ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2021-19

May 25, 2021

CALGARY POLICE SERVICE

Case File Number 001826

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Summary: This inquiry relates to information in the possession of the Calgary Police Service (CPS) relating to a specified RCMP file (RCMP file 2011-691476). The Applicant had requested a number of files from the CPS in 2014 and in its initial response, while it provided other records, the CPS withheld the information in the RCMP file on the basis that it was the subject of an ongoing prosecution. After the prosecution was completed (in 2015), the Applicant requested the information in the specified RCMP file a second time. In responding to the second request, the CPS provided 65 pages of records, some of which were partially redacted in reliance on a number of exceptions (sections 17(1), 20(1), 20(3), 24(1)(a), 24(1)(b), and 27(1)(a)). It also withheld an audio file responsive to the second request in reliance on section 17(1). The Applicant requested a review, arguing that she should have received more information, citing references to such information in the records she had received. She also objected to most of the redactions.

As a preliminary matter, the Applicant also 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 cases (as she had done in the associated inquiry, Case File 000708, which dealt with the initial response to her request). The Adjudicator relied on her reasoning in the associated inquiry with respect to this preliminary issue, finding she did not accept the Applicant's arguments relative to bias and conflict of interest on the part of the CPS's representative.

The Adjudicator held that the search for the records was adequate, but that in a few instances, explanations were called for as to why records were not located when it appeared, or seemed

likely, that they were once in the possession of the CPS. She upheld the redactions for some but not all of the records. The Adjudicator reserved jurisdiction to decide whether section 17(1) applied to withheld information in a number of instances in which she determined third parties needed to be notified.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 4, 10, 17, 20, 24, 27, 72

Authorities Cited: AB: Orders 99-028, F2004-026, F2008-008, F2009-047, F2010-029, F2012-10, F2020-13; **B.C.**: Order F18-05

Court Cases Cited: R v. Quesnelle, 2014 SCC 46 (CanLII)

I. BACKGROUND

[para 1] On approximately November 22, 2014, among her requests for other materials, the Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* ("the Act" or "the FOIP Act") to the Calgary Police Service ("CPS" or "the Public Body") for "[a]ll information obtained, provided to, or created by the CPS that related to the investigation of RCMP file 2011-691476 on or after June 13/11 and/or Court Dkt# 120767462P1 on or after June 28/12 at Districts 1,2 and/or 6 of the CPS and/or the Central General Investigations of the CPS". She provided further specific details as to the type of information she was seeking, as follows:

> 1) any communications/documents exchanged between/amongst those districts and/or any additional districts of the CPS and/or the Central General Investigations of the CPS;
> 2) any communications/exchanged between, on the one hand, those districts and/or the Central General Investigations of the CPS and, on the other hand, the RCMP; and
> 3) any communications/documents exchanged between, on the one hand, those districts and/or the Central General Investigations of the CPS and, on the other hand, the Law Society of Alberta. Without limiting the generality of the foregoing, this includes requests for any and all emails, faxes, text messages, voicemail messages in audio and/or hardcopy format, video recordings, notes, officers' notes, reports including any materials referenced in those reports, statements and accompanying materials/purported exhibits, evidence/exhibit processing materials/records, memorandum detailing the Crown's recommendations whether charges be laid, CPIC and/or CPICIN messages and communications, CPS database information including but not limited to any computerized "Event Chronology" and OCC and/or SAOCC communications.[1]

[para 2] The CPS located records and provided its initial response to the Applicant on January 22, 2015.[2] With respect to RCMP file 2011-691476, the CPS informed the Applicant it was denying access to the related information for this file number on the basis that it was the subject of an ongoing prosecution.

[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 the request, and its response to it.

[2] It provided an additional response on May 21, 2015.

[para 3] On July 12, 2015, apparently after the prosecution had been concluded, the Applicant made a new request. She asked for any records that had been withheld in reliance on section 4(1)(k) of the FOIP Act. She also asked for records documenting the destruction or release of any such records. The request included the following:

> By this Request I am re-submitting my request for all of the documents, materials and information of any sort what-so-ever, with respect to whkh (sic) you had advised, in your letter to me dated Jan 22/15 and issued in FOIPP 2014-P-1280, access was denied pursuant to s. 4(1)(k) of the *Freedom of Information and Protection of Privacy Act* and on the asserted basis that they related to RCMP File #2011691476. Your advice to that effect was contained in paras 4 through 6, inclusive, on pg 1 of your letter dated Jan 22/15. For your ease of reference, I attach a copy of pg 1 of that letter.
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> … I emphasize, I as (sic) previously have, that my request is for all materials with respect to me in any manner and that the particulars provided in my Nov 22/14 FOIPP Request are non-limiting particulars that do not, in any way, serve to limit the broad and global request made.
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> Further, for sake of clarity, particularly given the expiration of time since my Nov 22/14 FOIPP Request, I emphasize that my request made in the within Request, as had been the case in my Nov 22/14 FOIPP Request, encompasses a request for all documents, materials and information of any sort/form in the possession or control of the CPS regarding the destruction or release of any documents, materials and information with respect to me that were once in the possession or control of the CPS but no longer are as a result of such destruction or release.

[para 4] Further correspondence between the Applicant and the Disclosure Analyst as to the meaning of certain aspects of the request followed. The CPS responded on August 19, 2015, indicating there were 65 pages of responsive paper records and one audio file. It provided records, but redacted some portions of them in reliance on sections 17(1), 20(1)(c), 20(1)(m), 20(3)(a), 24(1)(a), 24(1)(b) and 27(1)(a), and it withheld the audio file in its entirety in reliance on section 17(1)[3].

[para 5] The Applicant requested a review of the CPS's January, 2015 responses on April 2, 2015. These responses were addressed in the associated Order in F2020-13. The Applicant had not objected to the withholding of records relating to the RCMP file, but only to which records had been designated as such. In my decision in the associated inquiry (Case File 000708) I decided that I would deal with all the records withheld by reference to section 4(1)(k) in the present inquiry.[4] The Applicant also objected to the fact that there were inaccuracies in the

[3] There was some initial confusion as to whether the audio file had been provided or withheld, but this was resolved after further communications with the CPS, as described in para 6 below.

[4] I acknowledge that this decision did not address the Applicant's concern that records which might otherwise have been addressed earlier are not being addressed until now. However, I made this decision as a function of the extreme complexity of the earlier inquiry, and my wish to not add further complexity by having to address both files and both sets of submissions, at one time.

number of pages that had been located as responsive for the present inquiry. In this regard, in my decision in the associated inquiry, I reviewed this objection and the records at issue that had been provided to me, and I made findings about a number of pages that had been withheld in addition to the 65 pages which the CPS has presented as responsive in the present inquiry.[5] By virtue of these findings, I am treating record 103 as a record responsive to the present inquiry.

[para 6] As well, the Applicant objected that there had been inconsistent information from the CPS as to whether the audio file had been withheld. In this regard, the CPS indicated in its initial submission in the present inquiry that it had provided the audio file to the Applicant, and it did not include the audio file among the records at issue that it provided to me. Subsequently, it acknowledged that this was an error, and that the audio file had in fact been withheld in reliance on section 17(1). In response to my recent request that it do so, the CPS has now provided a copy of this audio file to me.[6]

[para 7] On October 13, 2015, the Applicant requested a review of the CPS's August 19, 2015 response to the subsequent request for the RCMP file.

[para 8] A Notice of Inquiry with respect to Case File 001826 was issued on July 21, 2017. The Applicant communicated with this office indicating that there were errors in the Notice of Inquiry. Among other things, the Applicant objected that the Notice of Inquiry was improperly worded since it referred to records that "related to" the RCMP file. She expressed her concern that records may have been missed because a different FOIP Analyst dealt with the records in the present inquiry, who may have had a different interpretation of which records "related to" the RCMP file. However, as I said in the associated order, I am addressing in the present inquiry any records that were located but not dealt with in the earlier one.

[para 9] The Applicant also objected that the Notice of Inquiry did not include an issue relating to her concern that a "second aspect" of her access request had been improperly overlooked. This "second aspect" related to an email dated July 23, 2015 from the Applicant to CPS Disclosure Analyst [AN] as well as to [RW] (presumably employed by the same CPS unit). In that email the Applicant referred to a conversation she had had with [RW], and stated that, as she had explained to that person, she was "clarifying" her request as being "additionally, a request for any and all records of any sort with respect to any matter related to me that are in the possession of the CPS that came into the possession of the CPS subsequent to Nov22/14 regardless of whether or not these additional records were ones that related to records that had actually been withheld by [TL] pursuant to s. 4(1)(k) of the Act." In the July 23 email the Applicant also asked to be advised if it would be necessary for her to make a new request for

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[5] These were pages pages 68, 103, 112, 113, 114, and 115. My findings about these pages are at para 282 of Order F2020-13. Much of page 103 has the same content as record 37, so the same comments will apply to the replicated information in record 103 (as numbered in the entire bundle) – that is, that all the redactions in the replicated portions are appropriate as consisting of third party personal information, and no other considerations apply. I will direct the CPS to disclose the remainder of page 103 (the first 5 lines), which are not apparently subject to any other exceptions.

[6] The Applicant also objected that the CPS had not listed the audio file in its Index of Records. I agree that the response would have been clearer had it done so.

such post-Nov. 22, 2014 records. This email was in response to an email dated July 21 in which the Disclosure Analyst [AN] had confirmed that only records formerly withhold under section 4(1)(k) were going to be dealt with in the request.

[para 10] The previous adjudicator assigned to 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. I will therefore deal with this "second aspect" objection as a preliminary issue, below.

[para 11] The Applicant submitted a large number of documents for the Inquiry. I have reviewed the following:

- the submission respecting errors in the Notice of Inquiry (51 pages)
- the "Detailed Request for Review" attached to the Request for Review form, dated October 13, 2015 (103 pages)
- the Rebuttal Submission (131 pages) (this submission relates to allegations of bias and conflict of interest in relation to the CPS's representative, and is almost identical to the submission on the same topic in the associated Case File 000708)
- the Final Submissions of the Applicant (75 pages)
- an Addendum which the Applicant sent to this office in December, 2017 (104 pages)

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

[para 12] I have *not* reviewed a 790-page Addendum, and five supporting Addendums, to which the Applicant refers in her submissions in the present inquiry. I believe this is the same document as the Applicant provided on March 6, 2016 for the inquiry in the associated file.[7] Despite the fact the Applicant states that it is relevant to the "false and misleading statements" in the records at issue in this inquiry, I do not regard it as reasonably possible to review this document to try to ascertain how it might be relevant to the present matter.

II. ISSUES

[para 13] The issues were set out in the Notice of Inquiry as follows:

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.

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?

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

[7] This is suggested in the Applicant's Final Submission at page 62.

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?

5. Did the Public Body properly apply section 27(1)(a) (privileged information) to the information it severed from the records under these provisions?

[para 14] As indicated in the Background portion, I will also consider the Applicant's objection that the CPS did not respond to the Applicant's request for post-Nov. 22, 2014 information that she made in an email sent to the Disclosure Analyst by the Applicant subsequent to her access request of July 12, 2015, and that this issue was not added to the Notice of Inquiry at her request.

[para 15] As well, as in my decision in the associated inquiry, before turning to the substantive issues, I will address the Applicant's contentions and concerns regarding the CPS's representative in this Inquiry.

[para 16] Throughout her submissions the Applicant expresses concerns about the manner in which the CPS conducted its investigations relative to her, its motives (as well as those of officials or members of other organizations), and the way in which it shared information about her in the course of its investigations and activities concerning her. These concerns are beyond the scope of this inquiry.

III. DISCUSSION OF ISSUES

Preliminary issue: scope of request

[para 17] With regard to the question raised by the Applicant in relation to her email to the Disclosure Analyst of July 23, 2015, as noted above that email stated that she was "clarifying" her request as being:

> … additionally, a request for any and all records of any sort with respect to any matter related to me that are in the possession of the CPS that came into the possession of the CPS subsequent to Nov22/14 regardless of whether or not these additional records were ones that related to records that had actually been withheld by [TL] pursuant to s. 4(1)(k) of the Act.

[para 18] The Applicant also asked to be advised if it would be necessary for her to make a new request for post-Nov, 22, 2014 records.

