this case, the Board is not required to give access to the previously disclosed records for a second time. I find that, with respect to these records, the Board has already fulfilled its obligations under the Act by its previous disclosure". As well, Ontario Order M-860 states: "Provision 2 of this order does not require the Police to make an access decision regarding any records which were included in previous access decisions relating to requests by the appellant. Such records need only be listed in the decision letter or an appendix, with an indication that the record was dealt with previously, and a notation of whether access was granted or not in the previous decision."). See also Ontario Order MO-3696, in which the adjudicator accepted that requested records disclosed in a previous request were not at issue in the review. [20]

[para 69] Accordingly, I find that a public body has neither a duty to provide records it has already provided to an applicant a second time, nor to again deny records it has already denied.

[para 70] I contemplated whether my conclusion on this point might be different if a public body had charged fees for providing the records a second time. By charging fees, the public body might indicate its intention or understanding that it is providing the records again pursuant to the requirements of the Act. However, I rejected this theory. The obligations of the public body in a particular set or circumstances exist in the abstract, regardless of the view it takes of its duties itself. Further, I reviewed the access request and the further communications between the Disclosure Analyst and the Applicant, and there does not appear to have been any discussion of

[20] I have noted that Alberta Order F2008-006 (at para 35) holds that where an earlier request for the same records has been made through an informal (non-FOIP) process, and a search has already been performed and records provided informally, then while a second search need not be conducted, copies of the records have to be provided in response to the formal request. However, the reasoning from the order does not apply to situations in which the earlier request is a formal access request under FOIP.

fees. As well, the fact that the CPS did not include redactions from the records provided in the earlier requests among the records at issue in this inquiry indicates that it did not regard the provision of the responses to the earlier requests as a fulfillment of its duty to provide records in the current one. I believe the most reasonable interpretation is that it regarded a re-provision of the earlier responses as the most efficient way of indicating to the Applicant what it had already provided to her.

2.4 Differing versions of the same Report

[para 71] The Applicant points out that the 6-page report in File 9528061 in Response 2011-P-1050 differs from an earlier version of the same report she was given in 2003 in Response 2003-P-0076. She says two additional pages of hand-written notes were provided in the earlier of these responses, and also notes some other differences at page 4 of her initial submission.

[para 72] Possibly a 'To-Do list' at the conclusion of the Report was removed as unresponsive to the request. As for the remaining differences, some of them may be accounted for by the updating of the file in the interim or by some information management failure such that two reports were generated and one was deleted. Alternatively, as the Applicant notes, the two missing pages may have been misplaced by the time of the second response. In any event, the additional material is in the first of two previous responses, and the CPS was not obliged to re-provide either of them, as just discussed.

3. Adequacy of the search / duty to assist for Response 1280

[para 73] In dealing with the issue of whether it conducted an adequate search, the CPS reviewed in detail the extensive steps that the Disclosure Analyst had taken to try to ensure that all responsive information in the possession of the CPS had been provided.

[para 74] However, the CPS did not indicate whether it had considered all the particular information the Applicant believes is still missing from the responses, whether the submissions she makes about this raise the likelihood that such information existed and was in its possession at one time, and, if so, whether there is a reasonable explanation as to why such information, that it possessed or likely possessed at one point, no longer exists or is no longer in its possession.

[para 75] As noted above, earlier orders of this office have addressed the situation where an applicant provides evidence that information was or likely was in the hands of a public body. They hold that the duty to assist under section 10, in addition to requiring that the steps taken in conducting the search are set out, also require an explanation as to why the records had not in fact been in its possession, or if it is or is likely the case that they were, then why it no longer has them.

[para 76] For example, in F2015-29 I reviewed past orders of this office and noted that the duty to assist has an informational component, in the sense that a public body is required to provide explanations when it is unable to locate responsive records and there is a likelihood that responsive records exist. I said (at paras 18, 26 and 27):

> Earlier orders of this office provide that a public body's description of its search should include a statement of the reasons why no more records exist than those that have been located. (See, for example, Order F2007-029, in which the former Commissioner included "why the Public Body believes no more responsive records exist than what has been found or produced" in the list of points that evidence as to the adequacy of a search should cover. This requirement is especially important where an applicant provides a credible reason for its belief that additional records exist.
>
> …
>
> Even if the Public Body's steps in conducting the search were adequate, it is also important for it to address the absence of records that, based on the Applicant's submissions, it seems possible should exist.
>
> I will therefore ask the Public Body to provide a new description of its search to me, and to the Applicant, that is adequate to explain why the records the Applicant believes exist, as described above and in his communications and submissions, do not exist. I reserve jurisdiction to order a further search if I conclude this is called for (after hearing from the Applicant), in the event the Public Body does not provide an explanation that satisfactorily addresses the Applicant's point that the chronology written by the Director could only have been written with supporting documentation.

[para 77] See also, Orders F2016-58 at paras 14-15, and F2019-14 at paras 16-17. The latter case quotes the following passage from *University of Alberta v. Alberta (Information and Privacy Commissioner)* 2010 ABQB 89 (CanLII), in which the Alberta Court of Queen's Bench confirmed that the duty to assist has an informational component. Manderscheid J. stated:

> The University's submissions set out the information it provided, and argues that it is not necessary in every case to give extensive and detailed information, citing, *Lethbridge Regional Police Commission,* F2009-001 at para. 26. This is not an entirely accurate interpretation as to what the case holds. While the Adjudicator indicated that it was not necessary in every case to give such detailed information to meet the informational component of the duty to assist, it concluded that it was necessary in this case. In particular, the Adjudicator said (at para. 25):
>
> > In the circumstances of this case, I also find that this means specifically advising the Applicant of who conducted the search, the scope of the search, the steps taken to identify and locate all records and possible repositories of them, and *why the Public Body believes that no more responsive records exist than what has been found or produced*. [Emphasis added in original] [21]

[para 78] In saying this, I acknowledge that in the present case the Disclosure Analyst conducted an extensive and thorough search, and explained it in detail in his Affidavit. He stated that he had begun his search by downloading event chronologies for the requested files, then determined which CPS members were involved, and then made requests to those individuals and their units. He stated in his Affidavit that he had made a request to the Evidence Processing Unit and to the Administration Unit for all materials related to the tracking of evidence in the files the

[21] In the circumstances of that case, the University had not included all members of a department in the search, and had not used particular reasonable search terms/keywords; the Adjudicator asked it to explain why it believed adding members or using more keywords would not lead to locating further records. The Court upheld this requirement for a further explanation.

Applicant had specified. The Disclosure Analyst's Affidavit does not mention Detective B (despite the fact that the Applicant specifically mentioned Detective B in her request), but his correspondence with the Applicant subsequent to the access request makes clear that he also corresponded with and tried to obtain relevant records (emails) from Detective B.

[para 79] In some earlier orders of this office, the Adjudicator held that the fact a very thorough search had been conducted and records were not found was itself an adequate explanation for the belief that no further records exist.[22] While I agree with the logic of this in the appropriate case, in circumstances such as the present, where the Applicant is able to demonstrate with certainty for some of the records she describes that the public body was once in possession of them, or that this is reasonably likely, I believe the duty under section 10 includes giving an explanation as to what happened to them or likely happened to them that would account for their no longer being in the public body's possession.

[para 80] If such explanations cannot be given due to the passage of time, a public body should explain why the passage of time impedes its ability to provide an explanation – for example, that there are no longer people employed by it who have knowledge of the related events, or if there are, that they no longer remember details about the particular case, or that records retention policies permitted or provided for the destruction of pertinent recorded information.

[para 81] The Applicant has provided extensive and detailed reasons, including a large proportion of the 131 pages of her "Detailed Request for Review of CPS FOIP Response 2014-P-1280", as well as in her subsequent submissions, as to why she believes the CPS was once in possession of particular records relating to her that it has not provided to her. She points to email exchanges between herself and CPS members which she knows took place (and of which she has copies) but were not included in the responses. As well, the Applicant believes that given investigations that took place with respect to incidents in which she was involved, certain types of information should have been created (such as, for example, "event chronologies"). The Applicant also points to particular records or particular versions of records which she had supplied to the CPS as evidence relating to her files, but which were not provided to her in the responses to her access requests (in fact, she provides evidence that she was advised that these records would be placed in the "Property Room" and kept their "indefinitely"). The Applicant asks either that they be provided to her, or in the alternative that documentation as to their destruction or removal or return (if these records were dealt with in this manner) be provided to her. The Applicant's reasons for believing records exist are often also based on information provided in the responses to her earlier requests, including references in that material by CPS members to the records she continues to request.

[para 82] I have reviewed all of this information and related arguments. Having done so, I understand why the Applicant continues to have questions as to why particular records have not been provided to her either in her earlier access requests or in the present one – the latter of which was sufficiently broad to cover all records relating to her in all CPS investigations. While I have no reason to conclude that the CPS has located such records but has failed to acknowledge that they exist, I do believe that there may be reasons, which the Applicant ought to be told, as to

[22] See, for example, F2019-37, at para 12.

why (or if that is unknown then why it is likely), they no longer exist or are no longer in its possession. Alternatively, if neither of these things are any longer known or cannot be ascertained due to the passage of time for all or some of the records or categories of records raised by the Applicant, then the Applicant ought to be told that is the case. If it is, the CPS should also explain how the passage of time impedes its ability to provide an explanation – for example, that there are no longer people employed by it who have knowledge of the related events, or if there are, that they no longer remember details about the particular case, or that records retention policies provided for or permitted the destruction of pertinent recorded information.

3.1 The Applicant's evidence regarding records she believes have not been provided either in earlier responses or the present one

[para 83] In the pages immediately below I will provide my summary and analysis of the Applicant's evidence about these matters. At the conclusion, I will create a list of the records relative to which I believe an explanation is (or in some cases, depending on facts in the possession of the CPS, may be) required for why the records were not provided in Response 1280.I will also provide comments as to the types of explanations that might be provided in fulfillment of this requirement.

3.1(a) Email exchanges between the Applicant and Detective B:

[para 84] The Applicant appears to be or to have been in possession of particular email exchanges between herself and Detective B, as indicated by her provisions of excerpts from the emails (generally, their opening words) which have never been provided in CPS's responses to her. The specific emails mentioned (at pages 36 to 39 of her initial submission – the "Detailed Request for Review …"[23]) are:

i) Nov 5/10 email to Detective B regarding a statement to be provided by her regarding alleged perjury of LSA employee TG.

ii) A series of emails from 2011 (Mar. 10, Nov 9, 23, 24, 25, Dec 4); the Applicant quotes the beginning words of these emails at page 37 of her submission

iii) A series of emails between the Applicant and Detective B in 2012, plus attachments (described by the Applicant at pages 37 to 39 of her submission); these emails relate to the Applicant's Jan 16/12 complaint against RP. The Applicant says that related emails were disclosed in both 2012 (2012-P–0986) and in 2014 (2014-P-1280). In her "Detailed Request for Review" the Applicant said that there was no indication by Detective B that the attachments were not received.[24]

[23] Some of the emails mentioned in these pages were provided in the May 21, 2015 response, so are not listed here.

[24] A copy of the attachments (a 3-page statement and a thumbdrive) provided to Detective B on Aug 9/12, were also missing at the time of the Applicant's initial submission, but were provided to the Applicant in the (Part 2) May 21, 2015 response, (as was a "Property Record Card" related to the exhibit (632332)).

iv) A series of emails (7 emails) between the Applicant and Detective B in 2013 related to File 10411004 (allegation of perjury against LSA employee TG). The Applicant quoted the beginning words of these emails at page 39 of her Detailed Request for Review; she said that a polygraph attached to those emails was also missing. The Applicant noted that other emails in the same date range were provided in the former responses; she also noted that additional emails and other documents related to File 10411004 were included for the first time in the current response (page 1 of 41, emails of Dec 7/11 and of May 13/14 to June 12/14 – pages 32-33 and 39 of 41, and Folder 111207 Email); she also noted that other documents related to the polygraph were disclosed in the earlier responses. *However, most of the emails in the series of 2013 emails appear to have been provided in the May 21, 2015 (Part 2) response. The affidavit that was attached to the emails was also provided in the Part 2 response.*

v) An email dated Nov 9/11 from Detective B to the Applicant (described at page 56, letter q of the Applicant's submission) beginning with "I received your package..".

vi) An email dated Nov 9/11 from Detective B to the Applicant (described at page 56, letter q of the Applicant's submission) beginning with "I received your package..".

vii) A Feb 26/04 email to Detective P.

viii) An Apr 4/10 email from the Applicant to cps@calgarypolice.ca.

ix) An Apr 4/10 email to the Applicant from CPublicAffairs@calgarypolice.ca.

x) An Oct 25/10 email from Detective B to the Applicant in which Detective B told her there was no deadline regarding a statement she was preparing. (The existence of additional notes concerning this advice is speculative.)

[para 85] I accept the Applicant's evidence that there were emails exchanged between herself and CPS members that were not provided to her, as set out above.

[para 86] With respect to the emails just listed above, in its May 21, 2015 response, the CPS reviewed the emails that the Applicant had advised were still missing or partially missing. As just noted, it provided a series of emails from 2013. With respect to the Nov. 5, 2010 email, and 12 emails from March 10, 2011, the Disclosure Analyst stated he had contacted IT to determine if there were copies, and that IT confirmed the emails had been "deleted off the system". With respect to the remaining emails, he advised the CPS no longer had emails going back to 2004, nor the Applicant's correspondence with the communications unit, and that Detective B no longer had emails from 2010.

[para 87] It is not clear to me whether stating emails had been deleted off the system is meant to convey that the person making the statement was describing his or her knowledge respecting particular emails, or was merely stating that under CP policies, such emails would have been deleted given their dates.

[para 88] If the former is what is meant, it would be useful for the CPS to indicate who made this statement, or to provide a statement from the person who has this knowledge.

[para 89] If the latter is what was meant, I believe this would be a sufficient explanation as to why the CPS believes it no longer has them if it had made the following clear:

- what its policy requirements are with respect to the storage and retention of emails, whether in a member's computer, or in their notes,
- whether there is some other system in place for storing and retaining significant emails and their attachments,
- whether and what documentation is required for the deletion of any of these things, and what the retention period is for such documentation.

[para 90] Alternatively if there are no policies about these matters but it is left to individual discretion, it would be helpful to know, if such information can still be obtained, what the practices of the relevant member are or were relative to these matters, and whether they have any specific recollections. To some degree, Detective B, with whom the Applicant corresponded to a significant extent, has stated his practice (of placing significant emails in his notes), but it is not clear whether these practices related to any policy requirements, nor what he did with emails that he did not insert into his notes. Nor was it clear what policies are in place relative to retention of notes.

[para 91] In saying this, I note that the Disclosure Analyst advised the Applicant that if she wished to know the records retention schedule of the CPS, she could make a new access request for this information. However, I believe that advising her of the relevant parts of the records retentions schedule is required to help fulfill the duty related to its search of explaining why it believes records that once existed no longer exist.

[para 92] I am also aware of the amount of time that has passed since the emails were sent and received. Possibly, the answer in this case is that it is not possible to provide such advice to the Applicant because it has been obliterated by the passage of time, the departure of CPS members, or a combination of these things and the complexity of the events. If that is the case, the CPS should be as specific as to why it is.

> *3.1(b) Materials the Applicant supplied to the CPS as evidence for its investigation files (the list below is derived in part from the Applicant's submission "Detailed Request for Review …", at pages 57 to 60, and from a repetition of these requests at pages 87 to 92)*

i) Materials on a black USB drive that the Applicant gave to Detective B on Oct 18/2010 (SB1) which she says "consisted of various documents and materials" (page 57 and page 89 of the Applicant's submission); according to page 55 of her submissions, this material was later copied onto a red USB drive (discussed below).

ii) A red USB drive (SB2) that was provided at the same time (on Feb 8/11) as a hard copy of the first three volumes of the complaint regarding the alleged perjury of LSA employee TG; the nature of the "materials" it contains is unspecified at page 57 of Applicant's submission, but is described at page 52 as "the contents of the thumb drives that had been SB1 and SB2"; the Applicant also now asks for photos or photocopies of this USB drive. She also asks for any photocopies of the hard copy of her statement that she had provided; however, she is not

requesting copies of the original Volumes 1-4 of her statement, that became SB3 to SB6 in Ex 563306 in File 10411004, since unlike other items, she did not return these materials to Detective B (page 89 and 90 of the Applicant's submission, and her email to this office of May 6, 2015).

iii) A blue USB drive provided to Detective B on Mar 8/9 of 2011 (which the Applicant provided along with the hardcopy of the fourth volume of the complaint regarding the alleged perjury of LSA employee TG); the Applicant believes this USB drive contained the digital form of her statement regarding the alleged perjury of TG and was labelled SB7; the Applicant also now asks for photos or photocopies of this USB drive.

iv) An attachment to a Mar 15/11 email from the Applicant to Detective B (the email was disclosed, as indicated in Response 0970, at page 50); the attachment to the email was a Zip file containing evidence (a 37-page transcript from a trial) for CPS investigation file 10411004. The Applicant initially asked for a hard copy printed by Detective B and copy and photo of a DVD created by Detective B and referenced in his Mar 15/11 notes (as indicated in Response 0970 pages 50-51); she says the attachment was initially labelled as SB7 and was changed to SB8 and placed in the "Property Room" as part of Ex 563306 for File 10411004.[25]

v) Three attachments to the April 25/11 email from the Applicant to Detective B (as evidenced by her email which appears at page 125 of Response 2011-P-0970). At page 60 of her submission the Applicant says this was additional information (jpeg files) for her April 6/11 complaint against RP, ZC and KL; she suggests the attachments may have been in a black binder she returned to Detective B, and says they were treated as part of File 10411004 (complaint against the Law Society employee TG) rather than as part of investigation files numbers 04068170 or 04124301 (page 60 of the Applicant's submission).

vi) The blue USB and hardcopy versions of the April 6, 2011 complaint (SB9 and SB10)

vii) Any other contents of the black binder of materials, and emails sent along with it, that were returned by the Applicant to Detective B, and any other material not specifically listed that she returned to Detective B. The Applicant also asks for a photo or photocopy of the exterior of the binder.

viii) "2 packages of contents including 3 memory sticks": the contents of these items is unspecified but they were mentioned in Detective B's notes; she asks for these only to the extent they do not contain the foregoing material.[26]

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[25] In the email to this office of May 6, 2015 the Applicant made a further statement respecting SB8 (the DVD and a hard copy of a 37-page transcript of trial evidence of McC that she says became part of Ex 563306). This emailed statement is somewhat unclear: she says the material was "not retained by me and returned in the package received by [Detective B] on Nov 8/11, provided that the 37 pg hardcopy transcript was actually sent by the Property Room in the packages on Oct 4/1." I cannot tell from this sentence whether she is saying she did return this material, or did not. At the conclusion of the paragraph she seems to say that the hard copy of the transcript is likely still in the possession of the CPS because it was likely contained in the black binder that she returned to the CPS. Possibly this suggests that she is now asking only for the hard copy, rather than a copy (and photo) of the DVD.

