ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2021-03

February 8, 2021

EDMONTON POLICE SERVICE

Case File Number 004623

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Summary: On May 27, 2013, while he was depositing money at the bank from the sale of a motor vehicle, the Applicant was arrested by a member of the Public Body who applied force in making the arrest. Prior to the arrest, a citizen had contacted 911 to report that he was observing the Applicant and two of his acquaintances attempting to steal a car. The citizen referred to the people he was observing as being Black. He added that he did not think that the people he was observing were the kind of people he expected to drive the car legally.

The police officer who arrested the Applicant consulted EPROS (Edmonton Police Reporting and Occurrence System) prior to making the arrest and determined, from the information he reviewed (and recorded in the arrest report), that the Applicant had a "violent history including weapons offences and drugs". After the police officer arrested the Applicant, the police officer learned that the Applicant and his acquaintances were legally authorized to occupy and drive the vehicle that was the subject of the 911 call. The money the police officer observed the Applicant deposit in the bank was the proceeds of the lawful sale of the vehicle, rather than drugs.

Litigation followed this incident. In the course of this process, the Applicant was given access to the police officer's report of the arrest and to street checks and other information about the Applicant located in EPROS that the officer reviewed prior to making the arrest.

One of the street checks that the Applicant obtained states:

> 12Jul07 conducting walkthrough of Boneyard Ale House at 9212 34 Ave near closing time. Observed known gang member [redacted in original] at the front entrance. I had dealt with him before at Rumours and he was hostile. Less trouble on this date and seemed mellow, said he was working occasionally for his cousin who owns [a construction company] but would not say how his [cousin] was. Watched as he left with [the Applicant] who is also a known trafficker and wanna be bad dude. [Street check report submitted for association].

The Applicant made the following request to the Public Body regarding this street check:

> It has come to [the Applicant's] attention that on July 7, 2012, [a Constable] authored a Street Check Report in which he asserted that [the Applicant] is "a known trafficker and wanna be bad dude". This information is inaccurate, inflammatory and highly prejudicial.
>
> Pursuant to s.36 of the *Freedom of Information and Protection of Privacy Act*, I am hereby requesting on [the Applicant's] behalf that this record be corrected to remove the allegation that [the Applicant] is a "known trafficker" and a "wanna be bad dude".

The Public Body refused to correct the information on the basis that it was opinion. It appended the information to the Applicant's request pursuant to section 36(3) of the FOIP Act, which requires a public body to annotate or link a correction request to personal information, rather than correct it, when the personal information that is the subject of the request is opinion.

The Adjudicator determined that the Public Body had complied with its duty under section 36 of the FOIP Act.

The Adjudicator found that the correction request was more properly characterized as a complaint that the Public Body had not met its duty to the Applicant to ensure the accuracy and completeness of personal information that it would use to make decisions affecting the Applicant's rights. She found that the Public Body had not demonstrated that it had made all reasonable efforts to ensure that the personal information at issue was accurate and complete for the purposes of making decisions when it was entered into EPROS and maintained in that database. She directed it to comply with its duty under section 35 with regard to the statement that the Applicant is a "known trafficker and wanna be bad dude", by ensuring that it would not be used to make decisions affecting the Applicant's rights in the future.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 35, 36, 72 **CA:** *Corrections and Conditional Release Act*, SC 1992, c 20; s. 24; *Controlled Drugs and Substances Act*, S.C. 1996, c. 19; ss. 5, 6; *Criminal Code* RSC 1985, c C-46 **ON:** Ontario Regulation 58/16 Collection of Identifying Information in Certain Circumstances – Prohibition and Duties

Authorities Cited: AB: Orders 2000-007, F2013-14, F2013-50, F2016-34, F2017-39 **BC:** Order 01-23

Cases Cited: *Ewert v. Canada*, 2018 SCC 30; *R. v. Le*, 2019 SCC 34 (CanLII), *Vuong and Shah v Edmonton (Police Service)*, 2019 ABLERB 22 (CanLII), *Power v Law Enforcement Review Board*, 2020 ABCA 77 (CanLII)

I. BACKGROUND

[para 1] On May 27, 2013, while depositing money at the bank from the sale of a motor vehicle, the Applicant was arrested by a member of the Public Body who applied the use of force in making the arrest. Prior to the arrest, a citizen had contacted 911 to report that he was observing the Applicant and two of his acquaintances attempting to steal a car with dealer plates. The citizen referred to the people he was observing as being Black. He added that he did not think that the people he was observing were the kind of people he expected to drive a car with dealer plates legally.

[para 2] The police officer who arrested the Applicant consulted EPROS (Edmonton Police Reporting and Occurrence System) prior to doing so and determined, from the information he reviewed, that the Applicant had a "violent history including weapons offences and drugs". After the police officer arrested the Applicant, the police officer learned that the Applicant and his acquaintances were legally authorized to occupy and drive the vehicle that was the subject of the 911 call. The money the police officer observed the Applicant deposit in the bank was the proceeds of the lawful sale of the vehicle.

[para 3] Litigation followed this incident. In the course of this process, the Applicant received the police officer's report of the arrest and to street checks and other information about the Applicant located in EPROS that the officer reviewed prior to making the arrest.

[para 4] One of the street checks that the Applicant obtained states:

> 12Jul07 conducting walkthrough of Boneyard Ale House at 9212 34 Ave near closing time. Observed known gang member [redacted in original] at the front entrance. I had dealt with him before at Rumours and he was hostile. Less trouble on this date and seemed mellow, said he was working occasionally for his cousin who owns [a construction company] but would not say how his [cousin] was. Watched as he left with [the Applicant] who is also a known trafficker and wanna be bad dude. [Street check report submitted for association].

[para 5] The Applicant made the following request to the Public Body regarding this street check:

> It has come to [the Applicant's] attention that on July 7, 2012, [a Constable] authored a Street Check Report in which he asserted that [the Applicant] is "a known trafficker and wanna be bad dude". This information is inaccurate, inflammatory and highly prejudicial.
>
> Pursuant to s.36 of the *Freedom of Information and Protection of Privacy Act*, I am hereby requesting on [the Applicant's] behalf that this record be corrected to remove the allegation that [the Applicant] is a "known trafficker" and a "wanna be bad dude".

[para 6] On September 26, 2016, the Public Body provided the following response to the Applicant's request for correction:

> Please be advised that pursuant section 12(2) of the FOIPP Act, the EPS will neither confirm nor deny the existence of records responsive to your request for correction:
>
> > 12(2) Despite subsection (1)(c)(i), the head of a public body may, in a response, refuse to confirm or deny the existence of
> >
> > > (a) a record containing information described in section 18 or 20
> > >
> > > (b) a record containing personal information about a Third Party if disclosing the existence of the information would be an unreasonable invasion of the third party's personal privacy

[para 7] The Applicant asked the Commissioner to review the Public Body's response to his correction request.

[para 8] The Commissioner authorized a senior information and privacy manager to investigate and attempt to settle the matter. In the course of this process, the Public Body acknowledged the existence of the street check that is the subject of the Applicant's request for review. It refused to correct the street check, on the basis that it constituted the opinion of the police officer who created the street check report. Section 36(2) of the FOIP Act prohibits a public body from correcting an opinion, but requires it to annotate or link the requested correction to the personal information that is the subject of the correction request.

[para 9] The Applicant requested an inquiry.

[para 10] The notice of inquiry issued by this office cited only section 36 of the FOIP Act as being at issue and sets out the issue for inquiry as the following: "Did the Public Body respond properly to the Applicant's request for correction of his/her personal information under section 36 of the Act (right to request correction of personal information)?" After I reviewed the evidence and submissions of the parties, I decided that it was possible that section 35 of the FOIP Act, in addition to section 36, was engaged by the Applicant's complaint, and that the complaint was one that personal information used by the Public Body to make decisions affecting the applicant's rights was neither accurate nor complete. I wrote the parties to inform them that I was adding the issue of the application of section 35 and asked for submissions regarding this provision and its relevance to the issues. Both parties provided submissions with regard to the additional issue.