[para 19] In my view, the part of the Applicant's July 23 email that referred to post-Nov. 22, 2014 records was not a clarification, but an entirely new request. The Disclosure Analyst had previously made clear that such additional records would not be treated as part of the July 12, 2015 request (understandably, since that request did not encompass such records[8]). It appears

[8] The second and third paragraphs are very broad in their terms if read out of context, and could be taken as being with regard to all documents with respect to the Applicant and all records documenting destruction or release of any such records that were once in the CPS's possession but no longer are. Regardless of what the Applicant intended or

that the Applicant may not in fact have been advised that she would have to make a new request for any subsequent material, as she had requested be done if this were necessary. At the same time, however, while the Disclosure Analyst's correspondence did not speak in terms of a new request being required for any post-Nov. 22, 2014 records, that was implicit in what she had said earlier, for example, in her emails to the Applicant of July 16, 2015 and July 21, 2015. A post-request "clarification" cannot completely alter the scope of an initial request. I do not believe that as a consequence of the Applicant's July 23 email the Analyst was obliged to treat the July 12, 2015 access request as including a completely different category of records (including records documenting destruction or release of any records in this category) than those that had been described in the July 12, 2015 request.

[para 20] I accept it would have been better had the Applicant been advised directly that a new request would be required for such post-Nov. 22, 2014 records, or alternatively, had the August 19, 2015 response stated expressly that no search had been conducted for such material (as was made clear in the Disclosure Analyst's affidavit for this inquiry) [9]. However, that does not change the scope of the existing inquiry, which relates to the CPS's response to the July 12, 2015 request for records formerly withheld under section 4(1)(k) and any related "destruction/release" records. Nor would it have made sense to alter the Notice of Inquiry (as the Applicant had suggested should be done) to embrace any additional material, when, as I conclude here, the July

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now says she intended by these paragraphs, records relative to all files and matters relating to the Applicant, including all "destruction/release" records, other than for the specified RCMP file, were already addressed in the associated inquiry. The Applicant did not request a review of that decision, nor would it be practically possible to treat the present inquiry as addressing matters the Applicant regards as having been unresolved in the earlier one. Therefore, in my view, the July 12, 2015 request must be treated as encompassing only records (and "destruction and release" records if any) in relation to the specified RCMP File (Number 2011-691476).

[9] In her Final Submission (at pages 50 to 52) the Applicant also referred to the third of the paragraphs of the July 15 access request quoted above at para 3 to assert that her July 15, 2015 request had also been for any destruction or release records that had been created since Nov. 14, 2014 (the date of her initial request), not just those relating to the materials withheld from her on the basis of section 4(1)(k).

The Disclosure Analyst communicated with the Applicant to try to ascertain what was meant by the third paragraph, but I do not believe the Applicant's subsequent correspondence made that clear.

With respect to the records withheld under section 4(1)(k), the initial search for records relating to the specified RCMP file did not discover any records documenting destruction of records that would have been responsive to this aspect of the initial request, and the records that were located in the initial searches and withheld on the basis of section 4(1)(k) were preserved and not destroyed, so there would be no "destruction/release" records. (While the CPS was in error as to the number of records (withheld under section 4(1)(k)) it had presented as responsive in the present inquiry (providing only 65 records rather than 71), the additional six pages had not been destroyed, as set out in the associated order F2020-13 (see para 5 and footnote 5 above).)

With respect to destruction and release of records responsive to the requests for other CPS files or materials in CPS's possession, destruction documents for records that would have been responsive but were not located because they had been destroyed were dealt with in the associated inquiry.

The only other possibility is that the Applicant was also meaning to include post-Nov. 2014 destruction documentation for records that were the 'records at issue' in her earlier access requests. However, given the restrictive wording of the first of the paragraphs quoted at para 3 above, I do not believe it would have been reasonable to interpret the July 15, 2015 request as one for records documenting the destruction of 'records at issue' in the earlier requests (nor did the Applicant say anything that made clear that this is what she meant).

As the Applicant did not clearly explain what records any post-Nov 22, 2014 "destruction/release" documentation might relate to, and I am not able to determine this independently from her initial request or related correspondence, I believe the CPS cannot be faulted for failing to provide or search further for any such records.

23, 2015 email did not serve to broaden the scope of that existing request. To the extent that a new issue might have been added to the Notice – of whether the July 23 email should have resulted in the addition of a new dimension to the July 12, 2015 request – I have now answered that question by the comments made here.

Preliminary issue: CPS's representative

[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 in my decision in the associated inquiry at paragraphs 22 to 43, which I incorporate by reference here with a minor modification, 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] My reasoning about this point in the associated inquiry recognized that while the inquiry would cure any bias that had influenced the first-level decision, this would not be the case if any of the material were to be sent back to the CPS for discretion to be re-exercised. However, there was no need in the associated case to ask the CPS to re-exercise its discretion. In contrast, in the present case, I will be directing the CPS to re-exercise discretion relative to a number of redactions.

[para 23] I reiterate that for the reasons I gave in the associated order, I conclude that there was no bias or conflict of interest in fact. However, even had there been, the CPS's Representative is no longer occupying the position he occupied at the time the earlier order was issued, and any re-exercise of discretion would be done by someone else. Consequently, again, any bias that might have been found would still be cured by the present inquiry and this order.

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 24] In the associated inquiry (Case File 000708) the CPS provided information as to the details of its search for records responsive to the original request, which included a search for records responsive to the present request. I held that this information indicated that the Disclosure Analyst in the earlier file had conducted an extensive and thorough search, as he had explained 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 Applicant had specified.)

[para 25] In the associated order, I also held that where an Applicant provides arguments and/or evidence that give rise to a reasonable likelihood that records exist or formerly existed in a public body's possession, the duty to assist requires that the public body explain why it

believes such records did not or do not any longer exist. (See paras 75 to 80 of the associated order.)

[para 26] In the present inquiry, the Disclosure Analyst stated in her Affidavit that having reviewed the details of the earlier search, she was satisfied that there were no other repositories or databases in which records responsive to the present inquiry might be located. Accordingly, she did not conduct a new search. I agree that this was a reasonable approach given the thoroughness of the initial search and the fact the new request was for a portion of the records located by it.

[para 27] However, in her initial submission the Applicant provided reasons based on records she received in the response in the present case, as to why she believes records exist that were not located in the search for the requested records, or were located but not included in the list of responsive records. In the pages immediately below I will provide my summary and analysis of the Applicant's submissions and evidence about records she is asking for that she believes exist or existed but were not located or provided. As in the associated case, at the conclusion of my review, 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 located or provided.

[para 28] The first seven items below all relate to those of the responsive records which consist of notes of a meeting (which appear to have been made by a CPS member[10]) among several individuals (which it appears, as indicated by the first item noted, was held at the offices of the Law Society of Alberta (LSA)).[11] These notes were provided to the Applicant with some of the information redacted[12], including some of the names listed under the heading "Present". The notes appear to record information provided by the participants at the meeting, or the note-taker's interpretation of such information. In some cases, the source of the information is attributed by the notes to particular participants, and in others, it is not. In some cases, the information appears to consist of first-hand knowledge, and in other cases, it is or may have been learned from others. Referring to the information on these pages that was provided to her, the Applicant asks for the following:

1. *P. 2 - all communications by which the RCMP rep provided their "regrets" and all communications and materials relating to the request for attendance of the RCMP rep at this meeting and the decision of the RCMP not to attend*

[10] In the initial portion of her submissions respecting redactions, the Applicant asks to be given "disclosure" of the date and author of the handwritten notes comprising the first seven pages of the records. Similarly, she asks for information as to who made particular statements that were recorded but not attributed. The CPS is not obliged to provide such information independently of records that contain it.

[11] By reference to the content of the notes (page 4) this meeting appears to have taken place on or near March 30, 2012. A meeting at LSA offices is also discussed at the bottom of 11, to take place on Oct. 28, 2011. The latter is a different meeting held or to be held only between the two correspondents in the emails.

[12] Most of the redacted material on pages 1 and 7 was of unresponsive information, relating to unconnected matters or events.

[para 29] An email issued by the meeting organizer [D] that is found on page 14 of the responsive records contains a written request to the RCMP to attend the meeting in question. The response, if any, would have been to the sender of the email, and would not necessarily have been copied to the CPS. The existence of a copy of the response in the possession of the CPS is therefore speculative.

2. P. 3 - a copy of all "flyers in mailboxes" and all materials of any sort related to those flyers, their contents and distribution of those flyers to others after receipt and related to steps taken upon receipt of those flyers or of advice with respect to the content of those flyers

[para 30] It is not clear from the information in the notes of the meeting where the mailboxes in which it is said the 'flyers' were received (in "Christmas 2010") were located, whether the 'flyers' were collected from those (possibly "approx. 12" individuals) who received them, and if they were collected, then by whom, and whether they were ever conveyed to the CPS. Nor is there any evidence that the CPS is or was likely in possession of any documentation of the distribution of these documents, of or steps taken with respect to them or any other related documented information.

3. P. 3 - copy of the Report (the title of which is redacted) just before the words " .... Report (illegible) harassments by defendants"

[para 31] The information on page 3 suggests the reference is to the word "report" used as a verb rather than as a noun (the preceding word being the name of the person(s) (third parties) doing the reporting), such that there would not necessarily be a written report that was being referenced (though an associated police file which recorded this information might be termed a "report"). The existence of any such "report" is therefore speculative. (This comment applies to the Applicant's idea that there might be a "Report" by a Dr. B that was not located and provided to her. I could not find anything in the records to suggest such a report had existed, nor an explanation by the Applicant as to why she believes that it did.)

4. P. 3 - copies of the cards and emails referenced after the words "May 2011"

[para 32] It is not clear who the recipient of the referenced cards was, whether the cards were provided to or collected by anyone, and if they were collected, then by whom, and whether they are or ever were in the possession of the CPS.

5. P. 4 - copies of all cards, voice mail, mail Xmas cards (sic) w/typed letter referred to at the top of this page and all materials related to those asserted documents

[para 33] It is not clear from the notes who the recipient of the referenced cards or voice mail was, nor whether the cards or a copy of the voice mail were collected by anyone, and if they were collected, then by whom, and whether they are or ever were in the possession of the CPS. The same comments apply to the "mail delivered". Nor is it clear from these notes that the

“Xmas cards with typed letter” received by “employer & governing body” were collected by anyone or provided to the CPS.

6. Pp. 4-5

> *a. copies of the emails that were allegedly "cc' d" to some unidentified "Plaintiff" as referenced in the phrases at the bottom of p. 4 and the top of p 5*

[para 34] There is nothing on the information on the page to suggest the emails to which reference is being made were collected by the CPS.

> *b. copy of the 17000 pgs of transcripts referenced under the entry after "Justice Park" and copy of the 500 pgs referenced under that same allegation along with all documents and materials relied on and/or distributed in making these representations at the meeting*

[para 35] There is nothing in the information on this page to suggest that the information being referred to was collected or was or is in the possession of the CPS, nor that any written materials relating to the referenced information were relied on or distributed at the meeting.

7. *P. 6*

> *a. copy of the analysis and summary referenced after the words "Det. [B]" and all materials used in preparing that analysis and summary*

[para 36] The redacted portions of the records make clear that the reference to the “analysis and summary” was to verbal comments made by one of the other participants. There is nothing to suggest there are any related written materials.

> *b. copy of all communications and materials related to the advice "RCMP not present as they perceive matter as a ‘civil law’”*

[para 37] There is nothing in the materials to suggest the information provided by the participant was derived from written material.

8. P. 7 - communications by which Det. [B] was advised of disposition of the meeting

[para 38] This is nothing to suggest the referenced notification was in written form.

9. P. 8 - all documentation relating to completion and closure of file 11292557 or any other "file" referenced in the Feb 14/12 email from [H]

[para 39] File 11292557 was dealt with in the associated inquiry, including materials relating to the status of the file. This information is outside the scope of this inquiry.

10. P. 9 - all communications relating to the "feedback from Det.[B]"

[para 40] The context of these words does not suggest the feedback was or was likely received in written form.

11. Pp. 10-13

> *a. Mar 21/11 email from [D] - all material related to the allegation of "clear threats"*
> *i. Bona fides of this assertion by [D] is subject to question since no charge of utter (sic) threats ever advanced with respect to on or before Mar 21/11*
> *1. No privilege would attach to any such assertion by [D]*

[para 41] There is nothing in the context of the related email to suggest that the CPS would have been in possession of any related written materials related to the "clear threats". (Material that was also characterized as threatening was forwarded to CPS members, but this was on later dates, and the documents are among the records at issue.)