[26] In addition to the information set out in these bullets, under the heading "CPS Occurrence No. 14157448 Filed by Me and any Files/matters Arising Therefrom", the Applicant specifically mentions "USB drives of materials

[para 93] On page 55 of her submission, the Applicant says exhibits SB1 to SB10 were all received in the "Property Room" on April 12/11 (after Detective B reported that the file had been made inactive). After they had been sent to the Applicant, she returned the materials, and by emails of October 27, 2011 and November 3, 2011, Detective B undertook to return to and keep in the "Property Room" all the documents items she had sent back to him.[27]

[para 94] The Applicant asked in her submissions for disclosure of all the foregoing materials (with the exceptions noted), or alternatively, information regarding their processing, distribution, release or destruction. She says there is no Property Unit Report relating to any of this information after Nov 8/ 11, the date on which Detective B received the material the Applicant had returned. She asks that if the materials are no longer located in the "Property Room", she be provided with documentation as to what was done with them, either "Property Room" documentation, or documentation by Detective B.

[para 95] I believe it is likely there are processes in place for dealing with materials provided to the police for investigative purposes. Therefore, as the Applicant has demonstrated these materials once existed in the CPS's possession, and it cannot now locate them, its duty under section 10 calls for an explanation as to why it believes that they are no longer in its possession according to these processes. This is so whether or not Detective B fulfilled his undertaking to place the material that the Applicant returned to him back in the "Property Room" after it had been returned to her.

[para 96] I have noted that in its May 21, 2015 final response letter, the CPS stated with respect to file 10411004 that all materials the Applicant had provided had either been destroyed or returned, and with respect to the "111207 Email" it said that the CPS no longer had any further related records. (Presumably it was referring in each case to materials other than those provided in Response 1280.) The Applicant disputes the accuracy and points out imprecision with respect of some of these statements (at page 95 and following of her Addendum 3). In any event, I do not believe the statements fulfill the requirement for an explanation as to why CPS believes the records no longer exist in its possession.

[para 97] Thus, for example, if the CPS were at this point still able to determine whether the records were returned to the "Property Room" and discovers that they were or possibly were, its duty under section 10 might be fulfilled by explaining what becomes of records kept there as exhibits, both for active and closed files, what documentation is routinely created, including for destruction, and what becomes of that documentation. Alternatively, if the CPS is able to determine the materials were not returned to the "Property Room", any information still available as to what the detective might have done with these materials, and what the CPS's retention policies are with respect to such information in the possession of individual officers, could

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accompanying … witness statements" and hardcopy printouts of the materials on such USB drives. However, the Applicant indicates at page 1 of her submission that she has no concerns about the related response ultimately provided for this file.

[27] Relevant emails/undertakings from Detective B are at pages 132-134, and 136, of Response 2011-P-0970.

provide the required explanation.[28] (I do not have authority to monitor the CPS's compliance with its own policies, but indicating what they are could help to explain why it believes records are no longer in its possession.)

[para 98] In the event the explanations are insufficient to establish that the records described above no longer exist in the CPS's possession, a new search could possibly ordered.

[para 99] As for visual images of the recording devices, as already discussed at para 64 above, the Act deals with the provision of records of information, and not with the provision of the storage devices on which information is recorded. Writing on a storage device, such as a printed or hand-written label, would be "information" (which might be responsive to an access request, depending on its wording) but the storage device itself is not "information". The Act does not provide a right to access a physical device or a visual image of it, in contrast to a copy of the information recorded on that device.

3.1(c) Notes by Detective B that the Applicant believes would have been created given developments in the files

[para 100] I preface this section by explaining that in the pages that follow, I refer to some of the Applicant's suggestions that particular materials exist as "speculative" – hence they need not be addressed. I do so even though in some cases it is *possible* that such materials do in fact exist or existed. I use the term where, while acknowledging there may be a reasonable *possibility* that such records exist, there is insufficient basis in my view to conclude that they *likely do or did* exist, to the degree that their absence needs to be accounted for to the extent this is possible. For instance, where information is recorded in a CPS "Report", it is possible that there was other written information on which that recording was based, but it is also possible that the Report was based on the verbal supply of information or on recollection, rather than on other written material. In such a case, I characterize the idea that materials exist as speculative. This is in contrast to a "reasonable likelihood" standard, or "the required standard".

[para 101] The Applicant notes there are no disclosed notes of Detective B between the Apr 18/11 date of telephone advice by him to the Applicant that the investigation into her complaint could not be investigated further, and Nov 8/11 (the date Detective B recorded receipt of materials she had returned to him) and then again until Nov 22/11, the date on which Detective B commented in his notes on the contents and the steps he had taken in view of his receipt of a FOIP request (which presumably had been made by the Applicant). (This appears to be indicated by page 69 of Response 0970, not page 83 as the Applicant suggests.) The Applicant appears to be speculating that such notes should exist. I cannot require explanations for the absence of materials that are merely speculative. She also notes there is no email advising her either of destruction of the materials or their return to her. The Applicant does not provide evidence of having received such an email, by which she possibly means one must have existed; in the absence of evidence to this effect, the idea that such material exists is also speculative.

[28] Since the source of the folder "111207 Email" is unknown), it is possible it is a copy of the hardcopy version of SB10, in which case an explanation for that particular record would not be required.

[para 102] With regard to documents relating to the destruction or removal of exhibits, I will discuss more fully below whether given the wording of the Applicant's original request, such materials fall within its scope – a question that does not have a clear answer. Regardless, however, I believe that for any such material that still exists, reference to it could be important in explaining what became of records that were once in CPS's possession. The same is true of the related CPS policies and practices, including any policies related to retention of destruction documents.

3.1(d) Event chronologies for CPS Investigation files Numbers 95168061; 972227060; 04068170; 04124301

[para 103] The Applicant believes that there should be an "Event Chronology" for every investigation for which a file number was assigned and charges were laid. It is not clear to me how such a document would differ from an Investigation Report such as that which was created and produced in, for example, Response 1050. In any event, whether this is so depends on CPS policies and practices.[29] This would be a question that the CPS could readily answer for the sake of transparency. If such documents are routinely created, the CPS should explain why they were not created or were created but not provided for the file numbers listed above, if this information is still available.

3.1(e) Adequacy of search relative to the access request resulting in Response 2011-P-1050 (referred to within as "Response 1050")

[para 104] The Applicant believes there should be documentation of the fact noted in Report 95168061 that "the Case [was] sent to FIP". As I was not aware of what the acronym "FIP" stands for, I asked the CPS to explain. The CPS responded that it stands for "Forensic Investigation Process" which was a pilot project which related to access by the RCMP to CPS files that required the RCMP's forensic assistance.[30] In her recent submissions responding to the CPS's answer to my question as to what the acronym stands for, the Applicant provided an argument and some evidence suggesting that the CPS's explanation was false, and that in fact the acronym stands for "Firearms Interest Police". I acknowledge the Applicant's factual observation that what the CPS described as a "pilot program", according to some of CPS's related documentation that she obtained, lasted for 18 years, and her point that this period would not be fairly described a "pilot program". However, even if I accepted that the CPS's explanation was mistaken, this would not lead me to conclude that there would necessarily be written documentation related to the decision to submit material to the program to the extent this happened. Thus, regardless of what "FIP" stands for, I cannot take the entries as evincing the

[29] I note that the Disclosure Analyst in his Affidavit stated that he had started his search by downloading the "event chronologies" for the requested files.

[30] The submission stated: "FIP stands for **F**orensic **I**nvestigative **P**rocess. This was a pilot project initiated by the RCMP Forensic Science and Identification Process. Investigations that required forensic assistance or analysis through the RCMP Forensic Science and Identification Service were required to access those services through the Forensic Investigative Process (FIP). The notation on the file simply indicated whether or not that was done on any given file. The pilot project did not represent a change in the investigative procedures previously or subsequently employed but was rather related to the way those processes or procedures were accessed."

existence of such additional documentation. Therefore, the Applicant's belief that they do is speculative, and does not meet the standard of a reasonable likelihood that such records exist.

[para 105] The Applicant asks for "Reports, notes and materials" which she says are referenced on page 2 of Response 1050. The referenced parts of the Complaint Report state "Reported By" rather than "Reports", and under the heading there is a list of Regimental numbers of CPS members who reported information, and CPS members who entered data, all from 1995. There is no indication that when the entries in the Report for Case File 95168061 were made, they were based on additional written, in contrast to verbal, material, beyond the CPS member's notes that were provided. The CPS's response to my questions to it of July 29, 2019 are of assistance. The CPS explains that not all CPS members who are listed under that heading had involvement in the investigation, and that where there are members who provide substantive information, they do verbally over the telephone to someone who receives and records it, rather than by means of providing written reports. Therefore, there is no reason to think it likely that any of the people in the list other than those who were involved in the investigation provided any substantive information, and no reason to think that those who provided substantive information did so by reference to written material (though they may have been referring to their own notes). Therefore, the existence of "Reports" other than the final "PIMS" Report is speculative.

[para 106] The complaint Report in CPS File 95168061, as well as the member's notes that were disclosed, indicates that a written statement by the Applicant was taken and that she attended to complete it. The Applicant also believes there should have been a Property Unit section in the Report, since she gave a statement. This evidence meets the required standard, except that given the age of the records (dating from 1995), CPS policies may account for their absence/destruction. The Disclosure Analyst responded to this request specifically in the May 21, 2015 response, saying it did not have a copy of the statement. The Applicant asks, alternatively, for documentation authorizing destruction of her statement. Again, the creation and continued existence of such processing documents depends on CPS policies and practices.

[para 107] The Applicant also wants notes of Cst J. regarding his interview of her, if any exist that were not already provided, as well as the notes forming the basis for the "will-say" statements of the two officers who were involved in the complaint. For the reasons given above, the existence of such notes is speculative.

[para 108] The Applicant says she received two additional pages of notes made by the two officers investigating this file in an earlier (2003) request. She says she wants to know whether the additional pages still existed in the possession of CPS at the time of the later request, or whether they had been lost or misplaced. Though I understand why the Applicant is asking the question, as discussed above, I can only review whether the Public Body met its duties under the Act. Because there was no duty to provide the response a second time, I will not address the failure to provide these particular records in the second response.

[para 109] The Applicant also wants other materials related to charges being laid that were disclosed in the 6-page Report 2003-P-0076, but that were redacted in the same material provided in 2011-P-1050 (at page 3 under the heading "Statute Sections"); she also disputes the

latter redactions, (which I am not considering in this order)[31]. She is also asking for the version of the 6-page Report that was provided in 2003 to be provided again. As discussed, there is no duty to provide a second copy of records that have already been provided. The Applicant also says there are some minor differences in the unredacted portion of the information. These differences have already been discussed above at para 71-72.

3.1(f) Adequacy of search relative to request resulting in Response 2003-P-0076

[para 110] The Applicant points out that 3 pages of handwritten notes were provided in the 2003 response that were not provided when the earlier responses were re-provided to her in 2014. She wants to know if they were lost or were destroyed, and if destroyed, whether there are records that document that destruction. As already discussed, as there was no duty to provide the records a second time, I will not address the absence of these records from the second response. With respect to the Applicant's request for any records documenting destruction of these records, whether such processing records once existed depends on CPS policies. As discussed above, an explanation by the CPS as to what kinds of records authorizing destruction it routinely creates, as well as how long such authorizing records are themselves retained, would be helpful for the sake of transparency. (Any such records that still exist would be responsive to the request and should be produced.)

[para 111] The Applicant also asks for any other materials relating to the File Number (97227060) to which Response 2003-P-0076 related, including materials relating to destruction of any such other records. The existence of such additional records is speculative.

3.1(g) Adequacy of search relative to request resulting in Response 2011-P-0970

3.1(g)(i) CPS File No. 04068170

[para 112] The Applicant notes that other materials provided to her by the CPS indicate that File Reports are altered over time, and therefore she wants to ensure that the version of the Report for this file that was provided in Response 2011-P-0970 is the current version. Without more evidence, the existence of variations or updates in this Report is speculative.

[para 113] The Applicant thinks there should possibly be a section in this Report entitled "Property Unit" because she provided materials (a statement) for this file. However, she acknowledges that the absence of such a heading may have been because the statement was filed as an exhibit for CPS File 04124301. She also notes that she has received two versions of the "Property Unit" portion of the Report in CPS File 04124301, the latter (which was provided in the most recent Response 1280) containing two additional and more recent (2012) entries than the former. She believes the additional entries should have been provided in earlier responses, since the additional entries predated the earlier requests, and she asks that the entire Report in the latter File that contains the additional entries be provided to her a second time. I am unable to account for the absence of the updates in the version she was initially given: possibly it was re-provided as a function of the fact the updated version had been missed in the earlier response. In any event, the idea that the remainder of the Report is likewise different from the one she has

[31] See para 315 below for a discussion of my reasons for this decision.

already received, while possible, is speculative, and does not meet the "reasonable likelihood" standard which would warrant a further explanation.

[para 114] The Applicant asks for materials relating to entries in the Report that may be the internal approval of the assignment of investigating officers. The existence of such additional materials is speculative, and in any event, in my view, goes beyond the scope of the access request. (While the request was for "all information created for the investigation of the file", I believe this would be more reasonably interpreted as material relating to the investigative work done on the files, and does not go so far as the choice of officers assigned to perform it.)

[para 115] The Applicant believes there should be documentation of the fact that "the Case [was] sent to FIP"; as discussed above, the existence of such additional records is speculative.

[para 116] At page 69 of her submission, the Applicant refers to Reports referenced at page 2 of Response 0970. As acknowledged by the Applicant where she states "if it is anything other than the exact entry", there is no indication that when the incident described in the Synopsis section of the Report in the relevant investigation File (04068170) was compiled, it was based on written in contrast to verbal material, beyond the members' notes that were located and provided in part. Nor is there any indication of a written Report by Reg #2413. The existence of all such additional materials is speculative.

[para 117] The Applicant asks for materials that the Report indicates were provided to a CPS staff member as the "Copy". There is no indication any materials additional to the Report itself would have been copied, and no evidence of the existence of any additional materials.

[para 118] The Applicant asks for the written statement that was taken from her by Sgt. P, as well as a three-inch binder of materials that she provided to him (both of which are documented in the Synopsis in Report 04068170), and a photo or photocopy of the binder. She adds that that Report had no "Property Unit" section documenting those materials, but offers the possible explanation that it is the "Package of Statements, Computer Disk" that was documented the "Property Unit" section of CPS File 04124301 (Ex 230327), the destruction of which was authorized on Feb. 21, 2012. (However the Applicant also comments that one of the CPS members describes the materials that she provided as 1 CD and 2 volumes of paper materials, raising the possibility that Ex 230327 consisted of different materials,) The evidence provided by the Applicant about her statement and about the binder (which consists of the comments about these things in the SYNOPSIS in the Report), establishes that these materials were once in the possession of the CPS. While it may no longer be possible for it to do so, to the extent it is, the CPS should provide an explanation, possibly by reference to its policies and practices, as to why these materials are no longer in its possession. However, as already discussed above, there is no duty to provide a photo of the exterior of the binder of materials (though a written label, if it still exists, would be responsive.

[para 119] Further with respect to the interview/written statement of the Applicant referred to in the Report, the Applicant asks for any additional notes or documents that were created beyond those contained in the handwritten notes of the two CPS members who were present; she also observes that the notes are not associated with a specific file number. However, the notes reveal

the subject matter, which relates to the issues in the two files. The existence of additional written material is speculative.

[para 120] With respect to communications between Detective P and a Crown Prosecutor, while the notes of one CPS member reference a phone message being left by another member for the prosecutor, the existence of notes about further communications is speculative.

[para 121] The Applicant asks for any written materials that gave rise to a reference in the SYNOPSIS of a conversation between herself and the Crown Prosecutor (p. 5 of Response 0970). The idea that the conversation was communicated to the CPS by the Prosecutor by written rather than oral means is speculative.

[para 122] The Applicant asks for any further written materials related to an investigation being conducted in relation to her allegation of assault (as referenced at page 5 of 0970). She notes that the Report in file 04068170 contains no heading "Investigative Details". In my view this does not meet the "reasonable likelihood" standard that additional materials exist relative to this file: the reference at page 5 of Response 0970 to further information in file 04124301 possibly supports the idea that there are none. A well, as the Applicant notes, the exhibits for the former file may have been associated with the latter, as there was a lack of clarity as to which file number related to her complaint of assault against ZC and which related to her complaint of perjury against ZC, RP and KL.

3.1(g)(ii) CPS File No. 04124301

[para 123] The Applicant points to the fact that, as she demonstrated, versions of some of the Reports she received in Response 1280 differ from versions of the same Reports she received earlier, and based on this she asks for all former versions of the Report in File 04124301. As already discussed above at para 113, the existence of other versions of this Report, beyond the "Property Unit" update, is speculative.

[para 124] Much of the Applicant's argument under this section of her submission repeats earlier parts of the submission. These parts have already been addressed above.

[para 125] The Applicant asks for documents regarding the approval of the investigator of her complaint(s). The existence of such documents is speculative and is outside the scope of her original request (which is properly interpreted in my view as being for records about or relating to the investigative work, rather than about the assignment of investigators).

[para 126] The Applicant asks for "Reports, notes and materials" which she says are referenced on page 7 of Response 0970. The referenced parts of the Report state "Reported By" rather than "Reports". As discussed above relative to a different CPS file, there is no indication that when incidents described in the Synopsis section of a Report (in this case in the relevant investigation File 04124301) are compiled, the recordings are based on additional written, in contrast to verbal, material, beyond any CPS members' notes that were provided. As already noted earlier relative to CPS's general practices, not all CPS members who are listed under the heading "Reported By" had involvement in the investigation, and where there are members who

provide substantive information, they do verbally over the telephone to someone who receives and records it, rather than by means of providing written reports. Therefore, there is no reason to think it likely that any of the people in the list other than those who were involved in the investigation provided any substantive information, and no reason to think that those who provided substantive information did so by reference to written material (though they may have been referring to their own notes). Therefore, the existence of "Reports" other than the final "PIMS" Report is speculative.