II. ISSUES

ISSUE A: Has the Public Body complied with its duty under section 35 to make reasonable efforts to ensure that personal information about the Applicant that will be used to make a decision affecting his rights is accurate and complete?

ISSUE B: Did the Public Body respond properly to the Applicant's request for correction of his personal information under section 36 of the Act (right to request correction of personal information)?

III. DISCUSSION OF ISSUES

ISSUE A: Has the Public Body complied with its duty under section 35 to make reasonable efforts to ensure that personal information about the Applicant that will be used to make a decision affecting his rights is accurate and complete?

[para 11] Section 35 of the FOIP Act states:

> *If an individual's personal information will be used by a public body to make a decision that directly affects the individual, the public body must*
>
> *(a) make every reasonable effort to ensure that the information is accurate and complete, and*
>
> *(b) retain the personal information for at least one year after using it so that the individual has a reasonable opportunity to obtain access to it, or for any shorter period of time as agreed to in writing by*
>
> *(i) the individual,*
>
> *(ii) the public body, and*
>
> *(iii) if the body that approves the records and retention and disposition schedule for the public body is different from the public body, that body.*

[para 12] Section 72 of the FOIP Act sets out the Commissioner's order making powers. It states, in part:

> *72(1) On completing an inquiry under section 69, the Commissioner must dispose of the issues by making an order under this section.*
>
> *(2) If the inquiry relates to a decision to give or to refuse to give access to all or part of a record, the Commissioner may, by order, do the following:*
>
> *[…]*
>
> *(3) If the inquiry relates to any other matter, the Commissioner may, by order, do one or more of the following:*
>
> *a) require that a duty imposed by this Act or the regulations be performed;*

> *[…]*
>
> *(d) confirm a decision not to correct personal information or specify how personal information is to be corrected;*
>
> *(e) require a public body to stop collecting, using or disclosing personal information in contravention of Part 2;*

If a public body will use personal information to make a decision affecting the rights of the individual whom the personal information is about, then section 35 of the FOIP Act imposes a duty on the Public Body to take reasonable measures to ensure that the personal information it uses is accurate and complete. Section 72(3)(e) authorizes the Commissioner both to direct a public body to meet its duty under section 35 and to direct that it stop using personal information in contravention of its duties under Part 2 in the event the Commissioner finds that the public body has used, or is using, personal information to make decisions without taking reasonable measures to ensure its accuracy and completeness.

[para 13] In Order F2017-39, the Adjudicator interpreted this provision, stating:

> In any event, I do not believe that section 35(a) of the Act goes so far as to place a burden on public bodies to investigate and research other sources of information to ensure that its decision is correct. Section 35(a) is about the accuracy and completeness of the information that the Public Body had before it when making its decision, not about the decision itself, nor what information the Public Body should have used when making its decision (Order 98-002 at para 73). As stated in other orders issued by this Office, section 35(a) of the Act ensures fair information practices and emphasizes the importance of data quality (Order F2006-019 at para 88). Therefore, the purpose of section 35(a) of the Act is to ensure that the factual data before a public body when making its decision is accurate and complete such as a birthdate or a social insurance number or, in this case, what information individuals contacted for reference checks provided about the Applicant (see Order F2013-50 at para 161). I do not believe that it extends to examining if the Public Body took enough information into account.

[para 14] In Order F2013-14, the Director of Adjudication said:

> Given these considerations, in my view, despite its broad wording, section 35(a) is to be engaged primarily in relation to information that does not depend, for the determination of its accuracy, on a quasi-judicial process. Rather, resort may be had to it where a public body is to make a decision on the basis of information the accuracy of which is readily ascertainable by reference to concrete data. As the Adjudicator noted in Order F2006-019, section 35 is intended to promote fair information practices and data quality in relation to personal information.

[para 15] In Order F2013-50, I said:

> I agree with the Director of Adjudication's interpretation of section 35. Section 35 is not engaged by personal information in relation to which a decision maker must make findings of fact. Rather, it applies to information that can be readily ascertained by reference to data. An example of the kinds of information to which section 35 applies is a birthdate or a social insurance number.

In the foregoing order, I rejected the argument that section 35 authorizes the Commissioner to review the decisions of other tribunals or to change findings. Instead, I agreed with the interpretation of the Director of Adjudication, which holds that section 35 is intended to promote fair information practices and data quality of information used to make decisions. To satisfy the requirements of section 35, a public body need only establish that it has taken, or does take, all reasonable measures to ensure the completeness and accuracy of personal information about an individual it has used, or will use, to make decisions affecting the individual's rights.

What kinds of decisions are made with the personal data in street check reports?

[para 16] The Public Body explains that street check reports in 2012 -- the year the street check that is the subject of the complaint was written -- were to be used for the following purposes:

> Examples of the ways in which street check reports could potentially be used include:
>
> - To connect information from a variety of sources;
> - To tie together pieces of evidence;
> - To determine whether a call for service is a high risk call;
> - To identify the lifestyles of suspects, including the places that they frequent;
> - To locate missing persons;
> - To develop confidential sources;
> - To determine if there are weapons related incidents prior to entering a house; and
> - To check on the well-being of vulnerable populations

[para 17] The Public Body acknowledges that the information in street check reports may be used to make decisions affecting an individual's rights within the terms of section 35. It states:

> As noted above, the information recorded in a street check report could potentially be valuable for investigative purposes. However, given that a street check is not connected to a specific investigation, a street check report may ultimately turn out to have no investigative value.
>
> While a street check report may turn out to be useful, it is not reviewed in isolation. The EPS "always look at street checks in the context of other information we have. We [EPS] use street checks as one item of information or analysis. It is never used as the only item."
>
> Although a Street Check may contain useful information to assist with an ongoing investigation, the EPS would never rely on a Street Check Report in isolation to form reasonable and probable grounds to arrest someone.
>
> The EPS acknowledges that there could be circumstances where a street check report, in conjunction with other information, is used to make decisions that directly affect an individual. An example of when this might occur is when the street check report is used, in conjunction with other information, to identify an individual as a suspect in an ongoing investigation.

[para 18] The Public Body confirms that identifying individuals as suspects is a decision affecting individual rights.

[para 19] There are additional decision making functions for which the personal data in street check reports is used. I note that the information in street checks may form part of an "Information to Obtain a Warrant" (ITO). This would also be a use of personal information in street checks to make a decision affecting rights.

[para 20] The Applicant submitted evidence establishing that the police officer who arrested him at the bank reviewed information prior to making the arrest. According to the police officer's statement, he reviewed the street check report at issue along with other records, and concluded that the Applicant was violent and involved in drug trafficking. He decided to arrest the Applicant.

[para 21] Decisions to obtain warrants, decisions to arrest individuals, decisions to use force, and decisions to consider individuals to be suspects are all examples of decisions affecting an individual's rights. The parties have submitted evidence to support finding that street checks are used in conducting investigations and making such decisions, although decisions are not made on the basis of a street check alone. By entering street check reports into EPROS where it is accessible to members, the Public Body provides street check reports for decision making purposes, among other purposes. It is therefore foreseeable that information in EPROS will be used in making decisions, such as the one made by the police officer to arrest the Applicant using force.