> *b. Nov 27 /11 email*
> *i. · copies of all cards, e-mails and text messages and any other materials being referenced in this email of Nov 27/11 from [H] that he states he is "collecting" and "holding as evidence" and, in the event they have been now destroyed or released, copies of all communications related to that release and/or destruction*

[para 42] The email of November 27, 2011 appears to relate to the same or similar events and involved parties that gave rise to CPS File # 11292557. (I noted in the associated order, at para 280, the Applicant's point that there was some overlap between the CPS file and the RCMP file, and a corresponding issue as to which responsive records related to which file.) The responsive records in this inquiry reveal that events similar to those referenced in the email formed part of the events or the background for the matters in the RCMP file (together with other similar events involving other parties). The "cards and emails" which the CPS member says he is holding as evidence may be the same materials, or materials of the same type, as materials that constituted "exhibits" stored by the CPS in the associated inquiry relative to CPS File 11292557. Since the email is an indication that the CPS was once in possession of such materials, it should explain either that they are materials already addressed in the associated inquiry, or if not, why they were not located (or if destroyed, whether documentation of destruction was required, and how long such documentation would be kept).

> *ii. Copies of communications between [H] and persons whose names have been redacted*

[para 43] This may in part be a reference to the intention of the CPS member as stated in the November 27 email to contact and talk to a particular person. There is nothing to suggest this happened in fact or if it did that it took a written form or was documented.

[para 44] There are other names redacted from pages 10 to 13, and communications between the CPS member and these persons in other contexts, as is revealed by other portions of the records at issue, but there is nothing to suggest that there were additional communications that were not located.

c. Oct 27 /11 emails b/n [H] and [D]
i. All materials related to the meeting of Oct 27/11 at the LSA offices referenced in the emails

[para 45] There is nothing to suggest there are written materials beyond those found in other portions of the responsive records.

ii. There are indications in the criminal case out of Cochrane that flashdrives of material may well have been exchanged at this time

[para 46] This suggestion is insufficiently specific or documented to enable me to draw any conclusions about the existence of "flashdrives of material".

d. Oct 10/11 email from [H]
i. The report that was taken by [H] and his partner as referenced in this email
ii. All handwritten notes and other materials related to and arising from the [H] and his partner speaking at great length to a person whose name had been redacted (as set forth above all redactions except those specifically set forth above are being challenged)

[para 47] These references appear to be in relation to documentation of an incident and report that was addressed in the associated inquiry and order in relation to CPS File # 11292557.

iii. All materials and notes and phone records related to the assertion by [H] of "attempts to contact the other individual in Ontario, however, without success"

[para 48] There is nothing to establish there is likely written documentation of these unsuccessful efforts. For example, the effort may have been only to locate contact information.

12. Pp. 14-15
a. Mar 29/11 email
i. All material related to Feb 2012 as referenced by "the matter we received last month"

[para 49] This email suggests a communication was received in the preceding month (February) regarding the subject matter (redacted) that follows. The (partially redacted) emails on pages 8 and 9 involving the same correspondents describe the communication and suggest that it was received in verbal rather than written form. While the person who describes receiving the communication may have taken notes or furthered the communication by email, it cannot be said that it was likely that he did.

ii. A copy of the professional opinion of [P] and of all materials received by [P] in order to prepare that opinion and all material related to the help that [F] provided to [P].

[para 50] The Professional Opinion is contained in the Report in CPS Case File # 11292557. The material relied on for creation of the Report is discussed in the Order in the associated inquiry. The CPS was asked in the Order to provide any written material associated with the

creation of the Report, or to indicate it was found in the records at issue in the present inquiry. As indicated in the CPS's response to the Order, and as appears on the face of the (partially redacted) records, some parts of the email chains in the present inquiry involve the author of the Professional Opinion, and discuss where he obtained information and the nature of the information, including that the information was (as the CPS indicated in its response to the Order) received in the course of discussions, some of which were described in the email chains. I dealt with the redactions to the Professional Opinion in the associated order F2020-13. I will deal below with the redactions to the records at issue in the present inquiry. There is no reason to believe it to be likely that additional written materials exist beyond those that have been located by the CPS.

iii. All materials related to the "some knowledge" that [F] asserts that he has

[para 51] The records at issue contain and document earlier communications involving [F] that appear to contribute to his knowledge about the topic. There is nothing in the material to suggest it is likely that he obtained any additional knowledge by way of written materials in contrast to verbal discussions.

iv. All materials related to the request made by someone for [F] to attend the meeting at the LSA

[para 52] The content of the email (of March 27, 2012) on page 14-15 suggests that the invitation to attend the meeting was extended by way of this email. There is nothing to suggest there is additional written material

v. All communications and materials related to the and leading to the statement "you have offered to assist " inclusive of all the requests that led to the offers of assistance and all the offers of assistance made to the LSA

[para 53] Beyond what is contained in the records at issue, there is nothing to suggest the offers were by way of written in contrast to verbal communications.

vi. NOTE: THE IMPORTANCE OF WHAT OCCURRED AT THE ROUNDTABLE MEETING AND OF ALL FALSE AND MISLEADING STATEMENTS MADE AT THAT MEETING BY [T] OR OTHERWISE GIVEN THE STATEMENT IN THIS EMAIL "It will be interesting what is the consensus following the meeting as it will deeply depend upon the clinical views shared during the meeting"

[para 54] This statement does not suggest there is additional written material. The statements the Applicant believes were made by [T] (as documented by the note taker) were addressed by the Order in the associated inquiry.

13. Pp. 17-18
a. Any and all documents and communications and related material regarding the asserted "four months of unrelenting harassment"

[para 55] Much of the information in the file underpins the referenced assertion. There is insufficient specificity in this item to suggest there are other particular materials in addition to those already located.

> *b. Any and all documents and communications and related material regarding the asserted "crazy person" and "destruction" and any attempts to "stop" the alleged conduct*

[para 56] Much of the information in the file is related to these references. There is insufficient specificity in this item to suggest there are other particular materials in addition to those already located.

> *c. Any and all materials leading to the referenced "meeting" last week and related to the meeting conducted and follow-through from that meeting*

[para 57] Much of the information in the responsive records for this inquiry as well as the preceding one relates to the "meeting". There is insufficient specificity in this item to suggest there are other particular materials in addition to those already located.

> *d. Any and all materials with respect to the other meetings referenced in that Apr 20/12 email from [H]*

[para 58] The meeting or meetings referenced are prospective, and it is not known whether they took place, or if they did, what form they took. (Possibly a telephone call by [B] to the RCMP referenced in other portions of the responsive records took the place of such a meeting.) As well, it is unknown whether and in what form such a meeting or call may have been documented, or if documented by someone other than a CPS member, that a copy would have been provided to the CPS.

> *e. All communications and related materials between [H] and "his Staff Sergeant".*

[para 59] This aspect of the Applicant's request is insufficiently specific. It is also unclear who is being referred to by the reference to "[H]'s Staff Sergeant". If this is S/Sgt [F], there is no reason to believe there are emails between these two individuals in relation to the matter at issue additional to those already included in the responsive records.

14. Pp. 19-20

> *a. All documents and materials related to the calls allegedly made as referenced in the Apr 25/12 4:11 p.m. email to [H]*

[para 60] There is no reason to believe that documentation in relation to the referenced calls would have been conveyed to the CPS by the sender of the email and that it would therefore be in the possession of the CPS; further, the information that these calls were made may have been provided verbally to the sender of the email.

15. Pp. 21-23

> *a. All materials related to the "follow-through" to be done by [P] as referenced in the Apr 27/12 10:39 email from [F]*

[para 61] The redacted portion of the email refers to an action to be taken. There is no way of knowing whether this was in fact done or if there was related documentation. However, since it was reasonably possible that the action was taken, and that if it was, there was related documentation, if it can be determined that it was and that there were related materials in the possession of the CPS, the failure to locate them at the time of the request should be explained.

16. Pp. 24-25

> *a. All notes and materials relating to the call requested by [D] from [B] referenced in the May 9/12 4:41 email from [D]*

[para 62] It is not known whether the requested call was made, or if it was, whether there is a record of it. The existence of related materials is therefore speculative.

> *b. All materials related to the "touching base with" [H] regarding the matters referenced in the May 9/12 3:53 email from [B] to [D]*

[para 63] It is not known whether the referenced action was taken, or if it was, whether there is a record of it. The existence of related materials is therefore speculative.

> *c. All materials and communications related to the assertion that "it sounds as though she has new targets here in the city" referenced in the May 9/12 3:50 email from [D]*

[para 64] Other parts of the responsive records relate to the assertions. There is insufficient specificity in this item to suggest that other particular materials exist in addition to those already located as responsive.

> *d. All materials and communications relating to the "ideas" referenced in the May 9/12 3:48 email to [D]*

[para 65] The reference is to a verbal communication. I have no basis for concluding it was likely recorded.

17. Pp. 26-27

> *a. All materials relating to and giving rise to the [F] and [H] "participating and offering input and experience" and all materials relating to the reference "contacted by anyone in regards to next steps" referenced in the May 7/12 3:34 email from [D]*

[para 66] Other records documenting this participation by the CPS members, and about next steps, have been included among the responsive records. There is no reason to believe the references were to additional materials.

18. Pp. 28-29

> *a. All documents and materials related, and to [sic] used to provide objective evidence to substantiate the assertions of contact and messages from [the Applicant] as referenced in the June 21/12 9:18 email from (name redacted) and all materials and documents related to any request for materials to support these allegations*

[para 67] These assertions were made by a person who is not a member of the CPS. With the exception of the single 'note' that was attached to the email sent to the CPS, there is nothing to suggest that the material the writer is referring to was provided to the CPS, or that the CPS requested copies.

> *b. A copy of the note allegedly left by [the Applicant] as reported in the June 21/12 9:19 email from (name redacted)*

[para 68] It seems likely this is the document at page 29 of 65.

19. Pp. 30-31

> *a. Copies of all of the "latest messages" referenced in the June 22/12 email from [B] and all materials related to any conversation or other communication by [B] with [P], [D] or anyone else regarding the matters as referenced in the June 22/12 email from [B]*

[para 69] The "latest messages" appear to already be included in the responsive records. With respect to the prospective conversations, it appears they were to be in verbal form. As well, subsequent communications among the referenced individuals are already included in the responsive records. There is no reason to believe there are additional written communications beyond those that have been located.

> *b. Copies of the alleged voicemails, card, 4 visits and 19 incidents referenced in the June 21/12 email from (name redacted] to [T] and others along with all materials and communications related to and dealing with those assertions and actions taken regarding those assertions*

[para 70] The comments respecting pages 28 to 29 apply with respect to the card (which seems likely to be the note attached to the email of June 21, 2012 comprising page 28). While it appears that some additional records were created relative to the matter described in the email at the bottom of page 30, there is nothing to suggest these materials were conveyed to the CPS (indeed this appears not to be the case relative to some of them). The communications related to and actions taken regarding the assertions are the subject of a large portion of the responsive records.

20. Pp. 32-33

> *a. Copy of the message and any response referenced in the June 27/12 email from [B] to [D] and all material flowing from those communications*

[para 71] There is no reason to conclude the message or anticipated response referred to were in written form. "Material flowing from these communications" is insufficiently specific, as there were many subsequent actions and communications by the involved police services.

> *b. Copy of all communications between the RCMP and [B] or any other CPS personnel referenced in the June 27/12 email from [D] to [B], and copies of all materials exchanged between the RCMP and CPS.*

[para 72] A subsequent email (of August 21, 2012, p. 40) indicates the communication between the CPS member and the RCMP was verbal. The existence of exchanged materials is speculative.

> *c. Regarding the June 27/12 03:17 email from (name redacted) to (name redacted):*
>
> > *i. copies of any and all materials related to the alleged card and voicemail messages, including but not limited to copies of the card and voicemail messages and including but not limited to any requests that copies of such materials be provided to person/body to which this email was forwarded*
> >
> > *ii. Copies of any and all material related to the assertion "backs out of the driveway and pulls up close to the pedestal to leave a bag with the card"*
> >
> > *iii. All material regarding the statement "the RCMP have been helpful and responsive in the last few days (except for deaying (sic) the complaint" and "the harassing voicemail left on ... work phone"*

[para 73] It seems likely having regard to the sequence of emails that the "alleged card" is the document on page 34.