[para 127] The Applicant lists a series of emails between herself and Sgt. P, dating from April, May and November of 2004. She asks for the emails, or alternatively, documentation as to their destruction. Though I have not seen the emails, I see no reason why the Applicant would have fabricated the fact they were sent or received by her. Therefore, I believe the CPS should explain why they are no longer available (which is possibly referable to their date), as well as providing an explanation about documentation of destruction, and what becomes of such documentation, if any existed.

[para 128] The Applicant asks for recorded information regarding a series of telephone calls and voicemail messages, including but not limited to calls from February, October and November of 2005, taking place between or among herself and CPS members or between or among the members themselves, and any related materials. The existence of such records is speculative, unless CPS policy requires the recording of all business-related telephone conversations. (If the latter is true, it should explain, to the extent it is now still possible for it to do so, why such records were not provided (for example, that they were not or may not have been created despite the policy, or would by now have been destroyed).)

[para 129] The Applicant asks for any materials in relation to a series of meetings or in-person conversations she had with various CPS members and a prosecutor in February, October and November of 2005. The existence of written materials is speculative. This may not be the case for materials she provided to the prosecutor at the Oct 28 meeting (that is, she may be saying she has an actual recollection of providing such materials), but as the Applicant provides no specific information about their nature, there would be no way to identify them, nor is there reason to believe based on this statement that they were ever in the possession of the CPS in contrast to the prosecutor.

[para 130] The Applicant asks for written information underlying the details of an interview (of a person whose name is redacted) appearing under the heading "Synopsis", and which formed the basis for the "Will-Say" statement of that person. The existence of additional written material is speculative.

[para 131] The Applicant asks for Reports "called in" by Sgt. P, as indicated in his notes ("Call in reports" and "Report called in"). It is unclear what "call in" means in the context of the notes (that is, whether the author was receiving or providing the reports). Nor is it clear whether the reports referred to or related to the Applicant's files.

[para 132] The Applicant asks for the handwritten statement that she provided on Feb 10/04, noting parts of it were extracted and included in the "Synopsis" section of the Report in File 04068170. This statement has already been addressed above at para 118.

[para 133] Page 81 of the Applicant's submission deals with her request for documents that would disclose whether her statement given on Feb 10/04 became part of Ex 230327 as the "Package of Statements, Computer Disk", which was moved to various locations, and ultimately destroyed. The existence of such documents is speculative, She also asks, if this was not the case, for materials relating to what became of her statement – that is, relating to its removal or destruction. If the CPS has any information about these matters (though I recognize that the passage of time may mean that the CPS no longer has any such information), it should provide an explanation as to why they were not provided (which may consist of an explanation as to its usual practices in dealing with such documents). The Applicant made a similar request with respect to the two volumes of materials and a CD she provided on the same date, in the event that these materials were not included in Ex 230327. The same comments apply.

[para 134] The Applicant asks for any materials provided by her on Feb 10/04 that were not included as part of Ex 230327. The existence of such records is speculative.

[para 135] The Applicant asks for information respecting the CPS's dealings with Ex 230327, including documents about the locations to which the exhibit was moved (the identity or address), authorization for the movement (including the name and number of the person authorizing), documents relating to the assignment of the materials to that exhibit, and documents that more specifically particularized the contents of this exhibit. The existence of such additional written materials beyond what is included under the heading "Property Unit" for Report 04124301 is speculative. (The address for the locations of the exhibits is beyond the scope of the request, which asked for materials created, obtained or related to investigations. I have interpreted this as limited to the materials that serve the purpose of the investigation,) The Applicant also asks for any additional documentation relating to the authorization of the destruction of that exhibit, including particular forms that she mentions. Depending on the policies and practices of the CPS relating to the creation and retention of such destruction documents, the existence of such additional materials may be speculative. (If the creation and retention of such documentation to the present time is required by these policies, the CPS should explain why they were not created and/or retained.)

[para 136] The Applicant asks for Exhibit 632332 in File 04124301 referenced in the "Property Unit" part of the Report as well as in the notes of Detective B, consisting of a hard copy and USB drive of her Jan 15/12 complaint against RP. As already discussed above, a copy of the hard copy statement and of the USB drive statement the Applicant provided to Detective B in person was provided in Part 2 of Response 1280. The statement that was provided as an email attachment remains at issue.[32] The requirement for an explanation relating to the missing emails has already been set out above.

[32] This statement was also an attachment to one of the missing emails, as discussed above.

[para 137] The Applicant asks (at page 83 of her submission) for a statement of Nov 3/04 recorded on a CD that she sent to Sgt P, a photo or photocopy of the CD, and any related CPS documentation related to processing, storage and destruction. She also asks for the covering correspondence. I accept that the Applicant's assertion that she sent this information to Sgt P, and (other than the request for a photo or photocopy) the CPS should explain why it was not provided in its recent response. Alternatively, she asks for documentation of the destruction of this material. The comments at para 135 apply to the part of the request regarding information about destruction.

3.1(g)(iii) CPS File No. 10411004

[para 138] The Applicant asks for former versions of this Report.[33] She has not provided evidence to substantiate the existence of earlier versions that are different from the one provided in Response 0970 (pages 21 to 30 in that response).

[para 139] The Applicant asks for the Report relating to this file from which page 36 of the 41 page Response 1280 was extracted. The material under the heading "Property Unit" is the same in each case, and there is nothing to suggest that the extracted page came from a different version of the Report in File 10411004. (The location of the "Property Unit" section on the page is different, but this could be accounted for by the fact that only this section was selected for copying in the extracted version that is 36 of 41.)

[para 140] The Applicant asks for a current version of the Report if there is one that is different from pages 21 to 30 of Response 0970. She suggests there should be a version that documents Detective B's fulfillment of his undertaking to return exhibits for this Report that had been sent to her in error to the "Property Room". As there is no way to know that this undertaking was fulfilled[34], the existence of these materials without more is speculative. However, if the CPS is aware that it was fulfilled, and if there is a policy or practice that this would have been documented if it had happened, the absence of such materials from Response 0970 should be explained.

[para 141] The Applicant asks for documents regarding the assignment of Detective B as the investigator of her complaint(s). The existence of such documents is speculative and is outside the scope of her original request (which is properly interpreted in my view as being for records about the investigations themselves, rather than about the assignment of investigators). The same comments apply to her request for documents related to the "Approved" status provided by S/Sgt D.

[para 142] The Applicant asks for "Reports" under the heading "Reported By …" (pages 21-22 of Response 0970). Repeating what has already been said above with reference to other Reports, not all CPS members who are listed under that heading had involvement in the

[33] The Applicant refers to pages 2-7 of the materials she received in Response 1280; however, I believe this is an error as those pages relate to CPS file 11292557.

[34] The Applicant herself questions whether the undertaking was fulfilled at various points in her submissions, including at page 98.

investigation, and where there are members who provide substantive information, they do verbally over the telephone, rather than by means of providing written reports. Therefore, there is no reason to think it likely that any of the people in the list other than those who were involved in the investigation provided any substantive information, and no reason to think that those who provided substantive information did so by reference to written material (though they may have been referring to their own notes). Therefore, the existence of "Reports" other than the final "PIMS" Report is speculative.

[para 143] The Applicant asks for written material forming the foundation for the assertion in the "Synopsis", relating to the Applicant, that she "indicated that she sent 16 letters between March 8, 2005 and April 23, 2007 to the Law Society of Alberta, of [sic] which she received no response". She makes the same request for material underlying the assertion that "[the Applicant] alleges that (redacted), the head of the Alberta Law Society Membership Services perjured herself ….provided evidence under oath….stating she had received, and responded to 16 letters sent by [the Applicant] to the Law Society of Alberta between the dates of March 8, 2005 and April 23, 2007". The existence of written information on which the Synopsis is based, beyond information the Applicant herself provided, is speculative. She also asks for any approvals of the wording of the statements in the Synopsis. The existence of such materials is speculative.

[para 144] The Applicant asks for an email from A/S/Sgt M of approximately March 24/11 to Detective B, referenced in the latter's notes at page 57, and any responses by Detective B. I accept this email was sent and the failure to provide it should be explained, unless, as the Applicant acknowledges it may be, it is a part of the material redacted as subject to section 27 of the Act at pages 100 to 103 or at pages 103 to 106 of Response 0970. She also believes (as stated in her submission at page 96) that there would have been more materials created by A/S/Sgt M than the notes provided in redacted form, but this is speculative.

[para 145] The Applicant asks for any written materials from or to two CPS members who participated in a meeting with Detective B and A/S/Sgt M held on March 28/11 (or arising from any other meeting). She also asks for the identity of the author of two pages of partially redacted handwritten notes relating to this meeting (and challenges the redactions). The existence of such materials, and of any notes additional to those already provided, is speculative. The CPS is not obliged to provide the author of materials unless it possesses written documentation that would identify the person.

[para 146] The Applicant asks for an email from A/S/Sgt M of April/11 to Detective B, attaching a court decision, which is referenced in the latter's notes of April 11, 2011 (page 61 of Response 0970) , and any written material associated with this email such as processing and distribution. Unless this email has been identified as responsive but provided in a redacted form in reliance on section 27 of the Act (possibly at pages 62 to 63 of Response 0970), its absence from Response 1280 (assuming I have not overlooked it therein) should be explained.

[para 147] The Applicant asks for material relating to a conference call held on April 18, 2011, including the names of the participants. The existence of written material is speculative.

[para 148] The Applicant asks for a Report and any related materials, including a Briefing Note, submitted by Detective B to A/S/Sgt M that is referenced in Detective B's notes at page 65 of 0970. I accept that such materials existed. However, insofar as they would fall within the exception to disclosure in section 27 of the Act as materials supplied as part of a request for legal advice, it seems likely that they would have been identified as responsive but provided in Response 0970 in a redacted form. Unless that is the case, the CPS should explain why the Report was not included in that response.

[para 149] The Applicant asks for all documents in the "File" reviewed by CPS lawyers, referenced in Detective B's handwritten notes at page 65 of Response 0970. If materials existed in addition to the Report discussed in the preceding paragraph, the same comments relating to 'legal advice' apply as were made in that paragraph.

[para 150] The Applicant asks for materials related to the involvement in File 10411004 of Detective SB of the CPS Behavioral Sciences Unit, including any reports or materials reviewed by him. Detective SB's involvement in matters concerning the Applicant is also referenced in the records at issue in the accompanying inquiry for Case File 001826. These records will be dealt with in that inquiry.

[para 151] The Applicant asks for all materials regarding or containing advice by CPS lawyers. Insofar as such materials would fall within the exception to disclosure in section 27 of the Act as legal advice, it seems likely that they would have been identified as responsive but provided in Response 0970 in a redacted form.

[para 152] The Applicant asks for all documents etc. related to the legal advice received by Detective B. The existence of such material is speculative, and if it exists, to the extent it reveals the advice, it would fall within the exception to disclosure in section 27 of the Act, and the comments in the preceding paragraph regarding such advice would apply.

[para 153] The Applicant asks for records relating to voicemail messages that she had left for Detective B during the week of Feb. 7-11/11, which were referenced in Detective B's handwritten notes at page 80 of Response 0970, and records of any steps taken to respond to, or communications about, these messages. Other than the single reference to the messages at page 46 of Response 0970 that the Applicant mentions (which she has already received), the existence of written material relating to the messages is speculative.

[para 154] The Applicant asks for pages of Detective B's notebook that she believes contain information relating to the Detective's response to an email she sent to him setting out her concerns about the involvement in her file of a particular prosecutor. She relies for this belief on the numbering of the pages, which she says reveal a gap during which such information would have been recorded. She also asks specifically for an email in which Detective B undertakes to provide her email setting out her concern to the CPS Legal Advisor (this missing email is among those already noted at para 84). She asks for any recorded information establishing whether the email was in fact so forwarded, and for any response provided**.** Other than the missing email response indicating the Applicant's email would be provided to a legal adviser (the existence of which is confirmed in the Report at page 28 of Response 0970) the existence of all the

information requested in this paragraph is speculative (and it cannot be said whether or not the Detective's undertaking was fulfilled). While there is a gap in the page numbering of the notes, these pages could have dealt with intervening unrelated matters. However, if that is not the case, and if the CPS is still able to determine this, it should explain why any related intervening notes were not treated as responsive for the purposes of Response 0970.

[para 155] The Applicant asks for all communications between Detective B and the CPS legal advisor regarding her concerns about the prosecutor, and regarding materials to be reviewed at a meeting. The materials about which the detective consulted the CPS lawyer were presumably her statement or other materials she had provided to him, and possibly also the Report in Case File 10411004, or some other related "police report" he had prepared (as indicated in his Nov 1, 2010 email to her). Assuming such documents were conveyed by the detective to the CPS legal advisor to receive advice about them, in this context they would also be subject to solicitor-client privilege, hence would likely have been withheld on this basis, and may have been among the records at issue redacted from Response 0970. Unless that is the case, the CPS should explain why the communications were not included in that response (albeit in a redacted form).

[para 156] The Applicant asks for communications regarding the time at which Detective B received legal advice about her matter. She points to an email of April 11, 2011 from Detective B to the effect that he was still awaiting legal advice. The Applicant seems to believe this is inconsistent with the fact that according to both his notes of April 11 and his entries in the Report, he appears to have updated the Report on April 11 to include the advice and his consequent action (pages 4 and 9 of the Report). (The advice seems to have been sent on April 7, 2011, but Detective B does not discuss it in his notes until April 11. The Applicant appears to be mistaken in the assertion in her submission that these notes are dated April 4, 2011.) The Applicant also complains that the detective did not advise her until April 18 of the action he had taken on April 11. The actions of the detective in this regard are outside of the scope of the inquiry. The existence of additional communications about the timing of receipt of the advice and the consequent action of making the file inactive, beyond the communications already contained in the Report and in the Detective's notes, is speculative.

[para 157] The Applicant asks for written material respecting a meeting between herself and Detective B referenced in an email sent to her from the detective on October 18, 2011. The existence of additional written information about this meeting is speculative.

[para 158] The Applicant asks for written material respecting a conversation between herself and Detective B referenced in an email sent to her from the detective on October 27, 2011. The existence of additional written information about this conversation is speculative.

[para 159] The Applicant asks for written material respecting a prospective phone call mentioned by Detective B in an email he sent to her on Nov 3, 2011. The existence of additional written information about this phone call is speculative.

3.1(g)(iv) CPS File 11292557

[para 160] The Applicant asks for the current version of the Report for this file that was provided in Response 1280 unless the one already provided is current. Without more, the existence of variations or updates in this Report is speculative.

[para 161] The Applicant asks for documentation of the fact that "the Case [was] sent to FIP", and any results "of that inquiry/request"; as discussed above, the existence of such additional records is speculative.

[para 162] The Applicant asks for material regarding the cross-referencing of this file with File 10411004. While the materials she cites indicates the two files were cross-referenced, the existence of written materials indicating this, beyond those she cites, is speculative.

[para 163] The Applicant asks for materials related to the insertion of "charging section" CC 264(3) into the Report, including "an Information", "a Prosecutor's Information Sheet", and "A Criteria for Detention of Accused". The existence of written information forming the basis for making the decision about grounds for the charge beyond the information included in the Report (which references consultations with specific individuals) is speculative. With regard to the existence of the specific documents cited, while it may be routine practice to create such documents in the circumstances, I have no evidence of this. However, if is a routine practice, the CPS should explain whether such documents were created and if so, what became or may have become of them, to the extent it is still possible to do so.

[para 164] The Applicant asks for materials grounding the assertion in the Report that the "Culprit" "used computer electronic means". The existence of written materials about this, beyond the material which may have been shown or provided by the Victim (cards, letters, emails), is speculative.

[para 165] The Applicant asks for materials related to the entry of "COMPLETED" with respect to the field "Nature of Offence", and related to the entry of "INACTIVE" with respect to the field "Case Status". The existence of additional written material about these entries is speculative.

[para 166] The Applicant asks for documents regarding the assignment of Cst H as the investigator for the file; the existence of such documents is speculative and is outside the scope of her original request (which is properly interpreted in my view as being for records about the investigations themselves, rather than about the assignment of investigators); the same comments apply to her request for documents related to the "Approved" status provided by Cst B.

[para 167] The Applicant asks for three particular pages of the notebook of one of the CPS members (Cst S) who responded to the complaint in this file. The notes are dated August 4, 2011, as referenced in page 2 of the Report under the heading "Notebook". Three pages of the notes of this CPS member were provided to the Applicant in Response 1280. While the first page of these notes has Aug 3 in the field "Date", the redacted portion has the date Aug 4 in the same field, which may account for the date entered in the Report for this set of notes. If there is

another set of three pages of notes by this CPS member relative to the matter that is dated August 4, however, the CPS should explain why it has not been provided.

[para 168] The Applicant asks for notes of Cst H relative to his attendance at the location of the complaint in this file. As the Report indicates that Cst H was the prime investigator, it seems reasonable to believe he also (as well as Cst S) would have had notes about the response. If that is or is likely the case, the CPS should explain why they were not located in the search and included as records at issue.

[para 169] The Applicant asks (at page 110 of her submission) for materials regarding the Reports referenced under the heading "Reported By". As already discussed above, the Reports are routinely given verbally, and the members giving them may or may not be relying on notes they created. Therefore the existence of such additional material, beyond the notes discussed above, is speculative.

[para 170] The Applicant asks for the statement of the unidentified person making the verbal statement referenced at page 3 of the Report. The existence of a written form of the "verbal" statement is speculative. The existence of additional written materials (other than in notes of Cst H, discussed above) is speculative.

[para 171] The Applicant asks for all material related to the listing of her home address, which is set out both in the Report (as being valid on Aug 4, 2011), and in the notes of Cst S. In the latter case the address is followed by a date (1999), what may be a birthdate, and then by a reference to file 10411004. The latter file lists a different home address for the Applicant. Given the context in which it is found (description of attendance at the complainant's home) the source of the address in the Report could possibly have been verbal information from the complainant (who stated she received letters from the Applicant). The existence of additional written materials beyond those provided is therefore speculative. It is also possible, however, that some or all of this information may have been accessed from within the CPS's information systems. If that were the case, it would fall within the scope of the Applicant's request for "information obtained, provided to, or created by the CPS that related to the investigation of" her files. If it can be determined that that was the source of the information, then it is responsive to the request and its absence from the response should be explained to the extent this is possible (or if it still on a CPS system, it should be provided).