[para 22] The Public Body argues that section 35 is engaged only at the point that a decision is being made:

> By virtue of the plain and ordinary meaning of s. 35, the obligation to "make every reasonable effort to ensure that the information is accurate and complete" is not triggered at the time the information is collected or used, but is only triggered at the point when the information is used to make a decision that directly affects the individual.
>
> In this case, there is no evidence that Cst. […] (or anyone else at the EPS) has used the information in the Street Check Report to make any decisions about [the Applicant(?)]. Accordingly, s. 35 is not triggered based on the facts of this case.
>
> The EPS' submissions on this point are consistent with numerous previous OIPC decisions considering s. 35. For example, in Order F2016-34, the Applicant obtained police records indicating that he was charged with common assault, but did not indicate that he had been acquitted of the charge. Further, the records stated that there was a long history of domestic violence between him and his former spouse, and also indicated that he had access to rifles. The Applicant made a correction request, stating that the statements were incorrect. The public body declined to make a correction. The Adjudicator held the following with respect to s. 35:
>
> > A public body's duty to ensure that personal information is accurate and complete arises only in the circumstances set out in s. 35; that is, when a public body is going to make a decision directly affecting the individual with the information in question. The duty to use complete and accurate information under section 35 does not extend to situations in which a public body uses personal information for purposes other than making decisions directly affecting the individual.
>
> The previous OIPC decisions [F2016=34] demonstrate that the mere possibility that the information will be used at some point in the future is not sufficient to trigger the obligation in s. 35 to "make every reasonable effort to ensure that the information is accurate and complete."

[para 23] Order F2016-34, to which the Public Body refers, was decided on the basis that there was no evidence that the information would be used to make a decision affecting the applicant in that case. That is not the case here. The Applicant has submitted evidence that a police officer made a decision to arrest him in the bank and accessed and reviewed information in EPROS about him prior to doing so, including the street check at issue. The police officer formed the opinion from the information he reviewed, including the information at issue, that the Applicant was violent and involved in drug trafficking. Further, even if it were not the case that the street check report in question was accessed by the police officer, the street check report was placed in a database that the Public Body makes available to all members and expects them to access when making decisions of the kind that gave rise to the complaint before me.

[para 24] If it were the case that section 35 only applies to decision makers in the process of making decisions, it would be difficult to meet its requirements. A decision maker is not always in a position to take measures to ensure the completeness and accuracy of the information before him or her, as in the case of a police officer who considers him or herself to be in an emergency situation with only minutes, or even seconds, in which to make the decision on available data. Moreover, section 35 would be gratuitous if it applied only to formal decisions affecting individual rights, as appeals and the judicial review process are available to remedy decisions in which excess weight is given by a decision maker to inaccurate or incomplete information.

[para 25] The Public Body compiles street check reports in EPROS. Police officers are expected to consult street check reports containing relevant data in making decisions. The Public Body has created rules to ensure the quality of street check reports, given the fact that they may be used to make policing decisions affecting rights. The Public Body may not know exactly what decisions it will make or which street check reports will be given weight in making decisions at the time the information is entered into EPROS; nevertheless, it is aware that it requires police officers to use data in EPROS, and street check reports in particular, to make decisions in the course of carrying out policing duties, when relevant. It therefore knows that once personal data has been made available to members for the purpose of carrying out duties, which may include making decisions that affect rights, decisions will be made using the information. In my view, section 35 is engaged once the Public Body makes personal information available in EPROS.

[para 26] As set out in previous orders of this office, section 35 requires a public body to make reasonable efforts to ensure the data quality of information that will be used to make decisions affecting individual rights. The question to be answered in this inquiry is not whether the police officer should or should not have made the decision he did, or the extent to which he relied on a particular piece of information in arriving at his decision. The question is whether the Public Body took all reasonable steps to ensure that the personal information about the Applicant available to the police officer in EPROS to make the decision was sufficiently complete and accurate for that purpose and whether the information is suitable for future decisions affecting the Applicant's rights.

[para 27] In answering this question, I will turn first to the nature of street check reports, and the purposes for which they are used.

The significance of "street checks"

[para 28] A "street check" is a practice by which a police officer collects personal information from an individual in the course of investigating crime or looking for missing persons. Street checks are to be distinguished from "carding", which is a prohibited practice by which police arbitrarily stop members of the public and obtain personal information.

[para 29] The Supreme Court of Canada recently addressed the practice of "carding" in *R. v. Le*, 2019 SCC 34 (CanLII), to which the Applicant drew my attention:

> Nonetheless, without warning by way of gesture or communication to the backyard occupants, Csts. Reid and Teatero simply entered the backyard through the opening in the fence. Cst. Teatero asked them "what was going on, who they were, and whether any of them lived there". Cst. Reid engaged in a similar line of questioning. Each of the young men were asked to produce identification. This common police practice of asking individuals who they are and demanding proof of their identities for no apparent reason has its own name. It is known as "carding" (Justice M. H. Tulloch, *Report of the Independent Street Checks Review* (2018), at p. xi).

[para 30] In *Report of the Independent Street Checks Review*[1], cited by the Supreme Court of Canada in *Le*, Justice Tulloch of the Ontario Court of Appeal conducted a review of street checks in Ontario and commented on the inconsistencies of police practices in relation to conducting street checks and explained the relationship between street checks and carding:

> Randomness is the key feature that defines carding. Carding refers to situations where a police officer randomly asks an individual to provide identifying information when the individual is not suspected of any crime nor is there any reason to believe that the individual has information about any crime. That identifying information is then recorded and stored in a police records management system or database. Throughout this report, the term "carding" will be used to describe this type of scenario.
>
> Carding is not the same as what police services commonly refer to as conducting street checks, although the two terms have erroneously become synonymous.
>
> Historically, street checks included interactions between police and individuals beyond random requests for identifying information. For example, simple observations of individuals made and recorded by police officers without any communication or interaction with the individual were captured in the records management system as a street check. If an individual was stopped for a traffic violation and a record was made that the person had a gang tattoo or was wearing gang colours, it would qualify as a street check. If a police officer asked if a person needed assistance, it could be considered a street check.
>
> Compounding the problem is the fact that the term "street check" is not even used consistently between police services. Among police services, a "street check" is the general term used for

[1]Justice M.A. Tulloch, *Report of the Independent Street Checks Review* © Queen's Printer for Ontario, 2018

> interacting with members of the public (for a variety of purposes) and the subsequent recording of information obtained from this interaction in a database. Police have had their own terms or titles to label this practice and process over the years. Moreover, each police service utilizes proprietary records management systems (RMS) to record and store collected information. The "street check" or "regulated interaction" module in those RMS allow for police–public interactions to be recorded and stored. The types of police interactions that qualify to be inputted into that module as street checks can vary between police services. For many services, street checks were a catch-all category for a multitude of different types of information.
>
> To distinguish carding from street checks, for the purposes of this report, I will loosely refer to a street check as being information obtained by a police officer concerning an individual, outside of a police station, which is not part of an investigation. Carding constitutes a small subset of what falls under the overarching street checks umbrella.

[para 31] The foregoing report also provides a history of street checks and carding:

> The practice by law enforcement of asking for identification is a longstanding one, and its purpose and effects vary, based on the historical perspective from which it is viewed. In some communities, it is simply viewed as an innocuous practice. It is seen as one of the many tools of law enforcement, whereby police officers proactively collect the identifying information of various individuals within their community who are either unknown to the police or viewed as suspicious and, at some point in time, may be involved in some form of crime.
>
> To the policing community, this practice is viewed as a legitimate form of intelligence gathering, which is essential to maintain a safe and peaceful community. Throughout North America and Western Europe, as well as various other Commonwealth countries, different variations of this practice are utilized by law enforcement agencies.
>
> Historically, Indigenous, Black and other racialized communities have had different perspectives and experiences with practices such as street checks and carding.
>
> From the perspective of a large segment of the Black community, the historical origins of the random indiscriminate requesting of personal identifying information by the state is analogous to the historic practice of the issuance and mandatory enforcement of slave passes. Such passes were issued by slave owners to allow slaves to leave for a specified time to go to a limited area and had to be produced on request.
>
> During my consultations, Indigenous communities in Ontario voiced a similar concern about the practice of random street checks and its impact.