[para 74] It is possible, but not certain, that a record (the second of the two records referred to in the first sentence in the second redaction on page 33) was forwarded to the CPS by way of forwarding the email that begins on page 32 and ends on page 33. The CPS should consider whether it received this record by way of the forwarding email. If it is still possible to determine that it did, it should consider whether it is still is in its possession. If it is not, it should provide an explanation as to why it is not. If it is in its possession, but is not already a record at issue, it should indicate this to me; I will retain jurisdiction to decide, if requested and after hearing from the parties, whether any such record should be withheld or disclosed.

[para 75] There is a clear indication that some additional records relative to (ii) were created but that they were not provided to the recipient of this email, so were not forwarded to the CPS.

[para 76] There is no evidence suggesting a request for the material was made by the CPS recipient of what appears to be a forwarded email.

[para 77] The existence of material in the possession of the CPS relative to the statement about the RCMP is speculative.

21. P. 35

> *a. All communications and materials relating to "bringing this to the attention of the RCMP & their investigators/experts" as referenced in the June 27/12 email from [F] to [B]*

[para 78] A subsequent email (of August 21, 2012, page 40) indicates the communication between the CPS member and the RCMP was verbal.

22. P. 36

> *a. All communications and materials of any sort related to the assertion of "some one suing her" and related to any request to that request for information as referenced in the July 17/12 email to [H]*

[para 79] The existence of any related material in the possession of the person sending this email, or its having been conveyed to the CPS, is speculative.

23. P. 37

> *a. All material and documents of any type related to this asserted contact by [the Applicant] on Aug 11/12 with an undisclosed person as referenced in the Aug 11/12 9:07 email from (name redacted) and all material and documents of any type regarding communications and actions taken with respect to this asserted contact including but not limited to contact by the CPS with the person allegedly contacted by [the Applicant]*

[para 80] There is no evidence before me to suggest there are additional records of the type described, beyond those already forming part of the redacted records (which are concerned generally with actions of the police services involved with respect to incidents in which the Applicant was involved).

24. Pp. 38-39

> *a. All materials and documents of any type related to the alleged contacts by [the Applicant] on Aug 12/12 as referenced in the Aug 13/12 email from [D] to [B] including but not limited to:*
>
> > *i. All materials related to any contact by the CPS with anyone, including but not limited to the Executive Director and Chair of Conduct of the LSA, with*

respect to these allegations;

[para 81] Subsequent emails already contained in the responsive records consist of or describe contacts relating to the allegations that are the subject of the Aug 13/12 email between the CPS and others. There is no evidence before me suggesting there are other such contacts/communications beyond those already located, and in particular, no evidence suggesting contact with the persons holding the positions mentioned.

ii. Copies of any materials/letters alleged to have been left by [the Applicant] during these alleged contacts;

[para 82] There is nothing to suggest these materials/letters would have been conveyed to the CPS.

iii. All materials related to any steps taken by the CPS in response to these alleged contacts

[para 83] My comments under heading a(i) apply. There is nothing before me to suggest the CPS took further action with respect to these specific allegations.

b. All materials and documents of any type related to the alleged prior attendances by [the Applicant] at the residences of the Executive Director and Chair of Conduct of the LSA as referenced in the Aug 13/12 email from [D] to [B] including but not limited to:

i. All materials related to any contact by the CPS with anyone, including but not limited to the Executive Director and Chair of Conduct of the LSA, with respect to these allegations;

[para 84] My comments under heading a(i) above with respect to the most recent alleged attendance apply equally with respect to the alleged prior attendances.

ii. Copies of any materials/letters alleged to have been left by [the Applicant] during these alleged contacts;

[para 85] My comments under heading a(ii) above apply with respect to the alleged prior attendances

iii. All materials related to the alleged contacts;

[para 86] The existence of additional materials in the possession of the CPS with respect to the alleged prior attendances is speculative.

iv. All materials related to any steps taken by the CPS in response to these alleged contacts

[para 87] My comments under heading a(iii) (which incorporate my comments under heading a(i)) apply with respect to the alleged prior attendances. There is nothing before me to suggest the CPS took further action with respect to these specific allegations.

25. Pp. 40-41

> *a. All material related to the conversation/communications "3 weeks ago" between the RCMP and [B] as referenced in the Aug 21/12 email from [B] to [H] and [F]*

[para 88] The existence of material related to the verbal exchange is speculative.

> *b. All material of any type related to how [B] heard about the arrest as referenced in the Aug 21/12 email from [B] to [H] and [F]*

[para 89] The existence of a written rather than verbal communication is speculative.

> *c. All material related to any upset [sic] that [B] or anyone at the CPS received from [M] or anyone else at the RCMP regarding any court proceedings or other matters with respect to [the Applicant] as referenced in the Aug 21/12 email from [B] to [H] and [F]*

[para 90] The existence of a written rather than verbal (anticipated) communication is speculative.

> *d. All material related to communications between [B] and the RCMP and all material related to communications that [D] had with anyone such that she was aware of communications between [B] and the RCMP with respect to [the Applicant] as referenced in the Aug 21/12 11:36 email from [D]*

[para 91] Information respecting communications between [B] and the RCMP is found in other portions of the responsive records, and there is no evidence to suggest there were additional written communications or related material.

[para 92] With respect to the "Aug 21/12 11:36 email from [D]", the '11:36" email is from [H] to [D], and contains information about a communication between [B] and the RCMP. There is nothing in this email or in the '11:38" reply from D to suggest that [D] had any knowledge about this communication other than what she had just been given by [H].

> *e. All material related to any response received by [D] or anyone at the LSA to the request made by [D] in her Aug 13/12 4:24 email to [B] and [H] for advice if the CPS "needed anything from" the LSA*

[para 93] The recipients of the email responded, but the contents of the responses do not include a request for assistance. The existence of any other responses to the offer in the concluding sentence of D's email is speculative.

26. Pp. 42-43

> *a. All materials and communications related to [D] being aware that [B] had been away as referenced in the Aug 21/12emai [sic] from [D] to [B]*

[para 94] There is no evidence that there is information about this beyond that contained in the responsive records.

> *b. All material of any type related to any response or advice received by [B] from anyone regarding his assumption that the attendances by [the Applicant] at the residences as had been reported as referenced in the Aug 21/12 email from [B] to [D] and all material of any sort related to any such reporting to police agencies· or related to consideration of whether or not those attendances should be reported to a police agency*

[para 95] The existence of written material underlying [B]'s presumption, and material relating to any such presumed reporting activities, is speculative.

27. Pp. 44-45

> *a. All materials leading to and on which [H] made the statement in his Aug 11 [sic]/12 email to (name redacted) that the RCMP are proceeding which charges against [the Applicant] with the help of another victim*

[para 96] The information referenced here was conveyed to [H] in email communications already contained in the records, including at page 40.

28. Pp. 46-47

> *a. All materials of any type related to the phone call between [D] and [B] on Sept 12/12 as referenced in the chain of email exchanged between [D] and [B] on Sept 11/12*

[para 97] The existence of written material documenting this prospective phone call is speculative.

> *b. All materials of any type related to any communications between the LSA, including but not limited to [D], and the CPS, including but not limited to [B], related to any meetings that [D] had with other persons regarding any matter related to [the Applicant] as referenced in the Sept 11/12 5:04 email from [D] to [B]*

[para 98] The idea that the prospective meeting referenced in the '5:04' email was documented, or that such documentation, if any, was conveyed to the CPS, is speculative.

> *c. All materials of any type related to any communications between [D] and [B] regarding [the Applicant] as referenced in the Sept 11/12 5:00 email from [D] to [B*]

[para 99] The existence of communications between [D] and [B], or related material, about the topic of the email, beyond those already contained in the responsive records, is speculative.

29. Pp. 48-49

> *a. All materials of any type related to response(s) provided to the Sept 17 /12 email from [A], related to any meeting set up, as referenced in the Sept 14/12 email from [D] and in the Sept 17/12 email from [A], related to any materials provided at or distributed at any such meeting, minutes of and/or recordings of any such meeting and related to any steps taken in furtherance or as a result of any such meeting*

[para 100] Some of the responsive records (emails involving CPS member [B]) that follow the referenced email in time (pages 50 to 58) contain information, some of which is redacted, about this meeting. There is no evidence to suggest there was information in the possession of the CPS in addition to that contained in these records.

30. Pp. 50-51

> *a. All materials of any type related to any prior assistance or communication and related to any subsequent assistance of communication between the (redacted name) and [B] regarding [the Applicant] as part of the on-going relationship/communication between those parties and/or their respective organizations as indicated by the words "Thanks again for your continuing assistance in this matter" as referenced in the Sept 25/12 email to [B]*

[para 101] Some of the responsive records that follow the referenced email in time contain information, some of which is redacted, about the involvement/assistance of the recipient ([B], a member of the CPS) in the matter at issue. There is no evidence to suggest there was information in the possession of the CPS in addition to that contained in these records.

> *b. All materials of any type related to "the matter" that is the subject matter of the Sept 25/12 email*

[para 102] Some of the responsive records (emails involving [B], a member of the CPS) contain information, some of which is redacted, about the matter at issue. There is no evidence to suggest there was information in the possession of the CPS in addition to that contained in these records.

31. P. 52

> *a. All materials and communications exchanged between or amongst anyone leading up to the meeting on or about Oct 11/2 as referenced in the Oct 9/12 emails exchanged between [D] and [B]*

[para 103] Some of the other responsive records (emails involving [B], a member of the CPS) contain information of the type referenced. There is no evidence to suggest there was other such information in the possession of the CPS in addition to that contained in these records.

> *b. All material of any type related to any meeting set up, as referenced in the Oct 9/12 emails exchanged between [D] and [B], related to any materials provided at or distributed at any such meeting, minutes of and/or recordings of any such meeting and related to any steps taken in furtherance or as a result of any such meeting*

[para 104] Some of the other responsive records (emails involving [B], a member of the CPS who attended the meeting) contain information of the type described. While additional materials of this type may exist or have existed in the possession of other participants, there is no evidence to suggest there was other such information in the possession of the CPS in addition to that contained in the responsive records that were located.

32. Pp. 53-54

> *a. All materials of any type related to the setting of the agenda, provided to deal with the agenda items at, before or after the meeting , all recordings in any format of anything that occurred at that meeting, copies of any and all materials of any sort distributed at or discussed at that meeting and all materials of any type related to steps taken as a result of that meeting including related to any publication of / communications with respect to that meeting and any results of that meeting*

[para 105] Some of the other responsive records (emails involving [B], a member of the CPS who attended the meeting) contain information of some of the types referenced. While additional such materials may exist or have existed in the possession of other participants, with the exception of the materials discussed under item "f" below, there is no evidence to suggest there would be other such information in the possession of the CPS in addition to that contained in the responsive records.

33. Pp. 55-56

> *a. All materials of any type related to the "follow up" referenced in the Oct 16/12 16:06 email from (name redacted) to [B]*

[para 106] There is no evidence to suggest the CPS would be in possession of any information related to this referenced "follow up" by the sender of the email.

> *b. All materials of any type related to the contact to the Sheriffs Office referenced in the Oct 16/12 12:06 email from [B] and all materials, including but not limited to, all communications related to or arising from the attendance of the Sheriff in court on Nov 29/12*

[para 107] There is nothing to suggest the contact with the Sheriff's Office referred to in the email was by means of a written rather than verbal communication. The existence of written material is therefore speculative.

> *c. A complete copy of the Minutes of the meeting referenced in the Oct 16/12 9:29 email from (name redacted)*

[para 108] There is nothing to suggest that there were minutes of the meeting in addition to the material (partially redacted) contained in the responsive records.

> *d. All materials generated at, during, in preparation for or subsequent to the meeting referenced in the Oct 16/12 9:29 email from (name redacted) and all materials including but not limited to any communications with respect to any of the items listed as Action items, related to the asserted "background" and related to the "potential threat [the Applicant] poses to (name redacted) and their property"*

[para 109] Some of the other responsive records (emails involving [B], a member of the CPS who attended the meeting) contain information of the type referenced. While there is some evidence in the redacted material that additional materials of this type may exist or have existed in the possession of other participants, with one exception (discussed below in para 111 under item "f"), there is no evidence to suggest there would be other such information in the possession of the CPS in addition to that contained in the responsive records.