[para 172] The Applicant asks for the source for the references to "Law Society File Number LS #0016", as this appeared in Cst S's notes and in the Report. Again, given the context, this might have been supplied by the complainant, or its source may be unknown. However, if it is possible that this information was accessed through CPS systems, and this can still be determined, the comments in the preceding paragraph apply. (The propriety of the disclosures of the information, which the Applicant challenges, is not an issue in the context of an access request.)

[para 173] The Applicant asks for materials relative to the date of entry of the "Synopsis" and relative to the meaning of a particular phrase. The existence of recorded material about these

things in addition to what is in the Synopsis (which appears to have the complainant as its source) is speculative.

[para 174] The Applicant asks for the "alleged" materials (phone messages, letters, or other communications) provided by the person who made the complaint in this file. Assuming these were provided to CPS, these materials may form part of the information which was redacted under the heading "Property Unit". Assuming this to be so, and depending on CPS policies, if they were destroyed or removed there would likely be some documentation about this (in addition to the "Property Record Cards" provided in the May 21, 2015 response). To the extent its policies require this, the CPS should explain why such material was not located. (Redactions to the 41 page document provided to the Applicant, which includes redaction of the third paragraph under the headings "Synopsis" and "Property Unit" are dealt with later in this Order.)

[para 175] The Applicant asks for material related to information under the heading "Professional Opinion", including material relied on by the author (Cst H / A/Sgt H)) to make each of the factual assertions in the opinion, as well as material relating to the timing and sources of the entries, and to the distribution of the opinion. The Applicant also asks in particular for material relating to communications and exchange of written materials about her and the matters in which she was involved with CPS with the other individuals named in the Professional Opinion (this includes S/Sgt F, DetectiveSB of the CPS Behavioral Sciences Unit, and psychologist Dr. B – the latter two of whom are described as being familiar with her matters and who offer opinions about these matters), as well as material relating to the sourcing of and further distribution of such material.

[para 176] I have reviewed the Professional Opinion. I note first that it appears likely this entry was made later than the entries relating to the attendance of the CPS relative to the harassment complaint described in the Report, since the date of the complaint was August 3, 2011, and the Opinion begins with the words "since August 2011". (Possibly, it is the entry made by Cst (A/Sgt) H on March 12, 2012 as referenced under the heading "Reported By".) I have also noted that the related OIPC Case File 001826, the subject of the associated inquiry, involves written communications involving the other people named in the Opinion. Therefore, it seems possible, depending on the relative dates, that some of the information the Applicant is asking for here can be found in the records at issue for that file (which or some of which the Applicant has already received in redacted form). I also note that in Response1280, the CPS Disclosure Analyst stated that the information relative to Dr. B related to the RCMP investigation, which is part of the subject matter of the related file. Records relating to Dr. B that are part of that OIPC file will be dealt with in that inquiry.

[para 177] It is also possible that for some or all of the individuals Cst (A/Sgt) H consulted, the information he entered was obtained from verbal discussions which he had with some or all of them. Further, some of it may be 'second-hand' information reported to him by someone other than the person holding the views described.

[para 178] In the event it is still possible to determine that Cst (A/Sgt) H did obtain written information to form his views in the Professional Opinion, or it is likely that he did so, the CPS should explain either that this information is contained in the records at issue in the related OIPC

Case File 001826, or if that is not the case for some or all of it, then it should explain why such information was not located in the search. If the CPS is unable to make such determinations, it should advise that this is the case, and why it is. With respect to additional written information as to the timing of the entries, the sourcing, and the further distribution of the material, the existence of such additional material (other than when it appears in emails or letters contained in records already located) is speculative.

[para 179] Further in her submission with respect to the Professional Opinion, the Applicant asks for any written information documenting or indicating the involvement of the named individuals in *any of* her interactions with CPS. While any such additional materials beyond that related to the Professional Opinion (which includes reference to CPS file 10411004) would be within the scope of her request, their existence without more is speculative.

[para 180] The Applicant also asks for written information that would reveal how CPS became aware of the Law Society proceedings in which she had been involved, and which formed the basis for the assertion that she had been "sanctioned by the Law Society and disbarred in Alberta". I note that written information about the Law Society proceedings was contained in the factual background to the court decision provided to Detective B of the CPS on April 4, 2011 by A/S/Sgt M, as referenced in Detective B's notes of April 11, 2011.[35] As well, information about this matter, including involvement by Cst (A/Sgt) H, is contained in the records at issue in the associated OIPC Case File 001826. (The information that was located by CPS for this file and provided to the Applicant in a redacted form in Case File 001826 will be dealt with in the associated inquiry.)

[para 181] As already noted, while the incident in File 11292557 is dated as August 3, 2011, the information under the heading "Professional Opinion" in the Report for File 11292557 appears to have been entered on March 12, 2012, which follows some of the events referenced in the records in the associated inquiry. As well, Cst (A/SGT) H, may have consulted verbally (as well as via the emails that were located and provided in the related access request) with some of the individuals who held the views and information he refers to in the Opinion. Without more evidence from the Applicant, the existence of additional written or recorded materials in the possession of the CPS referencing this matter, beyond those already located, is speculative. However, in the event it is still possible to determine that Cst H did obtain written information to form this view, or it is likely that he did so, the CPS should explain either that this information is contained in the records at issue in the related file (Case File 001826), or if that is not the case for some or all of it, then it should explain why such information was not located in the search.

[35] I note that the court decision ([*the Applicant] v. The Law Society of Alberta*, 2010 ABQB 656] refers to the Applicant as having been disbarred by the Law Society initially, but the decision states that on judicial review the Applicant and the Law Society entered into a settlement and Consent Order of the court whereby the Applicant was restored to the Roll of the LSA as an active non-practicing member and the Applicant signed an undertaking not to practice law in Alberta for a seven-year period. The statement in the "Professional Opinion" does not describe these events accurately, insofar as the ultimate resolution of the matter did not involve disbarment, and the assertion that it did appears to have been or have been in part an inaccurate assumption or inaccurate understanding of the facts on the part of its author.

[para 182] The Applicant asks for materials serving as the foundation for the words “this unfortunate cycle of perpetual harassment” and for the words “the obsessions of the suspect”. The former statement is worded as though it is the opinion of the author. The latter idea (that the Applicant has ‘obsessions’) is referenced in the court decision. Again, it is also possible Cst (A/SGT) H derived his views from verbal communications. The existence of additional written material is speculative.

[para 183] The Applicant asks for disclosure of Ex 581582 under the heading “Property Unit”, and additional specified information in relation to the exhibit. Information about who provided material to the CPS in this file has been redacted, and that redaction is dealt with in another part of this order. The redactions under the heading “Property Unit” are also dealt with below. For most of the specific information requested here, the Applicant does not point to material that would explain why she believes the other additional material that she specifies exists. However as discussed above at para 174, it is possible the exhibits in this matter were information and/or physical evidence provided to the CPS by the complainant in the file. Such materials would be responsive to the Applicants access request. If these materials have not already been located, therefore, the CPS should explain why they were not. (As well, as already noted above, depending on CPS policies, if these exhibits were removed or destroyed, there may be or have been some documentation regarding their removal or destruction, so to the extent its policies require this, the CPS should explain why such material was not located. The address for the location of the exhibits is outside the scope of the Applicant’s original request for material relating to investigations.

[para 184] The Applicant asks for very similar information to that under the preceding bullet, for Ex 595236. The same comments apply.

[para 185] The Applicant asks for information under the heading “Investigative Details”, including “letters which were apparently from [the Applicant]”. Possibly, this material formed part of the exhibits discussed above. In any event, assuming such material came into the possession of the CPS, it would be responsive to the Applicant’s request. Therefore, the CPS should explain why it did not locate it in the course of responding to the present request.

[para 186] The Applicant also mentions materials forming the foundation for the words “the long drawn out legal battle”. The existence of written or otherwise recorded materials grounding these words beyond the information provided verbally or in written form by the person who made the complaint about this matter, and possibly as well (depending on the date of the entry) the emails and conversations referenced above, is speculative.

[para 187] The Applicant asks for materials that formed the basis for the assertions under the heading “Remarks” that “the off … is a disbarred lawyer” and that “the off has put a wiretap on CO’s phone”. The existence of additional written or otherwise recorded information, beyond statements made by the complainant or (depending on the date of the entry) the emails and conversations referenced above, is speculative.

3.1(g)(v) CPS File 12309731

[para 188] The Applicant asks for the current version of the Report for this file that was provided in Response 2011-P-0986 unless the one already provided is current. The existence of variations or updates in this Report is speculative.[36]

[para 189] The Applicant asks for "PIMS check results which were the foundation for the statement "PIMS Offdr shows 2011 Criminal harassment suspect, court order suspect" ". The existence of a written report containing the "check results" (in contrast to the results simply having been reviewed on the database and then recorded in notes) is speculative. The information about the criminal harassment charges was recorded both in the arresting officer's notes and in the Report in CPS File 12309809. However, if the CPS is aware that a written report was or likely was generated, it should explain why this information was not located in its most recent search.

[para 190] The Applicant asks for materials relating to her arrest, bail hearing and release, including emailed communications held by CPS or between CPS and the RCMP. The existence of an email sent to the RCMP is noted in the CPS Report in File 12309809, which Report was provided in Response 2011-P-0986; if this email has not already been located, the fact it was not located in the most recent search should be explained.

[para 191] The Applicant notes the following references in the Arrest Processing Section Report: a signature under the heading "Arrest Approved"; "specific charges under the CC and a "Hold Slip" under the heading "Charges"; a number under the heading "Bail Hearing"; a reference to "Cochrane" under the heading "Disposition(S) of Hearing', and; a reference to the Applicant's release under the heading "Booked Out By". With the exception of communications with the RCMP discussed above, and the other recorded information in Report 12309809, the particular references noted by the Applicant do not provide me with a reason to believe that additional written or recorded information in the possession of the CPS exists or existed (though some additional material was likely in the possession of the court – which would be outside the scope of the request and outside of my jurisdiction). The list of criminal charges was presumably derived or confirmed from the police information checks referenced in the CPS member's notes and in Report 12309809; the existence of written materials related to these charges in addition to the database material[37] and the notes and Report is speculative.

3.1(g)(vi) CPS File 12309809

[para 192] The Applicant asks for the current version of the Report for this file that was provided in Response 2014-P-1280, unless the one already provided is current. The existence of variations or updates in this Report is speculative.

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[36] Note: this file exists in both the 41-page Response 1280 at p. 14-15, and in 2011-P-0986 at pages 10-11 ("Cover Sheet" of the Report plus page 2 of the Report, dated (first submitted) Aug 18, 2012).

[37] The withholding of the results from "CPIC and CPICIN checks" will be dealt with below.

[para 193] The Applicant asks for materials (other than the Report at pages 5-9 of Response 0986) regarding the Case Status being "Inactive". I note that two entries in the Report are dated subsequent to the disposition of the bail hearing and release, which might possibly account for the status designation. The existence of any material in addition to the documents relating to the hearing and release that have already been provided is speculative.

[para 194] The Applicant asks for documents relating to the "Approval Status" under the heading "Investigators". The existence of additional documents is speculative and is outside the scope of the original request (which is properly interpreted in my view as being for records relating to the investigations themselves, rather than about the assignment of investigators).

[para 195] The Applicant asks for "The Information" and "an Information", as referenced under the heading "Incident". There is insufficient information to determine this was likely a separate document.

[para 196] The Applicant asks for "Reports, notes and materials" under the heading "Reported By". As already discussed above for other CPS case files, not all CPS members who are listed under that heading had involvement in the investigation, and where there is substantive information, the Reports are routinely given verbally, and the members giving them may or may not be relying on notes they created. Therefore the existence of such additional material, beyond the notes discussed above, is speculative.

[para 197] The Applicant asks for materials related to a PIMS check, including the results, as referenced in the Report at 9/15 of Response 0986, and in the CPS member's notes. The records at issue do not appear to include information from the database. The references suggest that such a check was performed, but it is not clear whether the database was only accessed and read, or whether a report of some kind was generated or notes were made. If the latter is likely, the CPS should explain why such material was not located and included among the records at issue (and either provided or withheld under an exception) in its most recent response (1280).

[para 198] The Applicant asks for materials related to the CPIC check, including the results, as referenced in the Report at 9/15 of Response 0986, and in the CPS member's notes. The records at issue do not appear to include information from the CPIC database, which is an RCMP database, and as just noted relating to the PIMS check, it is not clear that written materials were necessarily generated, or whether the database was simply reviewed.

[para 199] I note however, that the Jan 22, 2015 response letter to the Applicant from the Disclosure Analyst cited section 21(1)(b) as a ground for refusing to provide material from a CPIC and CPICIN search to the Applicant. As the Applicant has noted, the Index of Records provided to this office does not mention this section, nor do the Public Body's submissions. When I asked the Public Body to explain this discrepancy, it responded as follows:

> The CPS is prohibited from releasing CPIC materials and any CPIC information must be accessed through the RCMP. As the access request from the Applicant specifically requested CPIC records, the Disclosure Analyst addressed that in his final letter to her so that she was aware CPIC records could not be released by the CPS and that section 21(1)(b) was the reason. No CPIC records were collected by the Disclosure Analyst and

> as such they did not form part of the original records or the redacted records and therefore there was no reference to s. 21(1)(b) in the index of records.

[para 200] This response does not clarify whether there were or were likely to be any records generated from the CPIC check. The Applicant provides evidence and arguments that she says support her belief that, in contrast to the statement quoted above, such records had in fact been collected by the Disclosure Analyst initially. In any event, I presume the 'prohibition' to which the CPS refers is section 21(1)(b) of the FOIP Act, which provides for a refusal to disclose information supplied in confidence by an agency of the Government of Canada. It is my understanding that the CPIC database is in the custody and control of the RCMP, and that other police forces may not access that database for the purpose of responding to access requests, but rather, such requests must be made to the RCMP directly.

[para 201] However, this is a situation in which the access request includes a request for records which were obtained from the CPIC database at a point in time prior to the access request. There are previous cases from this office as well as cases from other jurisdictions in which information relating to existing CPIC searches, as well as the results, are held to be subject to access requests.[38]

[para 202] Therefore, if records were in fact generated, then unless it could be said that records accessed from the data base remain in the custody and control of the RCMP (which may be unlikely given the types of purposes for which such records are commonly used), any such records are not excluded from the FOIP Act. Therefore, any such records must be located, and, if section 21(1)(b) applies as the basis for withholding them, then this is an argument that the CPS must make. As its present position is that it has not included any such records as responsive to the request (without saying whether any were generated or located), I will order the CPS to search for any such records, and to make a decision (which the Applicant may subsequently ask to be reviewed), as to whether to withhold the records on the basis of section 21(1)(b).

[para 203] The Applicant asks for emails sent by CPS to RCMP Cst M and any reply, as well as any similar emails. The first email has been discussed above at para 190. The existence of additional emails involving the RCMP is speculative.

[38] See Order F2006-030. Some of the cases relating to access requests for CPIC queries turn on the question of whether police services are entitled to rely on section 12(2) of the FOIP Act to refuse to confirm or deny the existence of such information (and hold that the response cannot rely on this provision). See, for example, F2006-015. Other cases hold that information provided by a local police service to CPIC and then subsequently retrieved from the CPIC system cannot be said to have been *supplied to* the local service by the RCMP within the terms of the exception in section 21(1)(b). See, for example, Order F2009-038. There are also numerous cases involving complaints as to the purposes for which individuals' personal information derived from CPIC searches was collected and used which follow from access requests in which police forces provided information about CPIC queries. See, for example, Order F2012-28, Order F2008-024. See also 2014 Ontario order MO-3025-I at paras 60-65, 2019 Ontario Order MO-3773 at para 37.

3.1(g)(vii) CPS File 14157448

[para 204] The Applicant asks for the current version of the Report for this file that was provided in Response 1280, unless the one already provided is current. The existence of variations or updates in this Report is speculative.

[para 205] The Applicant asks for information in relation to an entry in a page titled "Event Information" for file 14157448 under the heading "Remarks" (page 34 of 41 of Response 1280). The entry states "Call Review By PSC SGT T…". The Applicant seems to believe this entry may relate to two other references in the Report to a "review", the latter (referred to in the "Synopsis" at 23 of 41), stating that it is to involve the CPS legal team. It is unclear to me what "Call Review" means in the context in which it is found, nor what the first reference to a review – "Review Pending – Follow-up" means under the heading "Investigators" at 21 of 41 (possibly one or both refer to the fact there will be a review by the legal team). This uncertainty makes it impossible for me to judge whether there are likely to have been related documents prepared for the legal team review additional to the Briefing Note at 31 of 41. If that is the case, the CPS should explain why these were not located as records at issue in the most recent response (1280).

[para 206] The Applicant asks for documents forming the basis for the "Offence Date", noting that the date of her complaint is not the date of events about which she complained. It seems clear that the date chosen for the "Offence Date" was the reporting date (even though this did not coincide with the dates in the materials and statements she provided to establish her allegations), and the existence of additional material is speculative. (I find her idea that her making the report was treated as the "offence" to be unlikely – see para 216 below for a further discussion.)

[para 207] The Applicant asks for documents forming the basis for the address for District 2 as the "Place of Occurrence". Again, it seems clear that the location chosen was that of the place of reporting, even though the matters relating to the allegations took place elsewhere (so that the stated location is inaccurate).

[para 208] The Applicant asks for materials (in addition to the Briefing Note at 31 of 41) in relation to the entry "Review Pending – Follow-up" under the heading "Incident", and the approval by Det. B; this request has been discussed above.

[para 209] The Applicant asks for "Reports, notes and materials" under the heading "Reported By". As with other files discussed above, the referenced parts of the Report state "Reported By" rather than "Reports"; there is no indication that when the incident described in the Synopsis section of the Report was compiled, it was based on additional written, in contrast to verbal, material, beyond the CPS member's notes that were provided.

[para 210] The Applicant asks for materials forming the basis for her former name appearing in the "Alias name" field. This may have been derived from a written source in the CPS, though possibly, it could have been verbal. Either way, it seems unlikely that the source of the information could be established at the present time. If that is incorrect and it is still possible to determine the source, the CPS should explain why it was not located.

[para 211] The Applicant asks for a handwritten hard copy 7-page statement she provided to Cst W on May 1, 2014, as referenced in various parts of the Report in file 14157448 and in the associated Briefing Note (31 of 41). This statement appears to have been provided in Part 2 of the CPS's response, dated May 21, 2015, beginning at page 28/35.