[para 32] Justice Tulloch recommended that information gathered from street checks be destroyed after five years, unless it continued to have value for investigative purposes as permitted by Ontario Regulation 58/16 Collection of Identifying Information in Certain Circumstances – Prohibition and Duties (the Ontario Regulation). He also recommended that information gathered from street checks not demonstrably in compliance with the Ontario Regulation be kept in a restricted database to limit access to the information and be subsequently purged.

[para 33] Alberta does not have legislation in place similar to the Ontario Regulation, but leaves it to police services to regulate street checks. The Public Body's Guidelines in force in 2012 for conducting field interviews and street checks reports, which were submitted for my review in the inquiry, state:

(1) Field Interviews:

Should be conducted with individuals who are encountered under suspicious circumstances and the nature of their actions and presence indicates an involvement in criminal activity or presents a threat to community safety:

a. persons who are known to be involved in criminal activity,

b. persons who may be able to supply information about criminal activities, or

c. persons checked during an investigation as a matter of course and who are believed involved in criminal activity.

(2) Recording:

It is important that records of field interviews be maintained so that persons involved in crime or who have knowledge of criminal activity may be monitored. Dedicated intelligence gathering will be done through SCR [street check report], Intelligence Reports (IR), and Source Debriefing Reports (SDR).

Intelligence which identifies or is provided by a confidential human source or intelligence which is gathered during the course of an ongoing specialized unit investigation will not be submitted on an SCR.

(3) Street Check Report:

Intelligence gathered through a field interview and strictly of an observatory or physical nature shall be done by way of the EPROS SCR. SCRs are not to be used if the information included is obtained from a "source" (registered or casual) or if the disclosure of the information included in this report could potentially place an innocent third party at risk. Any and all "source" information is to be submitted by way of a SDR or an IR.

A SCR contains description fields for information about the checked subject(s):

a. physical features,

b. past record,

c. vehicle,

d. associates, and

e. a narrative for comments explaining the reason for the check.

Submitted SCRs are reviewed by Strategic Intelligence Unit, where they are further distributed to other areas in the EPS and other law enforcement agencies.

Members will clearly identify, in the narrative portion of the SCR, if the person checked is of particular interest to a specific investigative section.

The foregoing policy was in place at the time the street check report at issue was created. This policy indicates that field interviews should be "conducted with individuals who are encountered under suspicious circumstances and the nature of their actions and presence indicates an involvement in criminal activity or presents a threat to community safety." The policy then requires that the field interview be documented in a street check report.

The policy does not indicate whether street check reports could be created to document conversations other than field interviews. In other words, it is unclear from the policy whether interviews with individuals who were *not* encountered under suspicious circumstances and whose actions and presence did not indicate criminal activity or threats to community safety, could properly be the subject of a street check report. It is unclear from the policy whether someone's attendance at a bar, even one that the Public Body's members considered to be a place where criminal business is sometimes transacted, would be grounds for police to conduct a field interview and to document the interview in a street check report.

Is the street check report at issue reasonably accurate and complete for the purpose of making decisions affecting the Applicant's rights?

[para 34] The Public Body argued in the inquiry that street check reports may also consist of the opinions of police officers. It takes the position that the statement that the Applicant is "a known trafficker and wanna be bad dude" is either the opinion of the officer or factual. With regard to opinions, the Public Body argues:

> Further, interpreting s. 35 in a manner to require that a statement of opinion be accurate and complete would have potentially far reaching and unintended consequences in the policing context. Police officers are required, by virtue of their role, to form opinions on a daily basis about a variety of matters. For example, in conducting an investigation, a police officer must determine which people might have information that is of sufficient value to merit an investigative interview, and whether any of the people interviewed could be identified as suspects. While police officers rely on all available information to make these types of decisions, a decision to identify a particular person as a suspect is still a subjective opinion.

[para 35] I agree with the Public Body that police officers necessarily form opinions and note them in the course of carrying out their duties. At the same time, I do not believe that all opinions should be made available to all members for decision making purposes without some form of restriction or qualification. Some opinions may be professional and based on sufficient information to draw logical inferences, while other opinions may be personal and based on inadequate or inaccurate information. The former may be suitable for use in making decisions affecting rights while the latter may not be, although both may have uses within the policing context and may need to be preserved for various purposes. For example, a police officer may initially suspect an individual has committed a crime, but after subsequent investigation and evidence gathering, form the professional opinion that the individual has committed the crime or did not commit the crime. Both the initial suspicion, and the subsequent determination are opinions, and both have a role in the investigation process. However, the opinion formed after investigation will be accurate and complete for the purposes of decision making affecting rights, while the initial suspicion may not be.

[para 36] "Accurate and complete" does not necessarily mean "correct" in the context of section 35. It would be impossible for a public body to ensure that accounts or opinions, including witness, expert or officer opinions, are "correct" or "true". Completeness and accuracy in relation to personal information in an opinion may require

some indication that the personal information *is* opinion, rather than fact, and if it is opinion, how the opinion was formulated. For example, is the opinion personal or professional? Is it based on personal bias or evidence? Is the evidence on which it is based current or dated?

[para 37] In *Ewert v. Canada*, 2018 SCC 30 the Supreme Court of Canada interpreted a similarly worded requirement in the *Corrections and Conditional Release Act*, SC 1992, c 20, which states:

> *24 (1) The Service shall take all reasonable steps to ensure that any information about an offender that it uses is as accurate, up to date and complete as possible […]*

[para 38] In that case, a majority of the Court held:

> Accurate information about an offender's psychological needs is also necessary for the CSC to comply with the guiding principle set out in s. 4(c) of the *CCRA*, namely that the CSC is to use necessary and proportionate measures to attain the purpose referred to in s. 3. And interpreting s. 24(1) such that the obligation to ensure the accuracy of information applies to the results of psychological tests is consistent with the guiding principle in s. 4(g) that the CSC's practices must be responsive to the needs of equity-seeking groups, including persons requiring mental health care. This is because psychological tests, including some of the tests at issue in this case, are used to assess the psychological and treatment needs of such persons.
>
> Interpreting s. 24(1) as applying to a broad range of information, including psychological test results and recidivism risk assessments, is also consistent with the paramount consideration for the CSC set out in s. 3.1 of the *CCRA*: the protection of society. Mr. Ewert's concern in this case is that, as a result of cultural bias, the impugned psychological tests and risk assessments incorrectly identify him as having psychopathic personality disorder or overestimate the risk that he will reoffend. But when the CSC uses tests whose accuracy is in question, there is also a risk of the converse: that psychological or actuarial tests that are inaccurate when applied to a particular cultural group may underestimate risk, thereby undermining the protection of society.
>
> Finally, the nature of the information derived from the impugned tools provides further support for its inclusion in the scope of the words "any information" in s. 24(1). In oral argument, the Crown took the position that actuarial tests are an important tool because the information derived from them is objective and thus mitigates against bias in subjective clinical assessments. In other words, the impugned tools are considered useful *because* the information derived from them can be scientifically validated. In my view, this is all the more reason to conclude that s. 24(1) imposes an obligation on the CSC to take reasonable steps to ensure that the information is accurate.
> I accordingly reject the Crown's argument that the obligation in s. 24(1) relates only to information-gathering and record-keeping — that is, that the CSC's obligation extends only to ensuring that information about an offender is accurately recorded. Had Parliament so intended, it would have been simple enough to provide that the obligation was "to take all reasonable steps to ensure that any information the CSC uses is accurately recorded". Moreover, an obligation to ensure accurate record-keeping would be relatively easy for the CSC to meet. The obligation s. 24(1) *actually* creates with respect to ensuring accuracy is qualified: what is required is that "all reasonable steps" be taken to ensure that information is "as accurate . . . as possible". The fact that Parliament considered these qualifications necessary suggests that s. 24(1) requires more than simply good record-keeping.