> *e. All materials of any type related to any subsequent and/or non-preliminary asserted background and/or assessment of threat posed by [the Applicant] to anyone or their property*

[para 110] Some of the other responsive records (emails involving a member of the CPS who attended the meeting) contain information of the type referenced. With the exception of the material discussed in para 111 under item "f" below, there is no evidence to suggest there would be other such information in the possession of the CPS in addition to that contained in the responsive records.

> *f. Copies of all "materials provided, including spreadsheet and chart provided by (name redacted) and initial threat assessment referenced in "Action Item" on Chart on p. 56*

[para 111] Parts of the referenced chart that were provided to the Applicant contain a suggestion that [B], a CPS member who attended the meeting, was to receive some of the referenced material, and that an "initial threat assessment report" was to be done (see row two, columns one and two of the chart on page 56). Subsequent records (emails) indicate the material was not in fact provided (e.g. at page 61), and there are no records that suggest that it was, or that the CPS did in fact prepare a threat assessment. However, as there are indications that there was an intention these things be done, if it can be determined that they were in fact, the CPS should explain why they were not located, or not retained, in the possession of the CPS member who received the email.

g. All materials of any type related in any way to the publication of or distribution to anyone other than those persons at the said meeting, at any time, of minutes or of any of the many types of materials referenced and requested in· the within item and the proceeding [sic] request items dealing with pp. 53-56

[para 112] The existence of such materials is speculative.

h. Any material of any type provided by anyone in response to the request "if I have missed or mis-stated anything, please let me know as soon as possible" as referenced in the part of the Oct 16/12 9:29 email at p. 56

[para 113] The existence of such responses is speculative.

34. Pp. 57-58

a. The requests for disclosure of materials arising from this Oct 26/12 email from [B] and its attached email of Oct 16/12 from (name redacted) are the same as those set out above regarding pp. 53-56

[para 114] The comments above in relation to pages 53 to 56 apply.

b. All material including all responses provided by or engaged in by (name redacted) in response to and/or related to this email communication and it subject matter

[para 115] The existence of responses to the email is speculative.

35. P. 59

a. In view of the mention in this Nov 27/12 email from [H] of updates in the context of anticipating updates, copies of all communications/updates/exchanges of materials as between [H] and the RCMP at any time at all

[para 116] The existence of updates, and the idea that any updates would come directly from the RCMP to [H], is speculative.

36. Pp. 60-61

a. Copy of all communications, including but not limited to the sheriff, and materials of any type leading to or related to [B] stating in his Nov 30/12 email, "she did show up and 'caused no problem' according to the sheriff'

[para 117] The existence of written in contrast to verbal information is speculative.

b. All materials of any type related to materials that were to be sent by the LSA re the [Applicant] matter to anyone including but not limited to [B] as referenced in the Nov 29/12 email from (name redacted) to [B], including any materials by which

it was indicated that the LSA would or could provide such material, related to whether they did or did not ever provide such material and, if not, why not, and, if so, copies of all those materials provided by the LSA and copies of all materials related to the distribution or, discussion regarding, or work product arising from those documents and/or their review and/or use

[para 118] Some of the other responsive records (redacted) contain information with respect to the nature of information to be provided, and there is no evidence to suggest that there was additional material of this type. With respect to whether the material was in fact provided by the LSA to [B], the comments in paragraph 111 above apply. With respect to subsequent related actions or work product, as already stated at para 111, there is nothing in the records or evidence before me to suggest that anything was done or created by the CPS. However, again, since the documents indicate that particular subsequent actions were anticipated at one point in time, then if it is possible to determine that the CPS created such work product, it should explain why any such material was not located, or not retained, in its possession.

c. All material related to what documents were anticipated to be received from the LSA and all material related to statements/indications that the documents would be provided all materials related to why they had not yet been provided, all documents related to whether or not they would actually be provided at some time and all documents with respect to whether they were ever provided at a point in time subsequent to Nov 29/12, which documents from the LSA are referenced in the Nov 29/12 1 :33 email from [B] and in the Nov 29/12 1 :03 email from (name redacted) to [B]

[para 119] Some of the other responsive records (redacted) contain information with respect to the nature of information to be provided, and there is no evidence to suggest that there was additional material of this type. The same comments apply to additional material relating to the provision of the materials. With respect to whether the materials were in fact provided by the LSA to [B], the comments in para 111 above apply.

37. P. 62

a. All material and communications leading to and relied on by (name redacted) in the Jan 11/13 email to [B] when stating that [the Applicant]'s court date was approaching and that [the Applicant] would be appearing on Jan 24/12 to set a trial date

[para 120] Given the identity of the sender of the email, there is no reason to conclude that any such material would be in the possession of the CPS.

38. P. 63

a. All material of any type, including but not limited to communications exchanged and reports prepared, meetings held, consultations engaged in, materials relied on, related to the topic of "[the Applicant] behaviour modification", referenced in the Feb 7/13 email from (name redacted) to [B] and to (name(s) redacted)

[para 121] The redacted portion of the email in question discusses the source of the related information. While there is a discussion in the records at issue about a report to be prepared (some of which discussion was disclosed to the Applicant), there is no indication in the records that the report was prepared in fact. However, since an intention to do so was expressed, if such a report was prepared, the CPS should explain why it was not located, or not retained.

39. Pp. 64-65

> *a. All materials, including but not limited to communications, leading to, giving rise to and relied on in the assertion made by (name redacted) in the Feb 25/13 email to [H], "[the Applicant] always shows up by announcing that she had new information, new witnesses and so on"*

[para 122] Given the identity of the sender of the email, there is no reason to conclude that such material, if any, would be in the possession of the CPS.

> *b. All materials including but not limited to communications, leading to, giving rise to and relied on in the assertion made by [H] in the Feb 25/13 7:18 email to (name redacted), "Court was adjourned for trial to Apr 11th, I don't know the reason for the adjournment". To my knowledge the Trial was never set for Apr 11th or adjourned to Apr 11th so this statement, to the best of my knowledge is false*

[para 123] The existence of written in contrast to verbal communications underlying the statement is speculative.

[para 124] Finally, the Applicant points to information in the records at issue that indicates that various individuals received information from her such as “flyers”, “cards”, “letters” at various times. Examples are found in the notes of the meeting (pages 3 to 4 of the records), and in an email at the bottom of page 38 (replicated on page 41). The Applicant believes that copies of these materials, and certain kinds of related information, should have been provided in response to her request. However, other than the material of this type that is or is discussed in the records at issue, and the item described at para 42 above, there is nothing in the records or the Applicant’s submissions that shows these materials were likely provided to, or collected by, the CPS.

[para 125] I note that I dealt in the associated file (at footnote 44) with the Applicant’s point that there was a reference in RCMP file 2011-691476 to the idea that the CPS would be opening a file relative to a particular matter (the Applicant’s contact with a particular person), but that no such file had been located or provided by the CPS. I concluded that despite the stated intention, there was insufficient evidence to establish that such a file had in fact or had likely been opened.[13]

[13] In the Addendum of December 17 which the Applicant provided to this inquiry, there is possibly a suggestion (on page 104) that the contents of this file were provided to her as the subject of RCMP file 2011-6914476, but it is not clear that this is in fact what is being suggested, particularly as this suggestion does not appear to have been made elsewhere in the Applicant’s submissions.

Conclusions regarding the Applicant's requests with respect to materials referenced in the records

[para 126] In the foregoing review, I have found clear evidence that records were not provided to the Applicant that were once in the possession of the CPS only in the case of page 10 of the records (Nov 27 /11 email), with respect to which the Applicant asks for the following:

> *copies of all cards, e-mails and text messages and any other materials being referenced in this email of Nov 27/11 from [H] that he states he is "collecting" and "holding as evidence" and, in the event they have been now destroyed or released, copies of all communications related to that release and/or destruction*

The "cards and emails" which the CPS member says he is holding as evidence may be the same materials, or materials of the same type, as materials that constituted "exhibits" stored by the CPS in the associated inquiry relative to CPS File 11292557. Since the email is an indication that the CPS was once in possession of such materials, I ask the CPS to explain either that they are materials already addressed in the associated inquiry, or if not, why they were not located.

[para 127] The Applicant also pointed to information on page 21 of the records (Apr 27/12 10:39 email from [F]) which describes an action to be taken which it seems reasonably likely would been recorded. She asks for "[a]ll materials related to the "follow-through" to be done by [P] as referenced in the [email]". It is reasonably possible that the referenced action was taken, and if it was, that there were related materials in the possession of the CPS. If it can still be determined that it was and that there were related materials in the possession of the CPS, the failure to locate them at the time of the search should be explained.

[para 128] With respect to pages 32 to 33, as noted above, it seems reasonably possible that a record (the second of the two records referred to in the first sentence in the second redaction on page 33) was forwarded to the CPS by way of forwarding the email at the bottom of page 32 to page 33. The CPS should consider whether it received this record by way of the forwarding email. If it is still possible to determine that it did, it should consider whether it is still is in its possession. If not, it should provide an explanation as to why it is not. If it is in its possession, but is not already a record at issue, it should indicate this to me. I will retain jurisdiction to decide, if asked to do so and after hearing from the parties, whether it should be withheld or disclosed.

[para 129] With respect to page 56 (item 33(f) in the Applicant's submission) the Applicant asks for "[c]opies of all "materials provided, including spreadsheet and chart provided by (name redacted) and initial threat assessment referenced in "Action Item" on Chart". Parts of the referenced chart that were provided to the Applicant contain a suggestion that [B], a CPS member who attended the meeting, was to receive some of the referenced material, and that an "initial threat assessment report" was to be done (see row two, columns one and two of the chart on page 56). Subsequent records (emails) indicate the material was not in fact provided, and there are no records that suggest that it was. However, as there are indications that there was an

intention these things be done, if it can still be determined that they were in fact, the CPS should explain why the materials were not located, or not retained, in the possession of the CPS member who received the email.

[para 130] With respect to pages 60-61 (item 36(b)) the Applicant asks for:

> All materials of any type related to materials that were to be sent by the LSA re [the Applicant] matter to anyone including but not limited to [B] as referenced in the Nov 29/12 email from (name redacted) to [B], including any materials by which it was indicated that the LSA would or could provide such material, related to whether they did or did not ever provide such material and, if not, why not, and, if so, copies of all those materials provided by the LSA and copies of all materials related to the distribution or, discussion regarding, or work product arising from those documents and/or their review and/or use

As noted above, the comments relative to item 33(f) (para 111 above) apply with respect to the material that was to be provided by the LSA to [B].With respect to subsequent related actions or work product, there is nothing in the records or evidence before me to suggest that anything was done or created by the CPS, or retained in its possession. However, since the documents indicate that this was anticipated at one point in time, then if it is possible to determine that what had been discussed had in fact been done by it, the CPS should explain why any such material was not located, or not retained, in its possession.

[para 131] With respect to page 63, the Applicant asks for any reports prepared … related to the topic of "[the Applicant] behaviour modification" referenced in the Feb 7/13 email in which this is the subject line. While there is a discussion in the records at issue about a report to be prepared (some of which discussion was disclosed to the Applicant), there is no indication in the records that the CPS prepared such a report in fact. However, since an intention to do so was expressed, if such a report was prepared, the CPS should explain why it was not located.

[para 132] With respect to the foregoing requests for records the Applicant believes should exist, I have noted her specific request for destruction/release records. Thus for any records discussed under the present heading (paras 126 to 131 above) if the records were once in the CPS's possession but no longer are, any existing documentation of destruction or release of the records would be responsive to the present request. If the CPS determines that records as outlined in paras 126 to 131 were once in its possession but no longer are, it should explain whether there are requirements for creating and retaining such destruction/release documents for such records, and to the extent still possible, whether any such requirements were followed. If it appears that such destruction documents likely exists that were not located, I reserve jurisdiction to ask the CPS to search for them.

[para 133] To the extent that the explanations discussed above require revealing the contents of the records, I will accept them on an *in camera* basis.

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 applies this provision?