[para 212] The Applicant asks for a handwritten hard copy 1-page statement she completed on a CPS Witness Statement Form and provided to Cst W on May 4, 2014. She points to various references to this statement in the Report including a reference to placing her statement in Hold Locker #4. This statement appears to have been provided in Part 2 of the CPS's response dated May 21, 2015 at page 35/35.

[para 213] The Applicant asks for photos of the USB drives she provided to the CPS in relation to this file (copies of the contents were provided). Although the Applicant specifically asked for the "USB drives of materials" in relation to this file, as discussed above, the Act deals with recorded information, not with the storage devices on which information is recorded. Even where a device is labelled (in which case the label is "information"), there is no duty under the Act to take and provide photographs or photocopies of the device on which information has been stored (in contrast to making a copy of the label itself). Therefore, unless the USB drive was labelled, the CPS complied with its duty with respect to providing access to these records when it provided a copy of the information on them in an electronic format it its recent response (Response 1280).

[para 214] The Applicant also asks for any additional records documenting entry of the foregoing materials as exhibits. Unless CPS policy requires additional such records beyond those that were provided (in which case it should explain why they were not located or that they were not or may not have been created despite the requirement), the existence of such records is speculative.

[para 215] The Applicant asks for materials related to the list of Police Witnesses under the heading "Witness List". I believe the listing of the members is accounted for by the fact that a member receiving a statement or evidence is a witness of the provision of the information. The same applies to a member who has some other involvement in an investigation. The entries in the "Synopsis" relating to the members indicate the information the members are able to provide. What appear to be related notes of Cadet M (partially redacted) were provided in the May 21, 2015 response.

[para 216] The Applicant asks for material relating to the direction by Detective M that Detective B "seize" documents from the Applicant. She is concerned that even though she was the complainant in the file, this reference (as well as the information recording the date and place of the "Occurrence") suggests she was being treated as the offender, and the evidence she was supplying was potentially being treated as evidence against her. The CPS member's notes suggest the direction/advice by the CPS lawyer to "seize documents evidence" (page 29 of 41) was given verbally. The existence of written material, or of material that would show her conduct was potentially considered to be criminal or that the evidence to be obtained was to be used against her, is speculative.

[para 217] The Applicant asks for materials forming the basis for a series of factual assertions in the "Synopsis" portion of the Report for file 14157448 and in the associated Briefing Note (31 of 41). The first three of these assertions appear to the authors' understanding of what the Applicant herself was saying. With respect to the final assertion (in the Briefing Note), with respect to her status as a lawyer, while this may have been derived from a written source in the CPS, given Detective B's participation in the preparation of the Note, and his historical familiarity with the Applicant, it seems likely he was the source of the statement (albeit an inaccurate one according to the Applicant). The existence of written materials supporting this statement are speculative.

[para 218] The Applicant asks for emails referenced in the Report, which were sent by CPS members receiving her evidence, and any other CPS emails relating to the file. The references establish that the email from Cadet M to Det M and an email to be submitted by Cst W were likely created and sent. Therefore CPS should explain why they were not located as records at issue in the most recent search and response.

[para 219] The Applicant asks for the communications by which the CPS legal team was consulted about file 14157448, including the response(s). The related emails that were provided in redacted form on pages 32 and 33 of 41 of Response 1280 indicate that the Briefing Note was conveyed by email from Detective B to Inspector C. The emails seem to suggest that this was the only material provided for the legal consultation, and that the matter was discussed by email, and some of the results of the consultation (that the matter would not be investigated and that the Applicant could take her complaint to the Law Society or the court if proceedings were still underway) were conveyed to the Applicant. The existence of additional written materials is speculative. (The redactions on these pages will be dealt with in another part of this order.)

[para 220] The Applicant asks for materials related to the phone call that Det. B notes was made to her by Inspector C, as well as long distance phone records of the call. In her initial request the Applicant specifically included a request for the phone records for this file, including dates (May and June, 2014) and phone numbers. The phone records provided in the May 21, 2015 response appear to be in fulfillment or partial fulfillment of her request, but since the caller associated with a particular phone number is not always specified, it is not clear whether any of the calls were made by Inspector C. (However, given the time of the June 12, 2014 call to the Applicant's number that appears in the phone records provided on May 21, 2015, the call may have been placed by Inspector C.) Any written records relating to this call additional to the email records that were provided in redacted form, and to the handwritten notes and entry in the Report about this call, are speculative.

[para 221] The Applicant asks for an "Info Report" referred to in handwritten notes of Detective B (as a document that is to be created and provided "to Inspector"), if it is not a copy of the Briefing Note. Because Detective B included the Briefing Note in an attachment to an email sent to Inspector C, it seems likely that the two documents are the same. If they are not, and the CPS knows this to be the case, it should explain why the "Info Report" was not located and included as a record at issue in Response 1280.

[para 222] The Applicant asks for materials relating to the reference in Detective B's handwritten notes to an investigation being done by an outside agency, and to forwarding the matter to the Chief's office. The existence of written materials in relation to the handwritten notes is speculative.

[para 223] The Applicant asks for materials relating to the reference in Detective B's handwritten notes to a "Report and Statement from Cst. W…". The Report for this file contains a statement from Cst. W as to his receipt of evidence from the Applicant. Cst W's handwritten notes documenting receipt of this evidence were provided in the May 21, 2015 response (pages 12-16).

[para 224] The Applicant asks for materials relating to the assignment of Detective M to the task of submitting a PIMS Report. The existence of such records in addition to the related information on page 30 of 41 is speculative.

[para 225] The Applicant asks for materials relating to advice Detective B asserts was provided to her by Det. M. The form in which the advice was given does not appear to be specified in the email from Detective B to Inspector C, so that the existence of such written material is speculative.

[para 226] The Applicant asks for documents related to the assertion made by Detective B in an email to Inspector C that ["the Applicant] continues to call requesting CPS investigate and is now calling P." The existence of written material grounding this assertion is speculative.

[para 227] The Applicant asks for materials relating to the emailed request by Inspector C that Detective B call him. Additional written materials relating to this call are speculative.

[para 228] Much of the content of Addendum 3 relates to the Applicant's idea that since new records were provided (and presumably were located only prior to their being provided) this demonstrates that the initial search was inadequate. I acknowledge it may be reasonable to question the difference between the original search and the search that led to the discovery of additional documents. In the present case, I do not believe the fact some additional records were located suggests that more steps need now be taken.[39] Possibly, additional specificity on the Applicant's part led to the later search being conducted for newly-named individuals or for date ranges or file numbers of which a given participant/searcher was initially unaware. Handwritten member notes, in particular, require specificity as they cannot be searched electronically. Whether or not this accounted for the discovery of new records, as has been stated in many orders, perfection is not required. My review of the steps taken by the Disclosure Analyst satisfy me that to the extent the Disclosure Analyst failed to search potential repositories initially, he took reasonable steps to follow up on the suggestions the Applicant made after she had reviewed

[39] However, it may be necessary to order a new search in the event the CPS cannot provide a reasonable explanation for what became or may have become of any record that the Applicant has demonstrated was formerly in its possession. (This would not extend to records relative to which the passage of time has obscured the surrounding events such that an explanation can no longer reasonably be expected.) As already noted, I will retain jurisdiction to review such explanations.

the records initially provided to her, as, for example, by asking questions of Detective B as to his procedures for retaining emails.

[para 229] As for the Applicant's belief that the CPS is obliged to tell her whether the records provided in Response 1280 that had also been provided in responses to her earlier requests still exist in CPS's possession, I have already explained above that the CPS was not obliged to re-provide records it had already provided. Thus in response to the request in this inquiry, it was obliged to provide neither the copies of the earlier response files, nor newly-created copies of the records it had already provided in the earlier responses.

[para 230] As to the latter, I have noted that the Applicant asserts the following in her Addendum 3:

> The Nov 22/14 CPS FOIPP 2014-P-1280 Request was for those documents then in the possession of the CPS, and was NOT a Request for copies of prior FOIPP responses provided to me as held by the FOIPP department/unit of the CPS.

[para 231] I have reviewed the Nov 22, 2014 request. It requests documents "in the possession or control of the CPS". The Applicant argues that her use of the present tense should have been taken as an indication that she was asking for only records still in the CPS's possession. She also seems to suggest that "in the CPS's possession" should have been taken as restricted to its operational files or investigation files, and the locations in which such files are kept. However, documents in the possession of the CPS's FOIP unit are in its possession and therefore, would be encompassed by this request. There is nothing in the language of the body of the request to suggest or imply that what was being requested had to have been housed in a particular location.

[para 232] While the Applicant's subsequent email of June 2, 2015 asked a question as to whether the documents provided as copies of responses to earlier requests were still "in the possession of the CPS" (which again seems to imply that she regarded records in the possession of the CPS FOIP unit as not in the possession of the CPS), this is not a reasonable position. Further, her June 2, 2015 email asked a question, it did not clarify the initial request. In my view the Disclosure Analyst's interpretation that she was asking for all records that had been created for the investigation, and not only those still in the possession of particular units, was reasonable.[40]

[para 233] Given the wording of her original request (which in my view did not raise or imply a distinction between "what is and is not currently in the possession of the CPS"), I do not believe the CPS is obliged to answer the question of whether the records from which the copies were made to fulfill earlier requests are still in CPS's possession. Possibly if a source had been specified in the later request that was different from the source of the first copy, CPS would have been required to re-provide copies of the records from the newly-specified source that were still in its possession, or to indicate that there were no records in the specified location or source if there were none. However, these questions do not arise given the wording of the original request

[40] I reject the Applicant's contention that the way the Disclosure Analyst articulated her request in his correspondence indicated that he understood her request to be limited to materials in particular locations. Indeed, the opposite seems to be true – that he understood it to be for all information "regarding [the Applicant]".

in this case. I understand that it is important for the Applicant to know which records had been retained in their original locations and which had not. The fact that it is important to her to know these things cannot influence my interpretation of what the legislation requires the CPS to do. As the CPS is not required to answer the Applicant's questions (other than questions about why records that existed in the CPS's possession at one time but have never been provided were not located), she is not in a position to complain about the adequacy of the answers.

[para 234] The Applicant also states the following in her Addendum 3:

> My Nov 22/14 CPS FOIPP 2014-P-1280 Request had been worded so as to require the CPS to also disclose all documents and materials related to the release and destruction of materials that had been in its possession but no longer were and, as such, could not be released to me.

In her original access request, the Applicant asked for records about the receipt, processing and storage of exhibits (or in some cases, of emails), and about "tracking" and "retrieval" of exhibits with regard to some specified files. However, she did not specifically ask for records about return, removal or destruction of exhibits/evidence. Records about return or destruction would not, strictly speaking, fall within the ambit of the words of the opening paragraphs of her requests, which were for records "obtained or created by the CPS for the investigation of" some of the specified files, or "obtained, created or provided to the CPS that related to the investigation of" others. (However, providing them to someone else might, depending on the circumstances, serve the purposes of an investigation.) Thus, it is open to question whether records documenting return of records to her, or destruction, would fall within the scope of the Applicant's request. While the idea of "processing" arguably encompasses destruction, the opening words of the requests as just quoted argue for the opposite conclusion about their scope.

[para 235] Nevertheless, in her submission in Addendum 3 (as well as in her first submission), the Applicant requests that, in the event the explanation for non-production of records is that they were returned, destroyed, or provided to someone else, any records documenting such actions be provided to her. Whether or not her access request was broad enough to encompass such documentation, and whether therefore destruction documentation would, strictly speaking, be responsive, in my view, if the explanation for not providing records is that they were returned or destroyed, then, as already discussed above, it would be useful for the CPS to refer to any such documentation that still exists in providing the explanation. As well, it would be useful for it to provide or to provide advice about the destruction documentation itself, or if it once existed or likely existed but no longer does, to explain why it does not. (I have noted that the Disclosure Analyst advised the Applicant that if she wished to know the records retention schedule of the CPS, she could make an access request for this information. However, I believe that advising her of the relevant parts of the records retentions schedule would be required to fulfill its duty under section 10 of explaining why it believes records that once existed no longer exist.[41])

[41] In saying this I note that the CPS may not in every case have followed its own retention schedules. To the extent in knows that it did not, it should advise the Applicant of this. However, it is not my role to monitor the CPS as to whether it follows its own policies, so had it not done so, this fact would be an adequate explanation for the present purposes.

[para 236] With respect to the Applicant's request for review of particular portions of the CPS's May 21, 2015 response, I will deal with her reasons for review in the same sequence as she presented them.

[para 237] Regarding Response A – records in relation to a particular RCMP file (page 26 of Addendum 3): The Applicant accepts that CPS was taking the position that it does not have the records (in contrast to the position that she must wait to request it until after completion of the investigation). As the Applicant takes the position that she is not now asking for records that are no longer in the CPS's possession (even if they once were), she says she is asking only for any records documenting destruction of these records, if the CPS ever had any. If that is the case, the CPS should explain why they are no longer in its possession.

[para 238] Regarding Responses B and C – traffic ticket information: The Applicant discusses her belief that the CPS ought to have such records that it did not provide. It appears the CPS provided the Applicant with information about two traffic tickets that it derived from a database (but not the tickets themselves, which it explained were routinely provided to the Crown), and that subsequently, in the May 21, 2015 response, it provided the Applicant with a copy of the document showing a photo-radar photo of a speeding violation related to one of the tickets. The Applicant concludes that this suggests the CPS has still more records in relation to the two tickets that it has not provided. I do not agree that the fact this additional item of information (presumably located on a subsequent search) indicates there is still more information to be found, or that a new search needs to be ordered specifically for this category of information. Possibly the second search was aided by the information derived from the first search (the licence plate number on the car).

[para 239] Regarding Response D – Applicant's written statement in CPS file 95168061, and Property Unit Report: These materials have already been dealt with in para 106 above.

[para 240] Regarding Response E – email correspondence between the Applicant and Detective B in 2013: Most of the missing emails were provided in the May 21, 2015 response. In two cases, the attachments were provided, but not the emails. The Applicant says 3 emails from 2013 remain missing.

[para 241] The Applicant says that the materials given to her reveal some of the emails had been pasted into the detective's notebook, whereas others that were retained and provided to her had not, and suggests that this differing treatment requires an explanation. The obligation of the CPS under the FOIP Act is to provide access to records, not to explain how records were treated/stored (unless in fulfillment of its duty, discussed above, to explain missing records).

[para 242] The Applicant also states she believes the missing emails may be in a black binder located in the "Property Room" (which she believes was not searched by Detective B), and explains why she believes these things. She asks that a search be conducted for this binder. This binder was included in the list at para 92 above.

[para 243] The Applicant also notes that additional material related to Case File 10411004 was located and provided in the May 21, 2015 response (the file number is hand-written on the first page of an affidavit). She says this speaks to whether other parts of that file had been destroyed or not. Whether or not the notation can help determine the continued existence, or otherwise, of this file, the CPS has already provided the Report and some other material in relation to the file. Particular materials related to this file which the Applicant believes are missing from earlier responses have been addressed earlier in this order. As to material already provided, the CPS is not obliged to determine whether the file still exists and to provide parts of it that it has already provided, for a second time.

[para 244] Finally under this heading, the Applicant asks to be given clear information as to which records were being fully redacted as part of the RCMP file (under this heading, she may be concerned that some 2013 emails or attachments, possibly associated with Dr. B, may have been withheld on this basis). Fully redacted pages withheld on this basis will be dealt with in the associated inquiry.

[para 245] Regarding Response F – emails exchanged with Detective B November 5, 2010 and parts of emails March 10, 2011 and Dec. 4, 2010, and any materials related to those emails: The Applicant notes that there is no indication that anyone in addition to Detective B and the IT department had searched for these emails, nor that related materials had been searched for, and she suggests the search was therefore inadequate. Perfection is not required, and I believe that asking Detective B and the IT department to conduct a search was reasonable. Therefore, I will not presently order an additional search. Nor do I have the power to require the CPS to provide materials (Detective B's notebooks) to me so that I may conduct a search, as the Applicant asks me to do. As I have discussed earlier in this order, however, I believe that CPS's duty to assist includes the duty to provide any explanation still available to it as to what became of the emails and notes that clearly existed but are missing, which may include an explanation of the applicable rules surrounding the retention of email correspondence and the retention of notes, what documentation if any was required for destruction, and the retention of any such documentation. Similar comments respecting the black binder have been made earlier. Any emails constituting records at issue in the related inquiry will be dealt with in that inquiry.

[para 246] Regarding response G – emails exchanged with Detective P and Detective B, and related material: In its May 21, 2015 response, the CPS stated that it did not have emails "going back to 2004". It also stated that the Strategic Communications Unit "no longer" had emails of correspondence with the Applicant from Apr 4, 2010. As well, it said that Det. B "no longer" had emails from 2010, neither did IT have any. It appears that in view of the CPS's statement, relative to three of these missing emails (one from Feb. 26, 2004 and two from April 4, 2010) the Applicant is asking now only for any related materials rather than the emails themselves. The existence of documents relating to the emails (other than any documents respecting retention/destruction that should have been created pursuant to CPS policies, if any exist) is speculative. If there are any policies respecting documentation of destruction, the CPS should explain why no such documents were located.

[para 247] With respect to the missing email from October 25, 2010 from Detective B, the Applicant relies on her submissions relative to Response F, by which she presumably means that a new search for this email should be conducted. My conclusions set out above under that heading – that at present a new search need not be conducted, but the absence of the emails should be explained – applies to this email.

[para 248] Regarding Response H – two emails sent from the Applicant to Detective B in 2012, and any related materials: In view of the May 21, 2015 response, the Applicant is no longer asking that the IT department search for these emails, or that Detective B search his notebooks for them. However, she provides an extensive discussion as to why she believes Detective B stored email correspondence he had with her in locations other than his notebook. She maintains that Detective B should search other possible repositories such as the black binder (discussed above), and that the search should be expanded to include other CPS staff, and that there should be a search for any related materials.

[para 249] I accept that these emails once existed in the possession of the CPS, and that the CPS should explain why they could not be located, and provide any materials relating to their destruction if such exists (or if they existed but no longer exist, why that is so). (The existence of any additional related materials is speculative.) As already discussed above, the same should be done relative to the black binder that was returned to the Applicant and that the Applicant returned back to the CPS. Any 2013 emails that were withheld in their entirety as part of an ongoing RCMP investigation will be addressed in the related inquiry.