[para 39] In the foregoing case, the Court concluded that the phrase "takes all reasonable steps to ensure that any information it uses about an offender is as accurate, up to date, and complete as possible" required more than ensuring that opinions are recorded accurately. Rather, *the method or data by which opinions are formed or created* is also subject to the requirement to make reasonable efforts to ensure the accuracy of information for the purposes for which it will be used. The Court found that Corrections Canada had failed to establish that its assessment methods were accurate in relation to Indigenous offenders and directed it to meet its duty to ensure that the information it used to assess offenders was as accurate, up to date and complete as possible.

[para 40] In *Ewert*, the Supreme Court of Canada reviewed the tools by which Corrections Canada assesses offenders' psychopathy and risk of recidivism. The Court found that continuing to use the impugned tools to evaluate Indigenous inmates perpetuated discrimination and disparity in correctional outcomes between Indigenous and non-Indigenous offenders. The Court also found that the impugned tools were not demonstrably accurate, and could, accordingly, overstate or understate the risk posed by indigenous offenders.

[para 41] I take the Public Body's point that it would be impossible for it to meet the standard set by the Supreme Court in *Ewert* in relation to all opinions that are formed by officers carrying out their duties. In many cases, the opinions formed by officers may not directly affect an individual's rights or the public interest, and if they do, it may not do so to same extent as in *Ewert*. At the same time, *Ewert* establishes that when a legislature uses the words "make every reasonable effort to ensure that the information is accurate and complete", it imposes a greater duty than ensuring that an opinion is recorded accurately.

[para 42] The Public Body, through policy, has taken measures to ensure that the information in street check reports has value for a number of policing purposes, including investigations and decision making. Its 2012 policy indicates that submitted street check reports are reviewed by the Strategic Intelligence Unit, which then further distributes street check reports to other areas in the EPS and other law enforcement agencies.

[para 43] I note that the Public Body updated its procedure for conducting street checks in 2016. This more recent procedure states, in part:

> […]
>
> 2. Initiating a Street Check may be considered if: a. A member makes an observation which may provide intelligence related to a legitimate police investigation and/or the prevention of crime and disorder. b. A member approaches and engages a subject(s) in an attempt to gather intelligence on the subject(s) or the area for the purpose of: i. Furthering a legitimate police investigation. ii. The prevention of crime and disorder, and/or iii. The prevention of further victimization.
>
> […]
>
> Members must adhere to the following principles of information collection for SCR's:
> a. Include the background or reason for conducting the Street Check or submission of the SCR.

> b. The SCR must contain factual information and must not include assumptions.
> c. Only relevant personal information about a subject(s) should be included within an SCR.
> […]

From the foregoing, I conclude that the Public Body now requires members to provide factual and relevant information rather than assumptions when they create street check reports.

[para 44] The Public Body also argues:

> As noted above, the information recorded in a street check report could potentially be valuable for investigative purposes. However, given that a street check is not connected to a specific investigation, a street check report may ultimately turn out to have no investigative value.
>
> While a street check report may turn out to be useful, it is not reviewed in isolation. The EPS "always look at street checks in the context of other information we have. We [EPS] use street checks as one item of information or analysis. It is never used as the only item." Although a Street Check may contain useful information to assist with an ongoing investigation, the EPS would never rely on a Street Check Report in isolation to form reasonable and probable grounds to arrest someone.
>
> The EPS acknowledges that there could be circumstances where a street check report, in conjunction with other information, is used to make decisions that directly affect an individual. An example of when this might occur is when the street check report is used, in conjunction with other information, to identify an individual as a suspect in an ongoing investigation.

[para 45] The "City of Edmonton Street Checks Policy and Practice Review" on which the Public Body relies in support of its statement that street checks are never reviewed in isolation, states:

> The crime analysts, patrol officers, and officers in the investigative units view street checks as an invaluable tool in case investigations. A number of the officers indicated that only a relatively small number of the thousands of contacts they have with citizens result in an SCR, yet the information contained in these documents was deemed to be extremely valuable by the crime analysts, patrol and beat officers, and investigators in the specialty sections. SCRs may be a component of the intelligence/investigative package. As one senior investigator stated, "Street checks are an investment in the future of your investigation. They open the door for evidence and investigation." The officers noted that, in order for a street check to be of any use, it needed to be credible, compelling and corroborated. In the investigators' experience, a simple conversation could lead to something major being solved. The investigators also noted that there are times when the information in an SCR supports a suspect's alibi. There are instances in which the information contained in SCRs has been used to demonstrate that a crime did not occur.
>
> Crime Analysis
>
> The crime analysts commented on how information contained in the SCRs is used. They noted that the information is filtered and weighed, depending upon the relative importance of the information and the specific analysis that is being conducted. As one analyst stated, "We always look at street checks in the context of other information we have. We use street checks as one item of information for analysis. It is never used as the only item." The crime analysts use the information in the SCRs to connect information from a variety of sources. One analyst stated, "The associations can be loose, e.g. two known individuals or one known/one unknown." The analysts noted that information contained in SCRs is also very useful in assessing the value of associations

> among persons, e.g. how people were moving through the ranks of the Hells Angels. This information has potential value to both case investigators and to prosecutors.

[para 46] In the context in which the statement that street check reports are "never used in isolation" appears, it refers to crime analysts, which the report distinguishes from patrol and beat officers, and investigators. I accept that the crime analysts never review street check reports in isolation; however, it is unclear whether that is true of others who may review street checks for decision making purposes. In any event, assuming that more than one item of information is reviewed prior to making decisions affecting rights, the fact that more than one piece of personal information would be reviewed does not necessarily diminish the requirement in section 35 that a public body make reasonable efforts to ensure that personal information is complete and accurate.

[para 47] Certainly, if there are numerous accurate pieces of information that enable a decision maker to identify an inaccurate piece of information, then making a decision based on more than one piece of information may assist a decision maker to ensure that reliable information is used. However, if numerous pieces of information merely repeat inaccurate information, then reviewing numerous pieces of information may provide no assistance. Again, in a situation where a decision maker lacks time, it may not be possible to review numerous pieces of evidence and to weigh it. For example, a police officer answering a 911 call is likely not in a position to review information in EPROS extensively for accuracy and completeness. In addition, if the street check report was compiled by someone higher in the chain of command or someone with greater experience, the officer might also reasonably assume that the street check is reliable for decision making. Finally, given that the Public Body maintains standards for street check reports and considers them to contain valuable information for investigations, it may the case that information in street check reports is assumed to be accurate for that reason.

Is the opinion in the street check at issue accurate and complete?

[para 48] The author of the July 7, 2012 street check report at issue states the following regarding his statements:

> My motivation for conducting a walk through was that the bar and the surrounding area had recently experienced a spike in crime and the presence of gang members. A few months later, in December, 2012, a homicide took place in the parking lot outside the bar.
>
> After arriving at the bar, I saw [the Applicant] leave with another individual. As outlined above, [the Applicant] was already known to me at this time as a result of my having worked as a patrol constable in the area in which [the Applicant] lived.
>
> I also knew the individual that [the Applicant] left with. I believed that this individual was a member of a gang and that he had been tied to instances of severe firearms violence in the Edmonton. I had interacted with the individual in the past, and on at least one of those occasions, the individual had been hostile towards me.
>
> I proceeded to complete a street check report which named both [the Applicant] and the individual that [the Applicant] left with.

> In my street check report, I reported that [the Applicant] was a "known trafficker" and "wanna be bad dude". I referred to [the Applicant] as a "known trafficker" because I believed it to be true due to his history of involvement in the drug trade. In the alternative, I referred to [the Applicant] as a known trafficker because that was my opinion of him at the time. I also referred to [the Applicant] as a "wanna be bad dude" because that was my opinion of him at the time.
>
> I based these opinions on all of the information that I learned about [the Applicant] from my time working as a patrol constable in the neighborhood where he lived. In forming these opinions, I was also influenced by the fact that I saw [the Applicant] leave the bar, which was experiencing a spike in crime and the presence of gang members, with an individual who I believed was a member of a gang.