[para 134] I have noted that the Applicant challenges most of the redactions in the records at issue that rely on section 17(1), with the exception of two specific redactions (telephone numbers) on pages 11 and 16.

[para 135] I will deal first with the redacted information that meets or is said to meet the criteria of section 1(n) of the Act. Section 1(n) of the FOIP Act defines "personal information" as follows:

> *1(n) "personal information" means recorded information about an identifiable individual, including*
>
> *(i) the individual's name, home or business address or home or business telephone number,*
> *(ii) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,*
> *(iii) the individual's age, sex, marital status or family status,*
> *(iv) an identifying number, symbol or other particular assigned to the individual,*
> *(v) the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,*
> *(vi) information about the individual's health and health care history, including information about a physical or mental disability,*
> *(vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,*
> *(viii) anyone else's opinions about the individual, and*
> *(ix) the individual's personal views or opinions, except if they are about someone else[…]*

[para 136] Most of the information that was redacted by reference to section 17(1) is self-evidently personal information of third parties, but for some of it, it is not clear to me why CPS characterized it in this way. This information is found on page 56 (in the seven lines beneath the chart[14]) and is replicated on page 58. Given the precedents from this office regarding persons acting in a work-related or representative capacity, I am considering ordering that this information be disclosed. However, before deciding whether to order disclosure of information withheld on the basis it is third party personal information, representations are typically invited from the third party whose personal information it is said to be. This has not been done in this case, and I considered further deferring this decision in order to do it. However, so as to avoid extending issuance of this order further, I have decided to instead defer my decision only relative to this information in particular, and to notify the third party whose personal information it is said to be so as to give them an opportunity to make representations as to why this information should be withheld under section 17(1) (or have CPS make them on their behalf). I will reserve jurisdiction to make a determination after hearing from the parties.

[para 137] Section 17 states in part:

[14] This refers in particular to the following words of the first sentence: words one to three, five to ten and sixteen to twenty-four; the second sentence; the remainder of the seven lines excluding the last nine words of the third sentence.

17(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

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

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

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

...

(g) the personal information consists of the third party's name when

(i) it appears with other personal information about the third party, or

(ii) the disclosure of the name itself would reveal personal information about the third party,

...

(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

...

(c) the personal information is relevant to a fair determination of the applicant's rights, ...

[para 138] Section 17(1) is a mandatory exception which is triggered where disclosure would entail an unreasonable invasion of the privacy of a third party. Personal 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 weigh in favour of disclosure to the applicant – for example, where 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[15]).

[15] 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

[para 139] The Applicant has made a number of comments in her initial submission (her "Detailed Request for Review" submitted on October 13, 2015) regarding the applicability of section 17, including: that there is insufficient information to determine how the subsections of section 17 apply; that the participants in a meeting that is recorded in the responsive records at pages 1 to 7, out of which charges could arise, implicitly consented to disclosure of their own personal information; that statements made about the subject of a criminal investigation are not entitled to have their identity confidential as they are answerable for the accuracy of their assertions; that the participation of the CPS was improperly motivated (as demonstrated by certain of its actions), and biased; that the participation of the LSA in the meeting was improperly motivated, as demonstrated by certain of its actions; that an RCMP contact referenced in the materials is either the subject of, or was tasked with determining, a "CPC Complaint".

[para 140] I believe the records themselves together with the submissions of the CPS provide me with sufficient information to make determinations about the applicability of section 17(1) and the other subsections of section 17.

[para 141] With respect to the 'implicit consent' of the participants to the meeting recorded at pages 1 to 7, I note that some of the emailed communications about the meeting that occurred among the attendees before it was held indicate that its purpose was to discuss options in relation to the Applicant, including some references in the emails to a potential charge and to investigation by and involvement of the RCMP. However, what was recorded by the note-taker regarding the discussion at the meeting does not mention a criminal charge, nor do the notes indicate that this was implicitly the topic of the conversation. (There is a single redacted statement that indirectly adverts to a prosecution as being among the options, but the notes reflect that this comment was neither preceded by any related discussion, nor was it taken up by any of the other participants.)

[para 142] Further, even if a potential criminal charge had been a topic of discussion. I do not accept the Applicant's point that the fact that a discussion relates to a potential criminal charge implies consent to disclosure of their personal information by the participants, or otherwise removes the Act's protection for personal information in the context of a request for access under the Act, other than in accordance with the provisions in the Act.

[para 143] As to the motives of participants at the meeting held on or near March, 2012, (or a subsequent meeting held in October, 2012 involving some of the same participants) I do not accept that the motivations of either the CPS or the LSA, even if shown to be improper (which has not been shown to me), have any impact on the question of whether section 17(1) applies.

[para 144] I do not understand the significance of the Applicant's final point, about the reference to a member of the RCMP.

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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.)

[para 145] I have also noted the Applicant's assertion in her Final Submission (para 28 at page 63/75 and following, and para 31 at page 65/75) that if the records were properly withholdable under section 4(1)(k) as relating to a prosecution, they should have been disclosed to the Crown for the purposes of the prosecution, and then, since personal privacy of third parties would not have been a factor supporting non-disclosure in that context, they would have been disclosed to her as the accused. She argues that since the criminal case has now been concluded, it is contrary to fundamental justice for the EPS to now withhold the records on a basis that would not have supported withholding had the records been brought forward and the question of disclosure arisen in the context of the prosecution.

[para 146] In response to this assertion, I must point out that my role is to apply the criteria set out in section 17 of the FOIP Act. While section 17(5)(c) provides that the fact information is relevant to a fair determination of an applicant's legal rights weighs in favour of its disclosure, the Act specifically *excludes from its scope* records of information, including personal information, "if all proceedings in respect of the prosecution have not been completed" (section 4(1)(k)). Thus, even if it were the case that the personal information withheld on the basis of the then-pending prosecution might at the time of the original request (November, 2014) have assisted the Applicant in relation to her legal rights relative to the prosecution, the rules in relation to prosecutions and court processes governed information disclosures during that period. When the new request for materials withheld under section 4(1)(k) was made again after the prosecution was concluded (in July, 2015), the Applicant's legal rights relative to the prosecution were no longer at issue; hence section 17(5)(c) could no longer have any application relative to that purpose.

[para 147] The Applicant also states, in her Final Submission, (as she did in the associated inquiry) that subsequent to the CPS's response to her she has made complaints against a number of individuals to various institutions, and asserts that the redacted personal information contained in the responsive records would be relevant to these proceedings (or, in the terms of FOIP Act section 17(5)(c), would be necessary for a fair determination of her rights in these proceedings).

[para 148] 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.)

[para 149] The Applicant points to the following proceedings which she initiated:

a) CPC/PSS complaint 16-1002, which was against a number of members of the CPS relating to and arising out of events and conduct reflected in records provided in the response to the access request here at issue which she characterizes as "improper conduct during the course of a criminal investigation and other related conduct". By way of further explanation the Applicant refers to a Dec 19/2017 'Addendum' that she provided "in CPC/PSS 16-1002" and provided for this inquiry, and says that she adopts the explanations contained therein as to the nature and significance of the materials to the professional standards complaint
b) A March 15, 2018 complaint to the Law Society of Alberta regarding four lawyers who attended an April 4/2012 meeting concerning the Applicant held at the offices of the LSA that also involved some of the members of the CPS who were the subject of the foregoing complaint
c) A March 15, 2018 complaint to the Law Society of Alberta against the CPS's representative in the present matter relating to his processing of files related to the Applicant; she states that the redacted materials may address the likely motivations of the representative for the conduct that was the subject of the complaint
d) An April 22, 2018 complaint to the LSA regarding the conduct of the Crown prosecutor in the prosecution of RCMP File 2011-691476, relating to an alleged concealment of an RCMP report and misleading of the court regarding the report's existence
e) An Apr 24, 2018 CRCC Complaint regarding the conduct of a number of members of the RCMP including KM;
f) A CRCC complaint dating from 2014 regarding conduct of two members of the RCMP (these complaints were concluded in October, 2017).[16]

[para 150] The Applicant had the ability to make these complaints, presumably pursuant to legislation, but she has not explained whether she had or has any right to participate, and she clearly has no rights relative to the final disposition of the complaints. Thus, it is not clear how any of these proceedings would engage her "legal rights" within the terms of section 17(5)(c), as that provision has been interpreted in earlier decisions of this office as cited above. I will assume for the sake of the discussion, however, that she has some rights of participation or appeal.

[para 151] All but the last of these complaints were made subsequent to both access requests, so the CPS could not have considered them. As my role is to review the Public Body's decisions respecting disclosure, it is not at all clear to me that if I were to conclude at this point that disclosure would now be warranted by reference to section 17(5)(c), it would be open to me to order the Public Body to disclose records that it had no reason to disclose at the time it made its decision. However, in case I do have such a power, I will set out below the reasons for my view that section 17(5)(c) could not apply to the redacted personal information in this case.

[16] In her Final Submission (at page 68, para 35), the Applicant describes her "rights" in the LSA proceeding as "not to be negatively impacted by/harmed by the improper conduct of lawyers who are acting in breach of the Code of Conduct of the LSA". This is clearly not a legal right within the terms of the provision, as that provision has been interpreted in earlier decisions of this office cited above.

[para 152] I begin with items c) to e). I do not know whether these complaints are still outstanding, but I will assume for the purpose of the present discussion that they are. While making the assertion the redacted portions of the pages could have some bearing on the matters to be decided in these complaints, the Applicant does not explain in any accessible way[17] how this could be the case. I have reviewed all of the redacted third party personal information in the records at issue and do not see that any of it could possibly have any bearing on any of the following: the motivation of the CPS's representative for the conduct that is the subject of the complaint against him (relating to his processing of her files); the conduct of the Crown prosecutor in the prosecution of RCMP File 2011-691476; and the conduct of a number of members of the RCMP including KM.

[para 153] Item f) was, according to the Applicant, concluded in 2017, so that section 17(5)(c) could not apply.

[para 154] Item b) concerns a complaint to the Law Society of Alberta regarding four lawyers who attended an April 4/2012 meeting concerning the Applicant. While it seems likely that this matter would have concluded by now, I will assume for the present discussion that it has not. The proceedings of this meeting were recorded in what appear to be the notes of a participating CPS officer, and constitute the first seven pages (in the case of the first and seventh pages, portions thereof) of the records at issue. The Applicant did not precisely describe the nature of the Law Society complaints (though offering to provide them if required). They appear to relate in some way to the Applicant's concerns that inaccurate statements were made at that meeting, by one of the lawyers, relating to her history and then-current status as a member of the Law Society. They may also relate to the Applicant's idea that the lawyers were improperly involved in the criminal investigation of which she was the subject.

[para 155] I have reviewed the redacted personal information of third parties contained in the notes of the meeting and in the associated emailed communications. The Applicant did not explain (again, in any in any accessible way) why she believes the redacted third party personal information could assist her with respect to her complaints against the lawyers who attended the meeting, even if she were to be given an opportunity to provide further evidence for this process. While I recognize she is hampered by not having seen the redacted personal information, I have reviewed it, and it does not appear to me on its face that any of it could help the Applicant in this way. The redacted notes do indicate the attendance of a particular one of the lawyers, but the Applicant was aware of this at the time of making the complaints by virtue of other access requests she has made. A significant portion of the redacted personal information is information the Applicant already knows as a function of her direct involvement in the events being described, such that she would be able to surmise what or approximately what the redacted material consists of. This weakens the argument that she needs this information to assist her in the complaints. As well, this as well as the remaining redacted personal information of third parties has nothing to do with the statements or actions of any of the lawyers, so again, I do not

[17] As noted above at para 12, it was not possible to review all of the many hundreds of pages of information the Applicant provided in this inquiry, beyond the several hundred that I did review.

believe this information could assist the Applicant with respect to her complaints against the lawyers.[18]

[para 156] I turn to CPC/PSS complaint 16-1002, which was against a number of members of the CPS. In the Addendum of December 2017 (which the Applicant incorporates by reference into her Final Submission) the Applicant describes the aspects of these complaints to which she asserts the redacted personal information is relevant. These aspects include the following: that non-law enforcement personnel, including LSA personnel, were improperly involved in criminal investigations, and information about her in this criminal investigation was improperly shared with them; that information about her that was inaccurate was not properly investigated before it was included in CPS report 11202557, shared with others, or acted upon (this includes information regarding the dates on which she sent "notices" (or "flyers") to particular persons); that the CPS destroyed records that she had provided that were inconsistent with allegations made against her (including information she had provided to particular CPS members in CPS Files 10411004 and 04124301); that CPS failed to provide the RCMP with evidence relevant to the RCMP prosecution file; the role potentially played at the meeting and relative to the criminal investigation by a particular individual (W) who may have been invited to attend the meeting [this individual does not appear to have attended in fact]; that the CPS's representative omitted information that she had provided in responding to her subsequent access requests, and that the representative had failed to advise others that some of the information provided was misleading or false/incorrect.[19]

[para 157] I have reviewed the redacted information that is the personal information of third parties contained in the records at issue. The Applicant did not explain how such information could assist her with respect to the complaints against CPS members outlined in the preceding paragraph even if she were given an opportunity to provide further evidence for this process. While I recognize again that she is hampered by not having seen the redacted personal information, it does not appear to me from my review that it could help the Applicant in the ways she describes. As noted before, a significant portion of the redacted personal information of the third parties who were involved is information the Applicant already knows as a function of her own direct involvement in the events being described, such that she would be able to surmise what or approximately what the redacted material consists of, which again weakens the argument that she needs this information to assist her in the complaints. As well, information about the statements or actions of the involved third parties does not bear on the statements or actions of the involved CPS members that gave rise to the complaints. Similarly, the information that was redacted sheds no light and has no bearing on what information was provided to the Applicant in the responses to her subsequent access requests. Therefore, I do not accept that any of the information about third parties contained in the records could assist the Applicant with respect to her complaints against CPS members in the ways she has suggested.