[para 250] Regarding Response I – request for additional emails from 2011: The Applicant adopts the submissions she made with respect to the missing emails under the heading 'Response F'. My comments under that heading apply.

[para 251] Regarding Response J - request for additional emails from 2012: The Applicant adopts the submissions she made with respect to the missing emails under the heading 'Response H'. My comments under that heading apply.

[para 252] Regarding Response K: This item seems to relate to the Applicant's request for all materials about her in the specified CPS files that were not otherwise provided. Under this item, the Applicant withdraws her requests for specific items that have now been provided (though she maintains her request for materials *related to* some of the newly-provided items[42]), and challenges redactions to some of them (redactions are dealt with below).

[para 253] Further under this heading in Addendum 3, at page 84, the Applicant asks for the following:

- an "Info Report" referenced in the notes of Cst W; this reference may have been to a Property Unit report for evidence provided by the Applicant.
- a copy of the "Follow-up Report" referenced in the notes of Cst W, which seems to refer to the report of placing a green USB drive provided by the Applicant in a hold locker

[42] The idea that there are materials related to the Jan 16/12 complaint is speculative.

- a copy of the email referenced in the notes of Cst W which was sent to Detective B
- a copy of the email referenced in the notes of Cadet M, which he sent to Detective M with regard to the blue USB drive the Applicant had submitted (and which the Cadet had placed in "property").

[para 254] I accept that the evidence referred to by the Applicant establishes that all of the foregoing documents discussed at page 84 of her Addendum 3 existed at one time in the possession of the CPS. Therefore, it should explain, possibly by reference to its retention policies for "Property Room" documentation and member emails, why these records were not located and provided to the Applicant.

[para 255] The Applicant also discusses in her submission under this heading that the Disclosure Analyst should have known when making his earlier response about the notes of Cst W and Cadet M that he provided on May 21, 2015, and that his failure to locate and disclose them raises concerns about his motives. Generally speaking, I believe it goes beyond the duty to assist under section 10 for a public body to have to explain why a former search did not locate records, when they were located in a subsequent search, or to suggest that a failure to find something that existed in fact suggests questionable motives. There may be exceptional cases where there is something in particular that suggests an effort to hide or deliberately fail to locate records. In this case, the notes of the members disclose that they had no substantive involvement in the matter but dealt with it only at a routine administrative level (which may be why their notes were not initially located). This is therefore no reason whatever to speculate that such notes had been located or were known to exist but were hidden. Further I would need far more evidence even for sensitive material to question the Disclosure Analyst's motives because something that existed had not been found.

[para 256] With respect to the disclosure in the May 21, 2015 response of a 3-page statement of her Jan 16/12 complaint and USB drive containing the same statement, the Applicant reiterates her request for a photo or photocopy of the USB drive she had provided to Det B in 2102, and for processing documents relating to these materials. I have discussed above that there is no requirement for a public body to provide a photo or photocopy of a storage device, except for the label, if any. The Applicant says again that she wants to know if the materials in the form she supplied them had been retained and where they had been stored. As discussed above, unless a location had been specified in the request, the Applicant cannot complain that the location of the records that were copied in order to provide the response is not ascertainable (although it is open to the CPS, on a voluntary basis, to provide that information if it so chooses).[43] The missing email related to the statement was in the list at para 84 above.

[43] The Property Unit portion of the Report in file 0424301 indicating receipt of the materials (as Ex 632332), as well as a Property Record Card from 2012, were provided in the May 21, 2015 response, received by the Applicant on June 2, 2015. The Applicant argues that the Disclosure Analyst would have been aware of these records in preparing his earlier response to her, and that this, together with the failure to locate/disclose particular forms of/sources for these records and the associated email and attachment, indicates selective disclosure and intentional unreasonable withholding on his part. There is nothing in the contents of these records that persuade me that the Disclosure Analyst would have any reason to make decisions to withhold these records for improper purposes.

[para 257] A considerable portion of the Addendum 3 (pages 95 to 119) is devoted to setting out "incorrect statements and ambiguities" in the May 21, 2015 response. Much of this discussion repeats points made in the Applicant's earlier submission. She points out that no Property Record Card or paperwork regarding destruction was ever provided respecting Ex 230327, which was authorized for destruction (this exhibit has been dealt with above). As well, she points out particular records which were provided later than they ought to have been, and repeats points that she made earlier about there being multiple versions of records, to which this order has already responded. She also repeats requests, also already addressed, for materials relating to destruction of records that had not been provided. A large portion of the discussion relates to the materials from the "Property Room" that were returned to the Applicant that she returned to the CPS, and that Detective B then undertook to place back into the "Property Room" to be kept indefinitely. These materials have been dealt with earlier in this order.

[para 258] Further with respect to this discussion, the Applicant notes that the May 21, 2015 response contains errors in that she did not request materials in file 12309809. As well, she says that contrary to what the Disclosure Analyst stated in the response, signs that had been seized from her had not been returned to her but rather had been released to the RCMP. The Applicant suggests this may indicate a lack of *bona fides* on the Disclosure Analyst's part, and the possibility that his use of the term "returned" in other contexts may have been similarly imprecise or incorrect. While the Applicant demonstrates that there were errors in the responses, the Disclosure Analyst was dealing with a significant volume of material that had been presented to him in a variety of ways. His failure to occasionally take note of or retain the precise significance of the contents of the records does not suggest to me any lack of *bona fides* or an intention to mislead the Applicant. I am not persuaded that these errors call for any additional searches such as the Applicant suggests at page 116 of her Addendum.

[para 259] The same comment applies to the assertion that the Disclosure Analyst was mistaken as to having provided particular records to her "previously" in contrast to having been provided to her contemporaneously with the May 21, 2015 letter.

[para 260] With respect to the Applicant's reassertion of her complaint that some of the records that were provided in the May 21 response were available earlier and should have been found, I have already noted that where additional records are located, it is not generally necessary to explain the inadequacy of the earlier search. (I also note, though, that the earlier failures may have been accounted for in part by the large number of CPS files and associated materials that are at issue and the complexity of the relationships between these files and associated materials.)

[para 261] The Applicant's concerns (stated at pages 113 to 114 of her Addendum 3, relating to how the CPS decided to deal with material she provided as evidence – that is, not entering it as an exhibit – are outside the scope of the present inquiry as this aspect of CPS practices is outside the Commissioner's powers. The materials the Applicant lists at pages 114 to 115 as not having ever been provided to her have all been dealt with earlier in this order.

[para 262] Regarding Response L: The Applicant's discussion under this heading is with respect to records already dealt with earlier in this order.

[para 263] Regarding Response M: In her discussion under this heading, the Applicant discusses records provided in the May 21, 2015 response (Property Record Cards) that in her view should have been provided earlier. I have already addressed this type of concern. She also asks that a "cut-off" part of a regimental number of a CPS member (on page 27/35 of the May 21, 2015 response) be provided. The number appears to be a stamp, which may not have been properly applied. However, if the full number was on the document and was somehow obscured during copying, the CPS should provide a copy that discloses the entire number.

[para 264] Under Response M, the Applicant again refers to particular records that she had provided to the CPS and then returned after they were given back to her. I have dealt with these records earlier in this order. I have also dealt earlier with Ex 230327 (also raised again under Response M). Further in her discussion under Response M the Applicant notes that records were provided in the May 21, 2015 response that were not referenced in the accompanying letter, and complains again that some of them were available earlier but were not provided earlier. As just noted, this type of concern has already been addressed.

[para 265] The Applicant also notes that her original request included a request for billing records for phone calls between herself and named members of the CPS. As already noted above, some such records were provided for the first time in the May 21, 2015 response. The Applicant notes that some of the disclosed phone records indicate that the phone calls were of significant duration, for example, 26 minutes, 13 minutes and 12 minutes, and she believes it reasonable to expect that some notes of these calls would have been made by the CPS members. Whether this is so depends on CPS's policies with regard to the creation of records of phone calls, and on whether they were followed in these cases. As well, even if such notes were made, their continued existence depends on the CPS's policies regarding records retention and whether any such policies were followed. If the policy is that the content of such calls is typically recorded, and retained, the CPS should provide an explanation as to why no such notes of these calls, nor destruction documents, were located.

[para 266] The Applicant also notes that there were no billing records for phone calls for some of the months for which she requested them. However, it is not clear from her submissions that she herself kept records sufficient to be certain that such phone calls took place.[44]

4. Further explanations required

[para 267] The Disclosure Analyst provided a detailed description of his search in his affidavit. To a considerable degree, he did consider and try to locate particular documents which the Applicant demonstrated the CPS must have once had in its possession – mainly emails and evidence that she had provided. In some cases he was successful in locating additional material and in others he was not. If he was not, then he responded primarily by saying that he had looked for it, often indicating where, and had not found it, or he said that it had been returned or deleted

[44] In her Final Submission, the Applicant makes reference to an entry in an RCMP Report (2011-691476) which she received from an access request. She says that this Report mentions that the CPS would be opening a file in relation to the matter in the Report. The Applicant has not presented sufficient evidence to establish that this file was opened in fact.

or destroyed. Generally, he did not explain why such records are no longer in the CPS's possession in the sense of why it did not keep or likely did not keep the records. Nor did he say whether the assertion the materials had been returned or destroyed were based on someone's actual knowledge or on policy requirements or routine practices or simply on the fact that it had not been found. As well, he did not explain why there was no documentation of removal or destruction for particular records that had not been located.

[para 268] In consequence of the foregoing review, I will ask the CPS to provide explanations to the Applicant with respect to the list of records set out below which the Applicant has either demonstrated existed at one point in the possession of the CPS, or has raised a significant possibility that they existed depending on CPS policies with regard to the creation and retention of documents.

[para 269] In imposing this requirement, I recognize that in some cases the explanation may be simply that too much time has passed to be able to make a determination about what happened to records, or the nature of actual or potential records is such that it would never have been possible to determine whether they existed or what happened or might have happened to them. If that is the case, the Applicant should be advised of this, and any available detail should be provided – for example that involved individuals have left the CPS, or particular record management practices indicate that particular records did not need to be retained or would routinely have been destroyed.

[para 270] My direction does not apply to any records that are records at issue in the associated Inquiry for OIPC Case File 001826, in case any such records were inadvertently included in the foregoing list.

[para 271] The records regarding which further explanation is required because the Applicant has demonstrated the CPS possessed or likely possessed them at one point are listed below. The information described under the headings, if available, could explain whether it is reasonable for the CPS to believe that the records, though once in its possession, no longer are. (Providing such explanations during the course of active investigations might possibly be harmful to law enforcement. However, I do not presently see that it would be for investigations that have concluded. If it is, however, the CPS should provide an explanation with regard to the records for which this is the case in the course of providing the explanations to me and to the Applicant that are described below.

a) Emails the Applicant sent to or received from the CPS

    i) Nov 5/10 email to Detective B regarding a statement to be provided by the Applicant regarding alleged perjury of LSA employee TG.[45]

    ii) A series of emails from 2011 (Mar. 10, Nov 9, 23, 24, 25, Dec 4).[46]

[45] The Disclosure Analyst advised the Applicant in the May 21, 2015 response that he had contacted IT to determine if there was a copy, and that IT confirmed that it had been "deleted off the system".
[46] The Disclosure Analyst advised the Applicant in the May 21, 2015 response that he had contacted IT to determine if there were copies, and that IT confirmed the emails had been "deleted off the system".

iii) A series of emails between the Applicant and Detective B in 2012, plus attachments; these emails relate to the Applicant's Jan 16/12 complaint against RP.

iv) A series of emails (7 emails) between the Applicant and Detective B in 2013 related to File 10411004 (allegation of perjury against LSA employee TG). However, most of the emails in the series of 2013 emails appear to have been provided in the May 21, 2015 (Part 2) response. The affidavit that was attached to the emails was also provided in the Part 2 response.

v) An email dated Nov 9/11 from Detective B to the Applicant (described at page 56, letter q of the Applicant's submission) beginning with "I received your package..".

vi) A Feb 26/04 email to Det P.[47]

vii) An Apr 4/10 email from the Applicant to cps@calgarypolice.ca.[48]

viii) An Apr 4/10 email to the Applicant from CPublicAffairs@calgarypolice.ca.[49]

ix) An Oct 25/10 email from Detective B to the Applicant.[50]

The following information, if available, could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Information from anyone who is able to provide actual knowledge of what became of the emails listed, including the participants (senders or recipients), and IT personnel
- If there is no one with actual recollection, then what CPS's policies and processes are (or if different, then what they were at the relevant time) with respect to
    - the storage and retention of email exchanges between complainants such as the Applicant and CPS members, including how and by whom retention is determined, according to what prescribed criteria if any, and any prescribed periods of retention (whether located in a member's computer, or in a hard copy)
    - whether there is some other system in place for storing and retaining significant emails and their attachments,
    - whether and what documentation is required for the deletion of any of these things, and what the retention period is for such documentation.[51]

[47] The Disclosure Analyst advised the Applicant in the May 21, 2015 response that there were no emails going back to 2004. In view of this, in her Addendum 3, the Applicant says she is now asking only for any related destruction records.
[48] The Disclosure Analyst advised the Applicant in the May 21, 2015 response that the Communications Unit no longer had this email. In view of this, in her Addendum 3, the Applicant says she is now asking only for any related destruction records.
[49] The Disclosure Analyst advised the Applicant in the May 21, 2015 response that the Communications Unit no longer had this email. In view of this, in her Addendum 3, the Applicant says she is now asking only for any related destruction records.
[50] The Disclosure Analyst advised the Applicant in the May 21, 2015 response that Detective B no longer had emails from 2010.
[51] In the case of items vii) and viii), the retention information would be relative to CPS general email.

- If there were no policies or routine practices in place, what the practices of the involved CPS members were with respect storing and retaining emails and related notes.

b) Evidence the Applicant supplied to the CPS in support of her complaints and allegations against other people, which Detective B undertook to return to and keep in the "Property Room".

   i) Materials on a black USB drive that the Applicant gave to Detective B on Oct 18/2010 (SB1) which she says "consisted of various documents and materials"; this material was later copied onto a red USB drive (discussed below).

   ii) A red USB drive (SB2) that was provided on Feb 8/11) relating to the alleged perjury of LSA employee TG; this is "the contents of the thumb drives that had been SB1 and SB2"; She also asks for any photocopies of the hard copy of her statement that she had provided.

   iii) A blue USB drive provided to Detective B on Mar 8/9 of 2011; the Applicant believes this USB drive contained the digital form of her statement regarding the alleged perjury of TG and was labelled SB7.

   iv) An attachment to a Mar 15/11 email from the Applicant to Detective which was a "Zip file" containing evidence (a 37-page transcript from a trial) for CPS investigation file 10411004. The Applicant believes it likely the hard copy was contained in the black binder of materials she returned to Detective B.

   v) Three attachments to an April 25/11 email from the Applicant to Detective B; this was additional information (jpeg files) for her April 6/11 complaint against RP, ZC and KL; she suggests the attachments may have been in a black binder she returned to Detective B, and says they were treated as part of File 10411004 (complaint against the Law Society employee TG) rather than as part of investigation files numbers 04068170 or 04124301.

   vi) Materials relating to her April 6/11 complaint against ZC, RP and KL that the Applicant provided on a blue USB drive (in PDF format), and a copy from the hardcopy form created by Detective B. The Applicant says these records had been labelled SB9 and SB10.

   vii) Any other contents of the black binder of materials, and emails sent along with it, that were returned by the Applicant to Detective B, and any other material not specifically listed that she returned to Detective B. The Applicant also asks for a photo or photocopy of the exterior of the binder.

   viii) "2 packages of contents including 3 memory sticks": the contents of these items is unspecified but they were mentioned in Detective B's notes; she asks for these only to the extent they do not contain the foregoing material.

   Alternatively the Applicant asks for documentation of their destruction or removal of all these records from the "Property Room".

The following information, if available, could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Information from anyone who is able to provide actual knowledge of what became of the records after they were returned (whether they were placed in the "Property Room" when returned or what might have been done with them otherwise); if not,
- what CPS's policies and processes are (or were at the relevant time) with respect to how long records are retained in the "Property Room", particularly after an investigation is concluded, what documentation is required of their removal or return or destruction, and how long the latter documentation is retained,
- what CPS's policies and processes are (or were at the relevant time) with respect to recorded information, provided by complainants to individual members, that does not become a formal exhibit in a file, (this might include information as to the ability of members to make decisions as to whether such information becomes a formal exhibit).

c) Event chronologies for CPS Investigation files Numbers 95168061; 972227060; 04068170; 04124301

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Whether, as the Applicant believes, there should be such a document for every investigation for which a file number was assigned and charges were laid, and how such documents relate to the investigation files and investigation "Reports".
- If yes, retention requirements for records of this type and for how long destruction documentation, if required, would have been retained.

d) A written statement by the Applicant that she attended to complete in CPS File 95168061, and a related "Property Unit section in the Report for the file, dating from 1995, or alternatively, documents authorizing destruction.

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Retention requirements for files/exhibits of this type, and for how long destruction documentation, if required, would have been retained.
- Whether destruction documentation were required to be created relative to 3 pages of handwritten notes that had been provided in earlier Response 2003-P-0076, and if so, the retention periods for such documents.

e) A written statement that was taken from her by Sgt. P, as well as a three-inch binder of materials that she provided to him, as documented in the Synopsis in Report 04068170, dated February 2004) (the Applicant says that possibly this was contained in Ex 230327, which was destroyed).

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Retention requirements for materials/exhibits of this type, and for how long destruction documentation, if required, would have been retained.

f) In the event it can be determined that the Applicant's statement documented in the Synopsis in Report 04068170, discussed under the preceding heading, was *not* part of Exhibit 230237 (which was destroyed), documentation as to removal or destruction of that statement. The same type of information respecting "two volumes of material and a CD" provided on the same date (again, if it can be determined this material was not part of Ex 230327).

   The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

   - Retention requirements for materials/exhibits of this type, and for how long destruction documentation, if required, would have been retained.

g) Documentation regarding authorization for the destruction of Ex 230237).

   The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

   - Whether CPS policy required documentation of the type the Applicant mentions at p. 85 of her initial submission
   - If yes, retention requirements for such documentation.

h) A series of emails between the Applicant and Sgt. P, relating to File 04124301from April, May and November of 2004, or documentation as to their destruction.

   The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

   - Retention requirements for emails of this type, and for how long destruction documentation for such emails, if required, would have been retained.

i) Recorded information regarding a series of telephone calls and voicemail messages relating to File 04124301, including but not limited to calls from February, October and November of 2005, taking place between or among herself and CPS members or between or among the members themselves, and any related materials.