[para 49] The author of the street check report at issue indicates that the statement that are the subject of the complaint were his opinions, based on *past* beliefs and opinions he formed at an undisclosed date regarding the Applicant when he patrolled the neighbourhood in which the Applicant lived.

[para 50] It is unclear on reading the street check report that the information is not intended to be factual and current. More significantly, the street check report refers to the Applicant as "a known trafficker" as if the Applicant is known to the author of the street check report to be trafficking in drugs at the time of writing. However, the author of the street check report acknowledged in his affidavit that he only knew for a fact at the time of the report that the Applicant was present at a particular bar. According to the affidavit, the opinion that the Applicant was trafficking in drugs was based on a belief the author had formed at an undisclosed time in the past. As the Applicant points out, he has never been convicted of trafficking, and his last criminal conviction took place in 2000, twelve years before the street check report was created.

[para 51] While it is possible to read the street check report as the author's personal opinion regarding the Applicant, it is also possible to read it as reflecting current facts – i.e. the Applicant is trafficking in drugs to the then-current (2012) knowledge of the author of the street check report.

[para 52] Both the Public Body and the Applicant provided information about the Applicant's history. The Applicant was convicted as an adult of assault in 1999. In 2000, the Applicant was convicted of importing a controlled substance under section 6(1) of the *Controlled Drugs and Substances Act* S.C. 1996, c. 19. (Trafficking is an offence addressed by section 5(2) of that Act.) This offence took place at the Toronto Airport and not Edmonton. As the Applicant notes, this was the last time he was convicted of a criminal offence. By 2012, when the street check report was created, the conviction was twelve years old.

[para 53] The Public Body reports that the Applicant was charged with, but not convicted of:

- possession for the purpose of trafficking under section 5(2) of *Controlled Drugs and Substances Act* (section 5(2) provides that "No person shall traffic in a substance included in

Schedule I, II, III, IV or V or in any substance represented or held out by that person to be such a substance");

- possession of the proceeds of crime under section 355(b) of the *Criminal Code*;
- assault causing bodily harm under section 267 of the *Criminal Code*;
- criminal harassment under section 264(2) of the *Criminal Code*;
- two counts of robbery under section 344 of the *Criminal Code*; and
- mischief under section 430(1)(a) of the *Criminal Code*.

[para 54] The Public Body argues that not being convicted of an offence does not mean that one is innocent of the offence. It argues that the fact that the Applicant has been charged with offences, but not convicted, supports the statement that the Applicant is a "wanna be bad dude". It states:

> [The author's] use of the phrase "known trafficker" is not incorrect simply because the Applicant was never actually convicted of this charge. The fact that a person was not convicted of an offence does not necessarily mean that they didn't commit the offence. There are any number of reasons why a person may not be convicted of an offence. For example, the charge may be stayed to remedy the fact that the person's protected rights were violated at some stage in the process. It's also important to note here that a person can only be convicted of a criminal offence with evidence beyond proof of a reasonable doubt. This is an extremely high standard that is used only in respect of criminal offences.

[para 55] I agree with the Public Body that it is possible for an individual not to be convicted of an offence even though the individual performed the activities proscribed by statutory offence provisions; however, it does not follow from this that an individual is guilty of statutory offence when charges are dismissed or the individual is acquitted. Charges may be dismissed if elements of an offence are not, or cannot be, proven, including elements such as identity and intent. Without more information, it would not be accurate to assert as a fact that an individual committed the activities giving rise to an offence on the basis that the individual was charged with an offence but not convicted of it. Further, statutes, such as the *Criminal Code* RSC 1985, c C-46 and the *Controlled Drugs and Substances Act*, in addition to the common law, contain mechanisms by which guilt is to be determined. If an individual is not convicted in accordance with the processes contemplated by those statutes, it is not accurate or factual to assert or imply that the individual is guilty of an offence, given that statutory and common law criteria are not met for a finding of guilt.

[para 56] In *Vuong and Shah v Edmonton (Police Service),* 2019 ABLERB 22 *(CanLII),* the Alberta Law Enforcement Review Board considered the action of describing a complainant who was charged, but not convicted, of drug trafficking in a street check report as having a "history of drug trafficking" could be considered discreditable conduct. It held:

1. *Discreditable Conduct: On September 23, 2017, respondent Reimer authored a Street Check Report which falsely stated that appellant Vuong "has a history of drug trafficking".*

2. *Discreditable Conduct: On December 21, 2017, respondent Panter authored a SCR which stated that appellant Vuong had a "history of 5(2) CDSA" which was false.*

As these two allegations were so similar, the Board will address them together.

The appellants submitted that the Chief failed to consider whether respondent Reimer's and respondent Panter's statements in the SCR's, (that appellant Vuong had a history of drug trafficking) were false, even though the evidence was clear that Ms. Vuong had no such history. While it was clear from the EPS databases that she had been charged with drug offences, she had never been convicted of an offence and the charges in question were withdrawn on May 25, 2018.

The appellants argued that "by reporting as a fact that Ms. Vuong had a history" of drug trafficking, Cst. Power and Cst. Panter [*sic*] imply that they know something above and beyond the information available to every officer through CPIC and EPROS. Their reports lend credibility to the accusation against Ms. Vuong which is misleading". The appellant was concerned that these misrepresentations could foreseeably stigmatize her in future dealings with the police.

The appellants asserted that the Chief's disposition of the complaint was unreasonable because he failed to resolve the question of whether the statements were false, accepting the respondents' argument that the charges in and of themselves qualified as "having a history of drug trafficking".

Furthermore, the appellants stated that the Chief referenced the applicable EPS policy regarding SCR's but failed to consider whether it had been breached. The policy states that "a street check report must contain factual information and must not include assumptions". It was submitted that this failure was unreasonable.

Respondents' counsel submitted that the term "history" was broad enough to permit varying interpretations of what was intended. It was conceivable, she argued, that it could include that subject's drug related charges. She went on to state that the use of the term 'history' may be imprecise, but it is not so clearly inaccurate that it violates EPS policy or renders the Chief's disposition unreasonable. Counsel cited case law to advance the principle that for there to be disciplinary misconduct, some meaningful level of moral culpability was required, otherwise officers were punished for simple mistakes.

The Board does not intend to engage in a debate about what the term "history" meant or was intended to mean in this context. We consider the plain meaning of the words used, and how a reasonable person would interpret them. The statements, as made, strongly suggested to the reader that appellant Vuong had been convicted of drug offences.

The Court of Appeal has affirmed that a Chief must in cases like this, ask the following question in deciding whether to hold a disciplinary hearing:

… is there enough evidence before [the Chief] that, if believed could lead to a reasonable and properly instructed person to convict the police officer at a disciplinary hearing?

The only reasonable conclusion to draw was that there was enough evidence before the Chief, of false statements having been made, indeed, sufficient evidence that could lead a reasonable and properly instructed person to convict at a disciplinary hearing for the making of a false statement on an official document, in breach of the policy. Accordingly, we find the Chief's disposition unreasonable on this aspect of the complaint.

[para 57] Leave to appeal the foregoing decision was granted by Khullar J.A. in *Power v Law Enforcement Review Board*, 2020 ABCA 77 (CanLII) on the issue of whether the LERB applied the appropriate standard of review to the Chief's decision to dismiss the complaint. However, I rely on the *Power* decision to the extent that it suggests that there is a live debate as to whether it is accurate to refer to an individual as a "trafficker" in a street check report or other official documents if that individual has never been convicted of trafficking.