[18] The recording of statements made at the meeting to which the Applicant most strongly objects are those that the Applicant believes were made about her by one of the lawyers present. These statements were not redacted, and are in any event not third party personal information.

[19] I do not know whether the CPS's representative, who while employed by CPS was not a police officer, was also the subject of the "CPS/PSS" complaint.

[para 158] I note finally in regard to these complaints, that if they have already concluded, section 17(5)(c) cannot apply regardless that they might have been of utility to the Applicant with respect to her complaints while those complaints were ongoing. (I understand that because of the delays in processing this inquiry this would be a difficult outcome for the Applicant to accept had section 17(5)(c) otherwise been applicable. However, as I find that the provision does not apply, the result is the same regardless.)

[para 159] Most of the information redacted from the records by reference to section 17(1) is third party personal information, and most of this information consists of a third party's name associated with other personal information about them. All such information in the documents at issue is therefore withholdable by reference to the presumption arising from section 17(4)(g)(i) that disclosure would be an unreasonable invasion of privacy. For most of it, given my conclusions regarding the non-applicability of section 17(5)(c) to the information, there is no factor that would outweigh the presumption.

[para 160] In accordance with the foregoing, I set out in the list below the information in the records which I find to be personal information that was properly withheld, or, in a few instances, personal information that I find was not properly withheld, adding specific explanations for some of these cases. (I add in italics my findings regarding other applicable exceptions, so as to make it easier in the end to identify pages that are withholdable in their entirety; I will discuss the application of these other exceptions more fully, and also make a separate list of items of information withholdable under each of them, under the appropriate headings below.) I also include in the list below, in italics, a number of items of information withheld by reference to section 17(1) for which I am reserving jurisdiction to make a future determination, as well as explanations as to why I am doing so. In some cases, this is of personal information that it may not be an unreasonable invasion of privacy to disclose, and in other cases, already mentioned above at para 136, it is of information which may not be personal information of third parties.

[para 161] My findings with respect to information withheld under section 17(1) are as follows:

- page 1: the redacted information on the image of an attached business card (the identity of lawyers representing third parties is the personal information of the third parties[20]); *(the redaction of most of the body is of unresponsive information unrelated to this case*)
- page 2: all the redactions except the sixth one (the 12th line on the page); the first redaction does not name anyone but the individual referred to would be identifiable by the Applicant

  The sixth redaction consists of the name and qualifications of a participant in the meeting who was employed as an advisor to the CPS[21]; while someone's name and

[20] This observation applies to all the redactions below of the information of lawyers representing third parties.

[21] In its *in camera* submissions (which I accepted in camera because it revealed the names in the redacted information), the CPS advised that the named individual was involved in the matters here under consideration as an advisor in the employ of one of its units.

professional qualifications are personal information, without more, disclosure only of qualifications and of the fact the person participated in a work-related discussion would not generally be an unreasonable invasion of privacy; therefore, I considered whether this information should be disclosed;[22] *however, before deciding whether to order disclosure of information withheld on the basis its disclosure would unreasonably invade personal privacy, representations are typically invited from the third party whose personal information it is; this has not been done for this case, and I considered further deferring this decision in order to do it; however, so as to avoid extending issuance of this order further, I have decided to instead defer my decision about this question and to notify the third party to give them an opportunity to make representations as to why this information should be withheld under section 17(1) (or have CPS make them on their behalf); I will reserve jurisdiction to make a determination after hearing from the parties*

- page 3: all the redacted information
- page 4: all the redactions except the first four words of the third redaction; the first four words would arguably meet the test under section 24(1(b)), but this was not claimed, so I will require these words to be disclosed
- page 5: the first two redactions; the name in the penultimate redaction; *(I find the final two redactions (on the last two lines on the page) are subject to section 20(3)(a); this has the consequence that the redacted name is subject to section 17(1))*

  The CPS appears to also have applied section 17 to the whole of the third redaction[23]*; as the justification for withholding this information by reference to section 17(1) is not presently clear to me, I must consider whether to order its disclosure*[24]*; the same requirement to notify the third party applies as was discussed for the sixth redaction on page 2, and I will take the same steps*[25]
- page 6: the fourth line and first word of the fifth line of the final redaction; *(all remaining redactions on the page meet the terms of section 24(1)(a) or (b), with the exception of the first redaction, for which section 24(1) was not claimed but which meets the terms of section 20(3)(a), and the second redaction*

  The second redaction is the name of a participant in the discussion; In the context in which the redacted name is found (a comment by [B]), while it is made clear the named person was participating in the discussion, the name is not associated with any personal

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[22] In saying this I recognize that all the records at issue in this case are arguably "law enforcement records", to which the presumption in section 17(4)(b) would apply with respect to any personal information contained in them. Despite this, however, section 17(1) was not generally applied by the CPS in this case to the names and statements of other persons employed by the CPS, and I was not given an explanation as to why it was applied to this name in this instance, and in other similar instances.

[23] Given the location of the section numbers being relied on, it is possible it meant section 17(1) to apply only to the name, but I cannot tell whether this was the case or not.

[24] See the discussion of redactions under section 20(3)(a) at paras 192 to 198 below, in which I note that I am not presently persuaded that section 20(3)(a) applies to the information in the third redaction.

[25] While I might have considered all of the redacted information on the page but the name of the speakers being recorded to meet the terms of section 24(1)(a) or (b), the CPS did not rely on these provisions with respect to this page.

information, nor is it possible to discern the person's contribution to the conversation; as it is not clear to me at present how disclosure of the name in this context could be an unreasonable invasion of privacy I must consider whether to order its disclosure; therefore, the same requirement to notify the third party as was discussed for the sixth redaction on page 2 applies, and I will take the same steps

- page 8: the first three redactions on page 8; the redactions of the same "subject" in the body of the final email, as well as the other items of personal information in the body of the final email; *(other than the first and next-to-last redactions in the body of the final email, the whole of the final email meets the terms of either section 24(1)(a) or 20(3)(a) and is withholdable on that basis)*

  The first and next-to-last redactions in the body of this email consist of the name of a person employed to provide advice; as it is not clear to me at present how disclosure of the name alone in this context could be an unreasonable invasion of privacy, I must consider whether to order its disclosure; therefore the same requirement to notify the third party applies as was discussed for the sixth redaction on page 2, and I will take the same steps
- page 9: the first two redactions; *(the remaining redactions meet the terms of either section 24(1)(a) or section 20(3)(a), except for the name of a person employed to provide advice to the CPS (appearing twice in the (replicated) final email), to which the comments relative to the same redactions in the preceding bullet point apply)*
- page 10: all the redactions except the final redaction in the body of the first email *(as to the latter, it meets the terms of section 24(1)(a))*
- page 11: all the redactions; the context reveals that the redacted phone number is a personal phone number[26]
- page 12: all the redactions except that in the final email for which section 20(1)(c) was claimed *(as to the latter, section 20(1)(c) applies)*
- page 14: all the redactions except for:
  - *the final redaction in the first email (this redaction is of information of an individual employed to provide advice to the CPS; as it is not clear to me at present how disclosure of the name in this context could be an unreasonable invasion of privacy, I must consider whether to order its disclosure; therefore the same requirement to notify the third party applies as was discussed for the sixth redaction on page 2, and I will take the same steps*
  - *the redactions in the "From" line in the second email (this redaction is of information of an individual employed to provide advice to the CPS; as it is not clear to me at present how disclosure of the name in this context could be an unreasonable invasion of privacy, I must consider whether to order its disclosure; therefore the same requirement to notify the third party applies as was discussed for the sixth redaction on page 2, and I will take the same steps; with respect to the email address (the second redaction in the "From" line), similar considerations apply as it is unclear if this is a work email or a personal one (or one that has personal dimensions), and I will take similar steps*

[26] The same number appears on pages 17, 18, 19 and 22 and may be withheld from those pages for that reason.

    - *the redaction in the CC line of the last email on the page; it is unclear whether this is a work email or a personal one (or one that has personal dimensions), and as with the email in the preceding bullet point, I will give the person with whose name this email address is associated an opportunity to provide submissions before making a decision as to whether it is to be withheld*
- page 15: all but the fifth redaction; *the fifth redaction relates to an individual employed to provide advice to the CPS; as it is not clear to me at present how disclosure of the name in this context, or the associated information, could be an unreasonable invasion of privacy, I must consider whether to order its disclosure; therefore the same requirement to notify the third party applies as was discussed for the sixth redaction on page 2, and I will take the same steps*
- page 16: the Applicant does not challenge this redaction
- page 17: all the redactions
- page 18: all the redactions
- page 19: the first two redactions and the personal information in the third redaction; *(the remaining information in the third redaction meets the terms of section 24(1)(b))*; all the remaining redactions on the page
- page 20: the first five lines and most of the sixth line of the first redaction; the personal information in the eighth line of the first redaction; *(all of the first redaction meets the terms of section 24(1)(b))*; the second redaction
- page 21: personal information on the second line of the second redaction*; (all of the second redaction meets the terms of section 24(1)(b))*; the personal information in the second, fourth and fifth lines of the third redaction; *(all of the third redaction meets the requirements of section 24(1)(b))*
- page 22: the first redaction *(which is also subject to 24(1)(b))*; the second redaction (which by reference to information on page 11 appears to be a personal rather than business phone number); all the remaining redactions prior to the final one; re the final redaction, the first seven lines and the first half of the eighth line; *(all of the final redaction meets the terms of section 24(1)(b))*
- page 23: the second redaction; *(the first redaction is the conclusion of the redaction on the preceding page, and falls within the terms of section 24(1)(b))*
- page 24: the second and third redactions; (the first appears to be a work number given the number also appears on a business card in other records; if a work number, the context suggests its disclosure would not be an unreasonable invasion of privacy: I will ask the CPS to make a decision accordingly and I will retain jurisdiction to determine this question if asked to do so

  The final redaction is of a name of a person performing services for the CPS; as it is not clear to me at present how disclosure of the name in this context could be an unreasonable invasion of privacy, I must consider whether to order its disclosure; therefore the same requirement to notify the third party applies as was discussed for the sixth redaction on page 2, and I will take the same steps
- page 25: both the redactions
- page 26: all the redactions in the "Subject" lines; *(the second redaction meets the terms of section 24(1)(b))*; while the CPS did not claim section 17(1) for the second redaction, it is a mandatory exception, and I find that the last sentence, although relating to work duties,

also meets the terms of this provision in that it has a personal dimension, and there are no factors outweighing the presumption arising under section 17(4)(g)(i)

The fourth redaction is the name of a person performing services for the CPS, and discloses nothing personal about them; as it is not clear to me at present how disclosure of the name in this context could be an unreasonable invasion of privacy, I must consider whether to order its disclosure; therefore the same requirement to notify the third party applies as was discussed for the sixth redaction on page 2, and I will take the same steps