   The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

   - Whether CPS policy requires the recording of all business-related telephone conversations
   - If yes, retention requirements for records of this type, and for how long destruction documentation for such records, if required, would have been retained.

j) A statement of Nov 3/04 recorded on a CD the Applicant sent to Sgt P relating to File 04124301, any related CPS documentation related to processing, storage and destruction, and covering correspondence.

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Retention requirements for records/exhibits of this type, and for how long destruction documentation for such records, if required, would have been retained.

k) A version of the Report in File 10411004 that documents the return of the exhibits to the "Property Room".

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Whether the CPS can now determine if the documents were returned
- Whether there would be documentation/updating of the Report if this was the case
- If yes, retention requirements for the Report, and if destroyed, for how long destruction documentation, if required, would have been retained.

l) An email from A/S/Sgt M of approximately March 24/11 to Detective B related to File No. 10411004.

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Whether this email is among materials redacted in Response 0970 in reliance on section 27
- If not, retention requirements for emails of this type, and for how long destruction documentation for such emails, if required, would have been retained.

m) An email from A/S/Sgt M of approximately of April/11 to Detective B related to File No. 10411004, attaching a court decision.

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Whether this email is among materials redacted in Response 0970 in reliance on section 27
- If not, retention requirements for emails of this type, and for how long destruction documentation for such emails, if required, would have been retained.

n) A Report and any related materials, including a Briefing Note, submitted by Detective B to A/S/Sgt M, and all documents in the "File" reviewed by CPS lawyers.

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Whether this email is among materials redacted in Response 0970 in reliance on section 27
- If not, retention requirements for materials of this type, and for how long destruction documentation for such emails, if required, would have been retained.

o) An email from Detective B indicating an email from the Applicant would be provided to a legal adviser, and any pages in Detective B's notebook (which has gaps in the page numbering in the portions she received) that may contain information relating to the Detective's response to an email she sent to him setting out her concerns about the involvement in her file of a particular prosecutor.

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- retention requirements for the email, and for how long destruction documentation for such emails, if required, would have been retained
- retention requirements for the notebook, and for how long destruction documentation for such notebooks, if required, would have been retained
- If the notebook can still be located, whether it contains information such as the Applicant describes.

p) Communications between Detective B and the CPS legal advisor related to File No. 10411004, regarding her concerns about the prosecutor, and regarding materials to be reviewed at a meeting.

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Whether this email is among materials redacted in Response 0970 in reliance on section 27
- If not, retention requirements for materials of this type, and for how long destruction documentation for such material, if required, would have been retained.

q) Materials related to the insertion of "charging section" CC 264(3) into the Report in File 11292557, including "an Information", "a Prosecutor's Information Sheet", and "A Criteria for Detention of Accused".

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Whether such documentation is routinely created
- If yes, retention requirements for materials of this type, and for how long destruction documentation for such material, if required, would have been retained.

r) Three pages of the notebook of a CPS member (Cst S) who responded to the complaint in File 11292557, dated August 4, 2011".

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Retention requirements for notebooks of this type, and for how long destruction documentation for such notebooks, if required, would have been retained.
- If the notebook can still be located, whether it contains notes dated August 4, 2011, in addition to those already provided in Response 1280 with Aug 3 in the "Date" field

s) Notes of prime investigator Cst H relative to his attendance at the location of the complaint in File 11292557.

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Retention requirements for notebooks of this type, and for how long destruction documentation for such notebooks, if required, would have been retained.

t) All material related to the listing of the Applicant's home address, which is set out both in the Report in File 11292557 (as being valid on Aug 4, 2011), and in the notes of Cst S.

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Whether it can be determined if the information was accessed from an internal CPS system
- If yes, whether such information still exists on the system

u) The source for the references to "Law Society File Number LS #0016", as this appeared in Cst S's notes and in the Report in File 11292557.

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Whether it can be determined if the information was accessed from an internal CPS system
- If yes, whether such information still exists on the system.

v) Materials (phone messages, letters, or other communications) provided by the person who made the complaint in File 11292557.

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Retention requirements for materials/exhibits of this type, and for how long destruction documentation for such material, if required, would have been retained.

w) Any written information relied on by Cst H's to form his views in the Professional Opinion in the Report in File 11292557.

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Whether any such information is contained in the records at issue in related OIPC Case File 001826
- If not, retention requirements for materials/exhibits of this type, and for how long destruction documentation for such material, if required, would have been retained.

x) Written information that would reveal how CPS became aware of the Law Society proceedings in which the Applicant had been involved, and which formed the basis for the assertion in the Professional Opinion in the Report in File 11292557 that she had been "sanctioned by the Law Society and disbarred in Alberta".

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Whether any such information is contained in the records at issue in related OIPC Case File 001826
- If not, retention requirements for materials/exhibits of this type, and for how long destruction documentation for such material, if required, would have been retained.

y) Exhibits 581582 and 595236 referenced in the "Property Unit" section of Report in File 11292557.

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Retention requirements for materials/exhibits of this type, and for how long destruction documentation for such material, if required, would have been retained.

z) "[L]etters which were apparently from [the Applicant]" referred to under the heading "Investigative Details" in File 11292557.

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Retention requirements for materials (possibly exhibits) of this type, and for how long destruction documentation for such material, if required, would have been retained.

aa) PIMS check results which were the foundation for the statement "PIMS Offdr shows 2011 Criminal harassment suspect, court order suspect" under "Remarks" in the Report in File 12309731.

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Whether such a report was or would likely have been generated
- If yes, retention requirements for reports of this type, and for how long destruction documentation for such material, if required, would have been retained.

bb) Materials relating to the Applicant's arrest, bail hearing and release, including emailed communications held by CPS or between CPS and the RCMP.

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Retention requirements for emails of this type, and for how long destruction documentation for such material, if required, would have been retained.

cc) Materials related to a PIMS check, including the results, as referenced in the Report in File 12309809.

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Whether such a report was or would likely have been generated
- If yes, retention requirements for reports of this type, and for how long destruction documentation for such material, if required, would have been retained.

dd) Materials related to a CPIC check, including the results, as referenced in the Report in File 12309809.

I have decided above (at paras 199 to 202) that even though CPIC is an RCMP database, the CPS should locate any such records if it has them. Whether it is required to ultimately provide an explanation to the Applicant will depend on whether it is able to locate any records further to my order.

ee) Entry in a page titled "Event Information" for file 14157448 under the heading "Remarks" (the entry states "Call Review By PSC SGT T…"), which the Applicant believes is related to a CPS legal team review.

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Whether documents for the legal review were or likely were prepared
- If yes, retention requirements for such records, and for how long destruction documentation for such material, if required, would have been retained.

ff) Materials forming the basis for the Applicant's former name appearing in the "Alias name" field in the Report in File 14157448.

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Whether the source for the information in the entry can be determined
- If yes, retention requirements for such information, and for how long destruction documentation for such material, if required, would have been retained.

gg) Additional records documenting entry of the materials as exhibits in the Report in File 14157448.

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Whether CPS policy requires any such additional material to be prepared.
- If yes, retention requirements for such records, and for how long destruction documentation for such material, if required, would have been retained.

hh) Emails from Cst M to Detective M, and from Cst W to an unknown recipient referenced in the Report in File 14157448.

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- The retention requirements for such records, and for how long destruction documentation for such material, if required, would have been retained.

ii) "Info Report" referred to in handwritten notes of Detective B (as a document that is to be created and provided "to Inspector") unless it is a copy of the "Briefing Note" that was provided as 31 of 41.

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Whether it can be determined if the two documents are the same.
- If it can and they are not the same, retention requirements for such a record, and for how long destruction documentation for such material, if required, would have been retained.

jj) Destruction documentation in relation to a particular RCMP file (as described at page 26 of the Applicant's Addendum 3).

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Retention requirements for such d and for how long destruction documentation for such material, if required, would have been retained.

kk) Missing email correspondence with Detective B from 2013 (discussed earlier).

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Retention requirements for such emails and for how long destruction documentation for such material, if required, would have been retained.

ll) Emails exchanged with Detective B November 5, 2010 and parts of emails March 10, 2011 and Dec. 4, 2100, and any materials related to those emails; missing email from Detective B of October 25, 2010 and additional missing emails from 2011 and 2012 (under the headings Response G, I and J in Addendum 3).

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Retention requirements for such emails and for how long destruction documentation for such material, if required, would have been retained.

mm) Destruction documentation with respect to emails exchanged with Detective P and Detective B in 2004 and 2010.

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Retention requirements for such emails and for how long destruction documentation for such material, if required, would have been retained.

nn) An "Info Report" referenced in the notes of Cst W in file 14157448; a copy of the "Follow-up Report" referenced in the notes of Cst W, which seems to refer to the report of placing a green USB drive provided by the Applicant in a hold locker; a copy of the email referenced in the notes of Cst W sent to Detective B; a copy of the email referenced in the notes of Cadet M, sent to Detective M.

The following information could explain whether it is reasonable for the CPS to believe it no longer has the records:

- Retention requirements for such notes and for how long destruction documentation for such material, if required, would have been retained.

oo) A "cut-off" part of a regimental number of a CPS member (on page 27/35 of the May 21, 2015 response). The number appears to be a stamp, which may not have been properly applied.

The following information could explain whether the CPS can address this issue:

- Whether the entire number appears on the original document.

pp) Notes of phone calls between the Applicant and named members of the CPS.
The following information could explain whether it is reasonable for the CPS to believe it does not have such records:

- Whether it has policies to record such calls.
- Retention requirements for such calls and for how long destruction documentation for such material, if required, would have been retained.

[para 272] My direction does not apply to any records that are records at issue in the associated Inquiry for OIPC Case File 001826, in case any such records were inadvertently included in the foregoing list.

[para 273] To the extent that the CPS's answers to the foregoing questions are the same or are based on the same information (for example, its storage and retention policies for operational records such as exhibits, officer's notes, and officer's emails, or its storage and retention policies for documents authorizing destruction of records) it may be more efficient for it to group such items together, and provide a single answer (though with the condition that such a global approach should not compromise precision or clarity of the answers).

[para 274] Ultimately if the explanation as to why these materials were not located (or why this cannot be explained) suggests they might still be found, I may ask the CPs to conduct a new search for these materials. I will retain the jurisdiction to review the explanations that I ask the CPS to make within should the Applicant ask me to do so.

[para 275] Before leaving this section, I will reiterate that one of the Applicant's primary purpose in much of what she says in her submissions is to learn whether information she had supplied as evidence was placed in and kept in the "Property Room" as exhibits, and for how long. The CPS's duties to search for records and provide responses, even as I have interpreted them for this case (which is to provide copies for each of the sources/storage devices on which she provided them, and to explain as far as possible why records once in its possession no longer are, including by reference to any destruction policies and documents) will not necessarily give her all the information she wants.

[para 276] For example, destruction documents could answer some of her questions about what became of exhibits of which she has not received copies. However, this would not be true

for any records for which destruction or removal documents do not need to be made, or did not need to be kept to the date of her request, or if any policies that required such documents to be created and retained were not followed.

[para 277] Further, had I required the CPS to provide new copies of records already provided earlier but only those still existing in operational locations, the Applicant might have learned which records had been removed or destroyed in the interim. However, because I do not agree with the Applicant's contention that asking for all records "in the possession of the CPS" could reasonably be interpreted as restricting her request in this way, I did not decide whether the CPS was required to take the step of re-providing only such records.[52]

[para 278] All of this is to say that if the CPS knows some of the information that the Applicant is seeking through her access request, particularly with respect to the storage location and retention of the exhibits in her files, then while it is not obliged to give this information to her in the form of answers to questions (beyond the explanations I am requiring it to provide as described above), it is open to it to do so on a voluntary basis.

Issues 2 – 5: Application of Exceptions under Sections 17(1), 20(1)(m), 21(1)(b), 24 and 27(1)(a)

1. Redactions in Response 1280

[para 279] The Applicant challenges the redactions in the current Response 2014-P-1280 (Response 1280).

1.1 Refusal to provide RCMP file

[para 280] In its initial response, the CPS advised that it was withholding records relating to RCMP File 2011691476 under section 4(1)(k) of the Act, which permits withholding of records in relation to a prosecution if all proceedings in respect of the prosecution have not been completed. The Applicant did not initially object to the application of this provision to some of the records; rather, she questioned what material belonged to the RCMP file. In particular, she noted that some records were provided from CPS files that related to arrest warrants issued by the RCMP in RCMP File 2011691476, and that exhibits were sent from a CPS file to the RCMP – suggesting an inconsistent interpretation of what belonged to the ongoing prosecution. She also mentions that records related to Dr. B were withheld under section 4(1)(k), but disputes this on the basis that such records relate to CPS File 11292557.[53]

[52] As discussed in other parts of this decision, its provision of its responses to her earlier requests was also not obligatory on its part – it needed only to point out to her that it had already provided the responsive information that it had in its possession. That it did so by way of providing the responses a second time was beyond what it was required to do (though it was probably a more efficient way of proceeding than trying to list and describe them).

[53] In her final submission the Applicant did object to the application of section 4(1)(k) on the basis that records relating to a prosecution must be provided to the Crown and cannot be withheld from a person involved in a criminal process. However, the FOIP Act provides for withholding records on the basis of this provision.

[para 281] I acknowledge a possible inconsistency, but the entirety of the records that have already been located will be addressed in any event in either this order or the associated one. To the extent that records relating to Dr. B are part of the records at issue in the present inquiry, I will deal with the related redactions in this order. Any records relating to Dr. B contained in the records at issue in the associated file will be dealt with in that inquiry.

[para 282] I also note the Applicant's point in the concluding pages of her rebuttal and in her final submission that there is an inconsistency in the number of records withheld in Response 1280 by reference to section 4(1)(k), and the number of records at issue in the associated file (that is, 65 pages and an audio file – the latter withheld in its entirety under section 17). By my own count of the unredacted records supplied to me for my review, 65 of the records out of the total of 142 appear in the bundle of records withheld in the associated file, and pages 68, 103, 112, 113, 114, and 115 are neither included in that bundle nor were they provided to the Applicant. Of these, the first (68) is of the same type of content as records I have held withholdable under section 17, and can be withheld on this basis; page 103 contains much of the same content as page 102 and is part of the same email chain, so should presumably have been included in the records at issue in the associated file, so I will ask the CPS to include it in the records at issue for that file; page 112 has the same type of content as the records I have held to be withholdable in their entirety under section 17 and can be withheld on this basis. Page 113 has no substantive content. The content of page 114 is entirely repeated on page 115. Both pages have the same type of content as the records I have held to be withholdable in their entirety under section 17 and can be withheld on this basis.

1.2 Redactions in the 41-page file provided in Response 1280

[para 283] In her initial submission (Detailed Request for Review), the Applicant lists all the redactions that were made in the 41-page file in Response 1280.[54] In the course of setting out this list she makes a number of assertions that she is entitled to the redacted information, as follows:

> She is entitled to know who alleged that she criminally harassed them, what allegations were made against her, the location of the alleged conduct, and who made the assertions that she is a disbarred lawyer.
>
> There is no expectation of privacy when one makes a statement to police alleging criminal conduct, and some of the information was her private information and she is entitled to know to whom and to what extent it was provided to others.
>
> She is entitled to know the factors considered in determining whether a particular matter would be investigated as a police matter, and what happened with the processing of her versions of one of her statements.
>
> With regard to specific files:

[54] I note the Applicant's point that she did not object to some of the redactions, such as those containing addresses or contact information in particular instances.

- There is a right to know what evidence is held in the "Property Room" in a CPS file that results from a Statement one has filed, and how that evidence has been handled, processed, disposed of, distributed and the reasons for such.
- Redacted material is required to establish that the CPS incorrectly intermingled key elements in particular files, including names and specified criminal conduct.
- Fairness requires the removal of reactions given particular assertions and advice provided to the Applicant by CPS
- CPS cannot be selective as to legal advice it chooses to redact and disclose.

[para 284] The Applicant also states some of her reasons for requiring the redacted information – for example, that she needs it to cross-reference the notes with other material. She also says she wishes to "track the exhibits with accuracy and certainty to ensure their preservation and location and to deal with loss and/or destruction of the exhibits". She also asks for advice as to the author of some of the materials.

1.2(a) Partial redactions on pages provided to the Applicant in reliance on section 17 (and in some cases, on the fact the information was unresponsive)

[para 285] Much of the information at issue was withhold in reliance on section 17(1) – a mandatory exception which is triggered where disclosure would entail an unreasonable invasion of the privacy of a third party.

[para 286] Information is presumed to be an unreasonable invasion of privacy where it is an identifiable part of a law enforcement record and is not needed to dispose of the law enforcement matter or to continue an investigation (section 17(4)(b)), or where it consists of a third party's name appearing together with other personal information about them (section 17(4)(g)(i)). In some circumstances, these presumptions can be outweighed if there are other factors that argue in favour of disclosure to the applicant – for example, whether disclosure would assist the Applicant in a fair determination of her rights (however, this consideration requires that there be a legal right at issue and some identified forum in which such rights can be asserted[55]). I will consider the Applicant's reasons for wanting the information that are listed above, as a potential "relevant circumstance" under section 17(5) in determining whether the mandatory exceptions under section 17 were properly applied.

[55] In order for section 17(5)(c) to be a relevant consideration, all four of the following criteria must be fulfilled: (a) the right in question is a legal right drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; (b) the right is related to a proceeding that is either existing or contemplated, not one that has already been completed; (c) the personal information to which the applicant is seeking access has some bearing on or is significant to the determination of the right in question; and (d) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing (Order 99-028, followed in many subsequent orders, e.g., Order F2010-029 at para 133.) While in her Final Submission the Applicant advises that she has initiated some further proceedings/complaints to which she says the redacted information is relevant, this was done after the CPS had made its decisions and provided submissions. (See para 300 below for further details.) Further, though asserting that the records at issue in the present inquiry bear on those proceedings, she does not explain or give any illustrations as to which of the records she is referring to, or how they might have relevance to those proceedings.

[para 287] Page 2 of 41: I believe the redacted information on this page is already known to the Applicant since she was involved in the referenced activities at the referenced location, so its disclosure would not reveal information such as she says she needs for her purposes described above.[56] Disclosure of the information is presumed to be an unreasonable invasion of the privacy of the third party by reference to section 17(4)(b).[57] It is also subject to the presumption by reference to section 17(4)(g)(i). I do not see any useful counter-purpose in providing information to the Applicant as it is contained in the context of this document.