[para 58] In any event, the author of the statement at issue does not refer to the dismissed charge for trafficking or assert that his statement that the Applicant is a "known trafficker" was based on the dismissed charges or an investigation leading to them, or even the Applicant's criminal conviction for importing. Again, he asserts his opinion was based on unspecified information he gathered patrolling the Applicant's neighbourhood at an undisclosed time.

[para 59] I am not satisfied that the information in the street check report that is the subject of the complaint before me is sufficiently accurate or complete for the purpose of making decisions, such as the decision that was made to arrest the Applicant, or other kinds of decisions for which a street check report may be used. I make this finding on the basis that it is unclear from the report itself that the author of the street check was providing his opinion rather than facts, and because the report does not indicate the source of the information on which the opinion is based or the age of that information. A reader is likely to interpret the street check report as stating that to the author's knowledge, the Applicant was trafficking drugs in 2012, and also had goals at that time of becoming a professional criminal. However, in the affidavit sworn for the inquiry, the author indicated that the statement at issue was opinion and that he formed this opinion at an earlier, unspecified time based on unspecified evidence.

[para 60] The Public Body has created rules requiring a high standard of accuracy for street check reports, with the result that the intended readers of street check reports may presume the information they contain is factual and rely on it, in part, to make decisions affecting the Applicant's rights. I find it likely that a police officer reviewing the report would consider it to be factual.

Did the Public Body take all reasonable measures to ensure the accuracy and completeness of the street check report?

[para 61] The Public Body has developed written procedures for conducting street checks and has updated them, so that there is now a requirement that information in street check reports not contain assumptions. The procedures in place in 2012, cited above, did not direct police members to exclude assumptions; however, it contained limits on conducting field interviews that appear intended to ensure that street check reports would include only data useful for future investigations. If so, these are reasonable measures for ensuring the accuracy and completeness of information in street check reports, including the street check report before me. However, section 35 requires that a public body take *all* reasonable measures to ensure the accuracy and completeness of personal information.

[para 62] The Public Body's procedures do not indicate that there is any mechanism in place to ensure that street check reports meet its standards for accuracy when they are entered into EPROS. While the 2012 procedures I was shown indicate that "submitted SCRs are reviewed by Strategic Intelligence Unit, where they are further distributed to other areas in the EPS and other law enforcement agencies", the procedure does not indicate that the Strategic Intelligence Unit would review the street check report for accuracy or completeness.

[para 63] There does not appear to be any mechanism to review street check reports in EPROS prepared under previous policies to ensure that they meet current standards for accuracy and completeness. Finally, given the age of the street check reports located in EPROS regarding the Applicant, it appears that the Public Body keeps street check reports in its database indefinitely, even though the personal information they contain may become less accurate and relevant over time. For example, a statement that an individual is the registered owner of a particular vehicle may be true when it is made, but not be accurate ten years in the future.

[para 64] I note that in "City of Edmonton Street Checks Policy and Practice Review", which was prepared for the Edmonton Police Commission, it states:

> At present the SCRs have an indefinite lifespan and are permanently retained in the EPROS database. [my emphasis] The CAC has provided input on a retention strategy for the SCRs. Some members recommended permanent retention while others favoured a one-year retention period. A collective decision was made to retain the SCRs for ten years.

From the foregoing, I understand that the retention period of street check reports is under review.

[para 65] As the Public Body's procedures regarding the conduct of street check reports do not contain methods by which it ensures that street check reports meet its standards before they may be accessed in EPROS by members, and because it did not indicate in the inquiry that it employs methods to ensure street check reports meet its standards of completeness and accuracy, it has not been established in the inquiry that the Public Body has taken all reasonable measures to ensure the completeness and accuracy of personal information in street check reports used to make decisions. Had the Public Body established that it had policies in place to ensure that the personal information in street checks is accurate and complete prior to making them available to members, it would have been possible to find that the Public Body had complied with section 35, even though the street check report at issue contains inaccurate personal information. I say this because section 35 requires a public body to take all reasonable measures to ensure that personal information it will use to make decisions is accurate and complete, as opposed to requiring that all personal information used by a public body be accurate and complete.

[para 66] I find, too, that the street check report at issue contains inaccurate and incomplete personal information regarding the Applicant, as it refers to him "as a known

trafficker and wanna be bad dude" without clearly indicating that this information is personal opinion rather than fact.

[para 67] I find that the Public Body's duty to ensure that the information in the street check was accurate and complete was engaged when the street check report was entered into EPROS for the use of its members in performing their duties, including use in making decisions affecting rights. Moreover, I find this duty continues to be engaged, as the information continues to be available to police members in EPROS for the purpose of making decisions. As a result, I must order the Public Body to comply with its duties under section 35 in relation to the Applicant's personal information in the street check report.

What is the relationship between sections 35 and 36 of the FOIP Act?

[para 68] As noted above, section 35 imposes a duty to ensure the accuracy and completeness of personal information that will be used to make a decision. Once a decision has been made, section 35 also imposes a duty to preserve the information for a fixed period. The duties imposed by section 35 apply regardless of whether an applicant has challenged the information's correctness.

[para 69] Section 35 is concerned with ensuring the suitability of data for the purpose of making decisions affecting an individual's rights. It also preserves the ability of an applicant to challenge the suitability of data.

[para 70] Section 36 authorizes an applicant to request correction of personal information regardless of whether that information could be used to make a decision. Section 36 imposes a duty on a public body to annotate or link the requested correction to the information that is the subject of the correction request, but does not require the public body to correct the information, even if the applicant establishes that the information is incorrect. Section 36(2) prohibits a public body from correcting an opinion.

[para 71] Section 36(2) of the FOIP Act does not operate so as to limit the duty in section 35 to ensure that information to be used in making decisions affecting rights is accurate and complete. The duty in section 35 requires making reasonable efforts to ensure that personal information unsuited for the purpose of making a decision is not used; it does not speak to making corrections.

[para 72] If the Public Body were to annotate or link a request for correction to an opinion in response to a correction request, doing so would not meet the duty under section 35, although it would meet its duty under section 36(2). Annotation and linkage would not necessarily prevent a public body from making decisions affecting rights using an inaccurate or incomplete opinion, and may not be a reasonable measure for preventing that outcome, as a result.

[para 73] In this case, the Applicant requested correction, but also asked that his personal information in the street check report be destroyed. He stated:

> The statements made about the Applicant are inaccurate and misleading. They suggest that the Applicant had present involvement in drug trafficking at the time of the report. This is false. Any relevant history on the part of the Applicant is dated, and there is no objective basis for [the Constable] to have reported otherwise.
>
> It is believed that this information is being accessed by members of the Edmonton Police Service in the ordinary course of their duties, and the provision of such misleading information to other police officers has and is expected to continue to negatively impact upon the Applicant's dealings with members of the police service.

[para 74] The foregoing complaint is based on the belief that the Applicant has suffered harm from the use of this information in making decisions about him, and that he will continue to suffer harm should the personal information be used again to make decisions affecting his rights. In my view, this is a complaint that the Public Body has used, and will use, his personal information to make a decision affecting his rights and that the statement that he "is a known trafficker and wanna be bad dude" is not sufficiently complete or accurate for this purpose. The remedy he is ultimately seeking is for this information not to be used to make decisions affecting his rights again. Section 35 affords a remedy to this complaint while section 36 does not.

[para 75] As the Applicant did also ask for correction, in addition to complaining about the completeness and accuracy of the personal information used to make a decision affecting his rights, I will also address his correction request under Issue B, below.

ISSUE B: Did the Public Body respond properly to the Applicant's request for correction of his personal information under section 36 of the Act (right to request correction of personal information)?

[para 76] Section 36 states:

> *36(1) An individual who believes there is an error or omission in the individual's personal information may request the head of the public body that has the information in its custody or under its control to correct the information.*
>
> *(2) Despite subsection (1), the head of a public body must not correct an opinion, including a professional or expert opinion.*
>
> *(3) If no correction is made in response to a request under subsection (1), or if because of subsection (2) no correction may be made, the head of the public body must annotate or link the personal information with that part of the requested correction that is relevant and material to the record in question.*
>
> *[…]*

(7) Within 30 days after the request under subsection (1) is received, the head of the public body must give written notice to the individual that

(a) the correction has been made, or

(b) an annotation or linkage has been made pursuant to subsection (3).

(8) Section 14 applies to the period set out in subsection (7).

[para 77] Once a public body receives a correction request, it has 30 days in which to decide whether to correct the information the applicant has identified as incorrect, and then to either make the correction, or to annotate or link the requested correction to the information that is the subject of the correction request.

[para 78] Section 36 does not make it mandatory for the head of a public body to correct errors or omissions in personal information, even if an applicant establishes that the information that is the subject of the correction request is inaccurate or untrue. Rather, section 36 makes it mandatory for a public body to annotate or link the requested correction to the information that is the subject of the request.

[para 79] In my view, the reason the FOIP Act does not make it mandatory to correct records by obliterating the data they contain relates to the public nature of records in the custody or control of a public body. This point is made in Order 01-23, where the former Information and Privacy Commissioner of British Columbia stated:

> Further, the Ministry's argument apparently assumes that a correction must be made by physically changing a record produced by someone else or by the Ministry, *i.e.*, by deleting or altering incorrect personal information in a way that impairs or destroys the integrity or accuracy of the record. Correction does not by definition require the physical alteration of an existing record. It is easy to conjure a number of ways in which the Ministry could correct an error or omission as contemplated by s. 23(2) of the CFCSA Regulation or under s. 29 of the Act. Handwritten corrections could, for example, be made on a copy of the original record, with a note being attached to the original to alert readers to the existence of the corrections on the copy. An attached note to the original could, alternatively, contain (or merely repeat) the actual corrections. Such approaches preserve the integrity of original records while ensuring that the incorrect personal information is actually corrected.

[para 80] Former Commissioner Loukidelis recognized that the records of public bodies are official documents. "Correcting" such documents by removing or altering incorrect information in the original document has the potential to destroy the integrity of a public body's documents. He noted that there are other ways that information can be said to be "corrected", such as attaching corrections to the document or annotating the documents such that the correct information is available to the reader.

[para 81] As I noted in Order F2016-34, I agree with the reasoning in Order 01-23 that correcting personal information by obliterating information deemed incorrect in an original document is not the only, nor is it often the optimal, means by which personal information may be corrected.

[para 82] In addition, I agree that correcting information by replacing incorrect information with correct information in a document is a step that should be taken only rarely, (such as in the case where information is inaccurately entered into a database with the result that an individual is, for example, incorrectly billed or refunded as a result) as doing so may destroy the integrity of the original record. An original record, even one containing inaccurate information, may be an important part of the history of a matter for which the document was prepared. If inaccurate information is destroyed and not preserved, then a significant part of the history of a matter could also be destroyed. If the matter in question is a legal matter, then the public body's action of altering information in an original document, even for the purpose of correcting it, may have adverse legal consequences for a public body or for others.

[para 83] I interpret section 36 as giving an individual some control over personal information about the individual in the custody or control of government institutions. While this provision does not permit an individual to dictate what may be said or written about the individual, or to require the deletion of information the individual considers inaccurate or misleading, it does permit the individual to provide the individual's own views (and supporting evidence) of information by requiring a public body to link or annotate correction requests to the records.

[para 84] As I noted in Order F2016-34, annotating or linking personal information will, in many or most instances, be the preferred method of correcting information when an applicant complains that there is an error or omission in his or her personal information. (In some cases, it may be possible to create a revised "corrected" version, but even so, the original version will likely need to be retained.)

[para 85] To summarize, a public body must not correct an opinion, but must annotate or link the requested correction to the relevant text. If information is not an opinion, a public body need not correct the information, even if it is incorrect or inaccurate, but must link or annotate the requested correction to the information. The duty imposed on a public body by section 36 is to annotate or link a correction request to the information that is the subject of the request.

[para 86] Previous orders of this office have considered what it means to annotate or link information within the terms of section 36 of the FOIP Act. In Order 2000-007, former Commissioner Clark summarized past decisions regarding public bodies' duties to annotate and link correction requests to personal information. He said:

> Section [36(3)] states that if a public body does not correct an applicant's personal information, or if no correction may be made because of section [36(2)], it must annotate or link the information with the correction that was requested but not made. In Order 97-020, I defined the word "annotate" to mean "add an explanatory note" to something and the word "link" to mean "connect or join two things or one thing to another", "attach to", or "combine".
>
> Furthermore, I stated that to "annotate … the information with the correction that was requested" implies that the correction that was requested is written on the original record, close

> to the information under challenge by the applicant. Although there is no requirement to do so, the annotation should also be signed and dated.
>
> In addition, I said that to "link the information with the correction that was requested" implies that the correction that was requested is attached to, or joined or connected with, the original record containing the information under challenge by the applicant.
>
> In Orders 97-020 and 98-010, I also adopted several principles found in B.C. Order 124-1996. I said that an annotation or linkage must be apparent on the file. A public body must not try to hide or bury an applicant's request for correction. The correction request should be as visible and accessible as the information under challenge, and should be retrieved with the original file. In addition, I stated that the public body should not be forced to comply with unreasonable demands of an applicant who, "in voluminous material and in nuisance fashion" insists the documents be edited in exactly the way he or she wishes. Rather, the annotation or linkage should be made in a fair manner. What is considered "fair" will depend on the type of records involved, the length of the correction requested by the applicant, the applicant's other avenues of redress within the public body, such as appeals, and the administrative resources of a public body.

[para 87] The Public Body takes the position that some of the text that is the subject of the correction request is opinion and cannot be corrected. It also provided detailed evidence, including information from CPIC and affidavit evidence from the police officer who wrote the statements that are the subject of the correction request to establish that the information is opinion.

[para 88] The Applicant's concern is that the information that is the subject of the complaint does not contain a complete picture, as it does not comment on the dates of past charges. In other words, he is concerned that the information in the street check indicates that he is currently committing offences, when he is not, and that this could have adverse consequences for him in future interactions with the police. As noted above, I have addressed that complaint in my analysis of section 35, above.

[para 89] The duty to annotate or link in this situation empower a citizen, such as the Applicant, to have his or her view of the personal information known and to include any details the citizen considers relevant, so that any representative of the public body using the information in the future will know the citizen's position regarding the information.

[para 90] In this case, the Public Body refused to correct the opinion in the street check report, in accordance with section 36(2). It informed the Applicant that it had appended the correction request to the street check report at issue. Section 36 does not require anything further from the Public Body.

[para 91] For the reasons above, I confirm that the Public Body met its duties under section 36 of the FOIP Act with regard to the correction request aspect of the Applicant's request.

III. ORDER

[para 92] I make this Order under section 72 of the Act.

[para 93] I direct the Public Body to comply with its duty under section 35 in relation to the personal information at issue in this inquiry – that is, the reference to the Applicant as "a known trafficker and wanna be bad dude" – by ensuring that it will not be used to make decisions affecting the Applicant's rights in the future. Compliance with this order could be achieved by restricting access to the information at issue in EPROS, or removing it entirely from EPROS. The Public Body could also achieve compliance by issuing a directive to restrict access or to prohibit the use of the information at issue in the future. I leave it to the Public Body's discretion how it will ensure that the personal information at issue will not be used to make decisions affecting the Applicant's rights in the future.

[para 94] I confirm that the Public Body met its duties to the Applicant under section 36 of the FOIP Act.

[para 95] I order the Public Body to inform me within 50 days of receiving this order that it has complied with it.

_____
Teresa Cunningham
Adjudicator
/bah