[para 288] Pages 3 and 4 of 41: with reference to the information redacted under "Name" and "Home Address", the same points apply as made with reference to page 2 of 41. The remaining information is personal information of a third party that has no relevance to the Applicant's issues or concerns in this case, as set out above. It is subject to the aforementioned presumptions and the Applicant has not provided any information or arguments that would outweigh these presumptions.

[para 289] Page 5 of 41: the same points as made under page 2 of 41 apply to the first redaction. The information under the heading "Synopsis", is personal information of a named third party which is also part of a law enforcement record. While some of it may be of passing interest to the Applicant, it has no direct bearing on the kinds of reasons for wanting the information that she gave, as set out above. The Applicant has not presented any factors that would outweigh the aforementioned presumptions against disclosure.

[para 290] Page 6 and 7 of 41: The comments in the preceding paragraph apply to the first three redactions on page 6. The fourth redaction (the largest block on the page) does not contain any third party personal information, and section 17 does not apply to it. The same is true for the two redactions under the heading "Property Unit". I will therefore order the CPS to disclose this redacted information. The final two redactions consist of the personal information of a third party. The first one is information that would likely be already known to the Applicant given her involvement, and the final one contains personal information of a third party that has no direct bearing on the Applicant's concerns. The latter is also true of the redactions on page 7. The Applicant has not presented any factors that would outweigh the aforementioned presumptions against disclosure.

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[56] In saying this, I note the "absurd result" principle that is sometimes applied in favour of disclosing to applicants information that is in the public domain or that they already know, since it would be absurd to withhold it. However, where the presumptions of an unreasonable invasion of privacy under section 17(4) of the Act also apply, they weigh in the opposing direction. As well, sometimes possession by an Applicant of personal information of a third party in a particular written context, even if known to the Applicant, can have negative implications for the person whose information it is. For example, information of persons against whom an applicant made allegations that would appear in a police report, if shared with others, would be a concrete indication to others that the third parties were involved in police investigations. In such cases, the negative implications for the third party could outweigh the significance of the information being already known to the applicant.

[57] While as discussed above the Applicant has recently brought a series of complaints against various individuals, these complaints are not part of the same "law enforcement matters" that arise in this inquiry. Therefore, relative to any such proceedings, the records are not needed to "dispose of a law enforcement matter" or to "continue an investigation" within the terms of section 17(4)(b). Therefore the exception to the operation of the presumption does not apply.

[para 291] Page 8 of 41: The comments regarding the redactions on page 2 of 41 apply to the first redaction and to the one under the heading “Location Information”. Under the heading “Remarks”, the first redaction is of what appears to be a personal telephone number. The remaining redactions under that heading consist of portions of sentences which describe actions of a third party or observations made about them by the CPS or observations made by the third parties. This is third party personal information to which the aforementioned presumptions apply, and the Applicant has not presented any factors that would outweigh them. The redacted information under the heading “Caller Information as well as that under “Supplemental Information” is also personal information of a third party (some of it known to the Applicant) to which the presumptions apply, and the presumptions are not outweighed by any factors presented by the Applicant.

[para 292] Page 10 of 41: The information obscured on this page is unrelated information not responsive to the access request.

[para 293] Page 11 of 41: The first redaction on this page is similar to the information on page 2 of 41, with an additional item of information that appears to also be personal information about a third party to which the presumptions apply. The second redaction is of what appears to be a business address which, by reference to the file number noted in the margin, appears (on a balance of probabilities) to be associated with the latter item of information in the first redaction. Therefore, (assuming it to be associated with the present file) it is personal information. The presumptions discussed above apply to all this information and there is no countervailing factor. The third and fourth redactions are of unrelated information which is not responsive to the access request, with the exception of the first line of the fourth redaction, which partially repeats disclosed information (which appears to be related to the case file in the margin) that precedes it. This first line of the fourth redaction should be disclosed. The final redaction is personal information of a third party subject to the presumptions against disclosure discussed above, and there is no countervailing factor that outweighs them.

[para 294] Pages 12 and 13 of 41: The redacted information on these pages is unrelated to the present matters and is unresponsive to the access request.

[para 295] Page 14 of 41: The redacted information on this page is all personal information of a third party that is subject to the presumptions under section 17(4)(b) and 17(4)(g)(i). The most significant portions of the withheld information on the page are likely known to the Applicant so their disclosure would not reveal information of the type she says she needs for her purposes, and the additional items of redacted personal information would have no particular relevance to the Applicant’s concerns. I uphold the redactions.

[para 296] Pages 32 and 33 of 41: The first redaction on page 32 that relies on section 17 is about the performance of a work duty (though it arguably has a relatively minor personal dimension). This information should be disclosed. The second redaction relates to a CPS’s member’s work schedule. I do not believe it is of a sufficiently personal character to warrant withholding it, and it should be disclosed. The same comment and conclusion applies to the two redactions on page 33, which reveal when a particular member was available to be consulted about a matter.

[para 297] Page 36 of 41: The first redaction on this page appears to be of a description of information (the name of a person who presumably gave evidence in a transcript) that had been supplied to the CPS by the Applicant. I am not fully aware of the context, but it is also possible that the evidence that was given was in a work-related capacity, so is not the personal information of the person involved. I will ask the Public Body to reconsider whether this is personal information, and to disclose it if it concludes it is not. If it is, I ask the Public Body to weigh relevant factors under section 17.

[para 298] The remaining redactions on this page are the name and address of a third party, which is personal information. Again, it seems likely given the context that the applicant already knows this information. I will uphold the Public Body's decision to withhold the latter information on this page as I see no factor in favour of withholding it.

1.2(b) Redactions of entire pages in reliance on section 17

[para 299] Pages 46 to 65 and 87 to 92 of the 142 pages of records located as responsive were withheld under section 17. All of them consist of communications between members of the CPS and a third party, and many of them consist of descriptions of events involving the Applicant by the third party, as well as forwarded communications that were sent to the third party by the Applicant. While the communications to some degree are the personal information of the Applicant, they are also personal information of the third party in that they reveal what the third party regarded as necessary to communicate to the police.

[para 300] I understand that the Applicant wishes to know what accusations are being made about her. However, to a considerable extent, she does already know these things, given her involvement in the incidents, and her authorship of some of the communications she sent, and presumably also given other legal proceedings in which she has been involved. The Applicant did not provide the CPS with evidence of any existing or anticipated proceeding or forum in which the information would assist her. In her Final Submission the Applicant mentions a CPS Professional Standards complaint that she filed in August 18, 2016. As well, she mentions a Law Society complaint against the CPS's representative filed on March 15, 2018, another Law Society complaint against other lawyers, a complaint against a prosecutor, and complaints against RCMP members. However, these complaints were subsequent to the access request, so the CPS could not have considered them. In any event, the Complainant indicates that most of the records she seeks in relation to these matters are records at issue in the associated inquiry in OIPC Case File 001826, and she does not make clear which records at issue in the present inquiry might be relevant for these purposes. I will deal with the records in Case File 001826 in the associated inquiry.[58]

[para 301] Therefore, I do not see that there is any factor listed under section 17(1) which outweighs the presumptions in sections 17(4)(b) and 17(4)(g)(i) that disclosure of the

[58] I also reject the suggestion by the Applicant that the fact she brought these complaints means that the records are relevant for subjecting the activities of the public bodies who employ the persons complained about to public scrutiny. I am unable to determine whether the complaints have or had merit, or how the records at issue in the present inquiry might be used to demonstrate this.

information would be an unreasonable invasion of the privacy of the third party. Nor, in my view, are the Applicant's reasons set out above of sufficient weight to do this, particularly as that part of the information which is about her and allegations against her is largely already known to her.

1.2(c) Redactions in reliance on section 20(1)(m) – harm to security of a system

[para 302] Page 39 of 41: The redaction on this page is of a cell phone number of a member of the CPS.[59] A previous order of this office (F2013-13) held that it had not been established in that case that disclosure of a police cell phone number could cause the harm contemplated by section 20(1)(m). However, because cell phones are also used by CPS members for personal purposes, she held that section 17 might apply to the numbers.

[para 303] In this case, the CPS argues that the harms test set out for section 20(1) of the Act (see, e.g., in Order F2010-008[60]) is met by the disclosure of police cell phone numbers because members of the public who are involved in criminal activities, such as dangerous offenders and gang members, could use the information to contact retired or off-duty officers to threaten or harass them. Such factors were not put forward or considered in Order F2010-008. I accept that this could be a possible result of public access to these numbers, and that the provision applies. I uphold the redaction of the cell phone number on this page, including its exercise of discretion.

1.2(d) Redactions in reliance on section 21(1)(b) – CPIC searches

[para 304] This provision as it was applied to the results of CPIC searches has already been discussed above. I will ask the Public Body to try to locate any such records and to make a decision whether to disclose any it locates.

1.2(e) Redactions in reliance on section 24(1)(b) (and in some cases, of unresponsive information)

[para 305] Page 26 of 41: The redaction on this page does not appear to describe advice; rather, it describes an action that was concluded, based on a directive that was received. This information should be disclosed.

[para 306] Page 28 of 41: The redaction on this page is of unrelated information that is not responsive to the access request.

[59] I have not reviewed the Applicant's submissions to determine whether she challenged this redaction specifically, but I will address it in any event since the CPS provided a submission about it.

[60] "… [T]here must be a clear cause and effect relationship between disclosure of the withheld information and the harm alleged; the harm that would be caused by the disclosure must constitute damage or detriment and not simply hindrance or minimal interference; and the likelihood of the harm must be genuine and conceivable." (Order 96-003 at p. 6 or para. 21; Order F2005-009 at para. 32; Order F2009-004 at para. 30).

[para 307] Page 32 of 41[61]: The redactions made in reliance on section 24(1)(b) deal with the logistics of consultations in terms of the availability of staff, but do not deal with the substance of the matter. In Order F2004-026, former Commissioner Work stated:

> In my view, section 24(1) does not generally apply to records or parts of records that in themselves reveal *only* any of the following: that advice was sought or given, or that consultations or deliberations took place; that particular persons were involved in the seeking or giving of advice, or in consultations or deliberations; that advice was sought or given on a particular topic, or consultations or deliberations on a particular topic took place; that advice was sought or given or consultations or deliberations took place at a particular time. There may be cases where some of the foregoing items reveal the content of the advice. However, that must be demonstrated for every case for which it is claimed.

In the present case the redacted information on page 32 does not reveal substantive content but only who was being consulted and when this could be done given the working schedules of the people involved. Further, while the CPS describes the correspondence as a junior officer "seeking direction" from superiors, seeking direction (which appears in this case to be mandatory) is not the same as seeking advice about a decision one is to make oneself. Therefore section 24(1)(b) does not apply and this information should be disclosed.

1.2(f) Redactions in reliance on section 27(1)(a)

[para 308] Pages 23 and 31 of 41: The redactions on these pages on their face involve a consultation on the issue in the associated file (concerning the alleged failure of a Crown prosecutor to disclose information in a court case) between CPS and its counsel. The Disclosure Analyst attested that the information is the same in each case. I accept this information was subject to solicitor-client privilege.

[para 309] Page 32 of 4: This redaction reveals from its context that legal advice about this same issue was to be sought from a CPS lawyer. The Disclosure Analyst attested that the redacted portion "refers to the same legal question and advice". I believe that the confidentiality of the communications was implicit in these circumstances, and I accept the Public Body's submission that the redacted portions of these pages "summarize the question and the advice given", and are subject to solicitor-client privilege.

[para 310] The following pages were redacted in full under section 27(1)(a): Pages 137 to 140 of 142. The CPS's submission (Disclosure Analyst's affidavit) states that pages 139 and 140 "are the [named] lawyer's handwritten notes with respect to the legal advice and recommendations he provided" about an allegation of perjury in a trial on the part of a representative of the Law Society. The submission also says that pages 137-138 consist of an email between three named CPS in-house lawyers and the Deputy Chief (also a lawyer) , and that the email summarizes the "preliminary advice" given by one of the lawyers to a detective concerning the issue, and outlines recommendations for next steps. I believe that the confidentiality of the communications

[61] This record is page 39 of 142 in the unredacted version of the records.

was implicit in these circumstances, and I accept that section 27(1) (a) was properly applied to the records.[62]

1.3 Redactions from the May 21, 2015 release

1.3(a) Redactions in reliance on section 17 (and in some cases of unresponsive information)

[para 311] Page 4 of 43: The redacted information on this page is all personal information of third parties that is subject to the presumptions under section 17(4)(b) and 17(4)(g)(i). The most significant portions of the withheld information on the page are known to the Applicant so their disclosure would be of no benefit to her, and the additional items of redacted personal information would have no particular relevance to the Applicant's concerns. I uphold these redactions.

[para 312] Page 5 of 43: the redaction of the top half of this page is of information unresponsive to the access request.

[para 313] I believe the material in the May 21, 2015 response that is obscured (on pages 19, 20, 21, the top of 22, much of 23, the top of 24, the bottom of 25, the top of 26, and most of the information on pages 29, 30 and 31) is of unrelated, unresponsive information. If that is not the case, I ask the CPS to advise me, and I retain jurisdiction to consider the redactions on the basis of other exceptions it may have applied, should the Applicant ask me to do so.

[para 314] Page 35 of 43: The redactions on this page are not, and do not reveal, personal information. (Possibly the reference is to information supplied by a third party to the CPS in the case file, but if that is so, this was already revealed in the "Professional Opinion" section of the related Report Number 11292557 (wherein the party's name was withheld). I see no other rationale for withholding this information, and it should be disclosed (as has already been concluded with respect to the same information as withheld on page 6 of 41).

1.3(b) Redactions in reliance on section 24

[para 315] The redactions on pages 22 and 26 of 43 are descriptions of actions taken in consequence of directives from superior officers. In my view this is not personal information (in the sense of being the performance of a work duty having a personal dimension). Nor is it a consultation or deliberation within the terms of section 24(1)(a) or (b), since it was not a question of advice being sought and given as to how a decision was to be made, but rather was a decision

[62] In her Final Submission the Applicant raises the issue of waiver of privilege. I have no evidence or reason to think the records over which privilege is claimed were shared with a third party such that it would have been waived. The Applicant seems to suggest that privilege over advice given to the Law Society by a lawyer was waived when it was disclosed to the CPS, but the advice over which privilege is claimed here is to the CPS by its own lawyers. As well, in the concluding page of her final submission the Applicant refers to a waiver, by way of provision to her of legal advice contained in an Apr 7/11 email (this record was provided to her in Response 17-P-0969). This disclosure appears to have been contained in a response to a 2017 access request, which is not part of the present inquiry. While the Applicant provided this information, I do not have sufficient evidence based on what she asserts in her submission that this waiver affected confidentiality of the records I have held to be privileged in the present inquiry.

and directive as to how the matter was to be dealt with. Accordingly, I believe this information should be disclosed.

2. Redactions from earlier responses

[para 316] The Applicant challenges the redactions in the re-provided earlier responses, which she did not challenge earlier. There is no obligation to consider them now since, as discussed above, there is neither an obligation to re-provide information already provided, nor is there any obligation to deny records for a second time that has already been denied. I cannot review actions of the Public Body that it has no duty to perform.

[para 317] I note that the redactions under section 17 that the Applicant challenges in some of the earlier responses are very similar to the ones discussed above (which were largely upheld). Thus, much of the information would be withholdable in any case under the same exceptions as apply to the records presently at issue in this inquiry.

3. Summary regarding redactions

[para 318] I require the CPS to disclose the following records to the Applicant:

- Page 6 and 7 of 41: The fourth redaction (the largest block on the page) and the two redactions under the heading "Property Unit".
- Page 11 of 41: The first line of the fourth redaction.
- Page 26 of 41: The redaction on this page.
- Pages 32 and 33 of 41: The first and second redactions on page 32; the two redactions on page 33.
- Page 26 of 41: The redaction on this page.

[para 319] With respect to Page 36 of 41, given it is possible the evidence that was given was in a work-related capacity, so is not the personal information of the person involved, I ask the CPS to reconsider whether this is personal information, and to disclose it if it concludes it is not. If it is, I ask the Public Body to weigh relevant factors under section 17.

VI. ORDER

[para 320] I make this Order under section 72 of the Act.

[para 321] I order the CPS to provide a further explanation to the Applicant and to me as to why it believes the records listed at para 271 above are no longer in its possession, having regard to the kinds of information it might provide that is set out in the list, to the extent this is still possible. To the extent it is not for some of the records, I ask the CPS to explain why the passage of time makes it impossible to provide such explanations.

[para 322] I reserve jurisdiction to review the explanations, and to order a further search for records if it appears the explanations or lack thereof indicate the records may still be in the CPS's possession, if the Applicant asks me to do so.

[para 323] I order the CPS to disclose records as summarized in para 318 above.

[para 324] With regard to page 36 of 41, I order the CPS to reconsider whether this is personal information, and to disclose it if it concludes it is not. If it concludes that it is, I ask the Public Body to make a decision as to whether to withhold it. I reserve jurisdiction to review such a decision if the Applicant asks me to do so.

[para 325] I order the CPS to provide the Applicant with photos or photocopies of any written labels on the storage devices it has located that contain records at issue.

[para 326] I uphold the decision of the CPS to withhold the remaining records currently at issue in this inquiry.

[para 327] With regard to the results from CPIC searches, I direct the CPS to search for any such records that it obtained in written form from the RCMP's database, and then retained for its own purposes. If it locates such records, I ask it to make a decision as to whether to disclose them, or to withhold them under the exception it raised in its first response (section 21(1)(b)), or any other applicable exception. If the decision is to withhold the records, I reserve jurisdiction to review this decision should the Applicant ask me to do so.

[para 328] With regard to the material obscured in the 41 pages (pages 19, 20, 21, the top of 22, much of 23, the top of 24, the bottom of 25, the top of 26, and most of the information on pages 29, 30 and 31), I direct the CPS to determine if this is responsive information. If it is, I ask the CPS to advise the Applicant and me, and I reserve jurisdiction to consider the redactions on the basis of other exceptions it may have applied, should the Applicant ask me to do so.

[para 329] I further order the Public Body to notify me and the Applicant, in writing, within 50 days of receiving a copy of this Order, that it has complied with it.

[para 330] On receiving notice of compliance, the Applicant may ask me to review the CPS's decisions as set out in paras 322, 324, 327 and 328 above.

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Christina Gauk, Ph.D.
Adjudicator and Director of Adjudication