The fifth redaction meets the terms of section 17(1) (I accept the CPS's argument that the presumption against disclosure in section 17(4)(d) arises with respect to most of this redaction (which no other factor outweighs), and the remainder (the last 9 words), though related to work duties, also has a personal dimension having regard to the content of the last sentence of the second redaction (which no other factor outweighs))

- page 28: all the redactions other than the final email address in the "Cc" line; *with respect to the email address, this is the same as the email address on page 14, which is discussed above, and I will take the same steps*; while the eighth redaction contains some information which is not personal information, it would be meaningless without the associated personal information, so can be withheld under section 17(1) *(the eighth redaction is also entirely subject to section 24(1)(b))*
- page 29: the redacted information; this information is an opinion about the third party held by the Applicant, which constitutes the third party's personal information by reference to section 1(n)(viii); while it appears the information was created by the Applicant, this is a factor that does not necessarily weigh in favour of disclosure (since disclosure would not reveal anything unknown to her), and I find it does not outweigh the presumption relating to personal information of a third party that arises under section 17(4)(g)(i) in the present circumstances
- page 30: all the redactions, with the possible exception of the second sentence in the first redaction. As to the latter, it is not clear whose "residence" is the subject of the reference; if this is personal information of someone other than the Applicant, it should be withheld; if it is personal information of the Applicant, there does not appear to be any basis for withholding it under section 17(1), and no other exception was claimed; I will ask the CPS to consider this question and make a decision accordingly, and I will retain jurisdiction to finally determine this question if asked to do so
- page 31: all the redactions
- page 32: all the redactions except the first one; (the first redaction concerns an unidentifiable individual and the information is in any case mainly related to working status; it should be disclosed)
- page 33: all the redactions
- page 34: the redaction; this information is an opinion about the third party held by the Applicant, which constitutes the third party's personal information by reference to section 1(n)(viii); while it appears the information was created by the Applicant, since disclosure would not reveal anything unknown to her, I find that this factor does not outweigh the presumption relating to personal information of a third party that arises under section 17(4)(g)(i) in the present circumstances
- page 35: the first three redactions ((the final redaction concerns an unidentifiable individual and the information is in any case mainly related to working status, so should be disclosed)

- page 36: all the redactions
- page 37: the first 7 words of the first line of the first redaction; the last two words of the second line and the remainder of the sentence (the third line) of the first redaction; *(the remainder of the first redaction consists of consultations and deliberations within the terms of section 24(1)(b)); however, because the same information as that in the final twelve words of the first line and the first word of the second line were disclosed from other pages of the records at issue, I will ask the CPS to take this factor into account in exercising discretion relative to this information)*; the remaining redactions
- page 103 of the records at issue from OIPC Case File 000708: the first five lines on the page do not appear to contain any personal information, nor do they appear to engage any other exception, so they should be disclosed; the remaining information replicates the final email on page 37; the email should be redacted in the same manner as I have approved above for page 37
- page 38: the first redaction; *(the second redactions consists of advice within the terms of section 24(1)(a))*
- page 40: all the redactions; *(the second redaction also consists of consultations and deliberations within the terms of section 24(1)(b))*
- page 42: all the redactions except the first (two lines), the last, and the contiguous two redactions in the center of the page; *(the first redaction (two sentences) and final redaction (last sentence) consist of consultations and deliberations within the terms of section 24(1)(b); however, since the (redacted) fourth sentence in the first email on this page is of the same type as information in the part of the final email that was disclosed, and is very similar to information on page 40 that was also disclosed, I will ask the CPS to re-exercise its discretion with respect to the former taking this factor into account; the two contiguous redactions in the center of the page are also consultations and deliberations within the terms of section 24(1)(b))*[27]
- page 44: all the redactions
- page 45: the redaction
- page 46: all the redactions, with the exception of the final one, and the possible exception of the third one, which is a telephone number; it is unclear if this is a work or personal number; if a work number, it may still qualify as "personal information" by reference to section 1(n)(i) of the Act (and thus for the presumption against disclosure under section 17(4)(g)(i) to arise). If that is so, however, the absence of any personal dimension to this information could be a factor that weighs in favour of disclosure. Therefore, in the event it is such a business number, the CPS should consider whether its disclosure would be an unreasonable invasion of privacy*; (the final redaction consists of consultations and deliberations within the terms of section 24(1)(b))*
- page 47: the first four redactions and the personal information regarding the property of an individual in the final redaction; *(the remainder of the final redaction consists of consultations and deliberations within the terms of section 24(1)(b))*
- page 48: all the redactions

[27] See the discussion below at para 181 (under the bullet point for page 42) regarding the fact that the CPS initially relied on section 27 to withhold this information.

- page 50: the first, second, fourth and fifth redactions*; (the third (major) redaction on the page contains some personal information, but all of it consists of consultations and deliberations within the terms of section 24(1)(b))*
- page 51: the redaction
- page 53-54: the first two redactions on page 53 and the final two on page 54; *(the third (major) redaction on pages 53-54 contains some personal information, but all of it consists of consultations and deliberations within the terms of section 24(1)(b))*
- page 55: all the redactions
- page 56: all the redactions with the exception of those in the first row of the chart on this page, the second name in the first row of the second column, and the seven lines beneath the chart

  The redactions in the first row are of actions to be taken in the actor's work capacity, so do not qualify as personal information, other than the name[28]; I will therefore require disclosure of all the information in the first row; disclosure of the second name in the first column of the second row would not be an unjustifiable invasion of privacy as the named person is performing work duties; for the same reason, disclosure of the name in the second column of the third row would not be an unjustified invasion of privacy, so both these names should be disclosed[29]; the information in the third column of the third row does not consist of personal information, so these items of information should be disclosed;

  With respect to the seven lines below the chart, while much of the information in the seven lines arguably meets the terms of section 24(1)(b), the CPS relied on the exception in section 17(1) rather than section 24(1)(b) in withholding this information; it appears that part of the first sentence (the fourth word and words eleven to fifteen) as well as the last nine words of the third sentence consist of personal information, and I agree that disclosure of words eleven to fifteen of the first sentence and the last nine words of the third sentence would be an unreasonable invasion of privacy, and should be withheld

  It is not clear to me, however, that disclosure of the fourth word of the first sentence would be an unreasonable invasion of privacy given its work-related context: similarly, it is not clear to me that the portions of the first sentence not already discussed, nor the whole of the second sentence, consist of personal information, given the precedents from this office regarding persons acting in a work-related or representative capacity; therefore, I must consider whether to order its disclosure, and the same requirement to notify the third party applies as was discussed for the sixth redaction on page 2; accordingly, I will take the same steps relative to this information

  The greatest part of the remainder of the seven lines (this excepts the last nine words of the third sentence) does not appear to be third party personal information; however, as

[28] The disclosure of the name would not be an unreasonable invasion of privacy; while the information in the first column of the first row might allow some speculative inferences as to events or actions involving third parties relating to this information, there is no personal information that could be inferred with certainty or even to any significant degree of likelihood.

[29] I have decided not to provide notification and an opportunity to make submissions to the parties whose names, as they appear in the chart, I am ordering to be disclosed; I do not see that these persons would regard this disclosure as an unreasonable invasion of privacy, particularly as they are acting in a work capacity, and information of the same type is disclosed elsewhere in the records.

the CPS appears to have characterized this information in this way, I will include it in the information for which I am deferring my decision

- page 57: the first redaction is of an email address; it is not clear if this is a personal or business email address; if it is personal, it may be withheld as a function of the presumption against disclosure for names associated with other personal information; if it is an email address at which its holder is to be contacted in a representative rather than a personal capacity, it may still qualify as "personal information" by analogy to other items of contact information, such as telephone numbers, in section 1(n)(i) of the Act (and thus for the presumption against disclosure under section 17(4)(g)(i) to arise); if that is so, however, the absence of any personal dimension to this information could be a factor that weighs in favour of disclosure; I will ask the CPS to consider these factors and make a decision accordingly, and I retain jurisdiction to finally determine this issue

  All the remaining redactions are third party personal information except the first two and final lines of the sixth one (which replicates the first row of the chart on page 56, just discussed), and the third line of the final one; for the reasons given relative to the same information in the preceding bullet point, I will order disclosure of the information replicated on page 57 that I find above (as it appears on page 56) is not third party personal information

  With respect to the names of persons acting in their representative capacities, for the reasons given above relative to the same information as it appears on page 56, disclosure would not be an unreasonable invasion of privacy and I will order these names to be disclosed
- page 58: the first redaction replicates the seven lines beneath the chart on page 56, and the comments made above relative to the same information on page 56 apply; the remaining redactions consist of third party personal information and should be withheld
- page 59: all the redactions except the third one; the third redaction is a phone number, which does not appear to be a personal number given its context; if it is, it may be withheld as a function of the presumption against disclosure for names associated with other personal information under section 17(4)(g)(i); if it is a cell business phone it may be withheld under section 20(1)(m), on the basis of my reasoning at para 303 of the associated order (F2020-13); if it is a business number that is not a cell number, but is a contact number for the person to whom it has been assigned in a representative rather than a personal capacity, it may still qualify as "personal information" by reference to section 1(n)(i) of the Act (and thus for the presumption against disclosure under section 17(4)(g)(i) to arise); if that is so, however, the absence of any personal dimension to this information could be a factor that weighs in favour of disclosure; I will ask the CPS to make a determination about this number having regard to these factors, and I will retain jurisdiction to review this decision if requested
- page 60: all the redactions
- page 61: all the redactions
- page 62: the first, third, fifth and sixth redactions; the seventh to eleventh words of the second line of the second redaction; *(the remainder of the second redaction consists of consultations and deliberations within the terms of section 24(1)(b), as does the fourth redaction; however, the fact some of the information in the final sentence of the second redaction and the first sentence of the fourth redaction was disclosed to the Applicant from other pages (for example, in the latter case, from the chart on page 56) should be*

taken into account as a factor in exercising discretion under section 24(1)(b) as to whether to withhold the same information as it appears here)

- page 63: the first, fourth, fifth and sixth redactions; the second redaction is of an email address; it is not clear if this is a personal or business email address; if it is personal, it may be withheld as a function of the presumption against disclosure for names associated with other personal information; if it is an email address at which its holder is to be contacted in a representative rather than a personal capacity, it may still qualify as "personal information" by analogy to other items of contact information, such as telephone numbers, in section 1(n)(i) of the Act (and thus for the presumption against disclosure under section 17(4)(g)(i) to arise); if that is so, however, I believe the absence of any personal dimension to this information could be a factor that weighs against disclosure; I will ask the CPS to make a new determination about this email address having regard to these factors, and I will retain jurisdiction to review this decision if requested; *(the information in the third redaction falls within the terms of section 24(1)(a))*
- page 64: all the redactions except the redacted telephone number, which is the same number as the one appearing on page 59, discussed above, and the same considerations apply
- page 65: the redaction.

[para 162] The audio file was also withheld in reliance on section 17. The Applicant has stated that she believes the audio file may be a recording of the meeting of which notes were taken (pages 1 to 7 of the records at issue). That is not the case. I have listened to the recording and it consists of two sentences, totaling approximately 10 words. (The first word or words is unintelligible.)

[para 163] The CPS argues that what is recorded in the audio file reveals some information of a third party. I have listened to the recording and there is nothing in it about a third party. I acknowledge that, as the CPS points out in its *in camera* submissions about this record, the fact the CPS is in possession of the recording gives rise to an inference that could be said to constitute the personal information of a third party. However, to qualify as personal information, information must be recorded information about an individual. In this case, while I agree that it might be possible to draw an inference about an individual (though not with certainty), it would be drawn not from the substance of the recorded information, but rather, from a fact about the information that is independent of its content (the latter being a fact which is not "recorded").

[para 164] I believe that where an inference that constitutes personal information can be drawn from recorded information, the recorded information can itself be said to constitute personal information (in that it reveals it). However, that is not the case here. The recorded information in the audio recording is neither about a third party, nor does it reveal information about a third party by inference. Therefore, in my view, it does not meet the definition of personal information in section 1(n) of the Act.

[para 165] As section 17(1) is the only provision on which the CPS relied to withhold the information, I will order it to disclose the information to the Applicant.

[para 166] I will deal next with the information the CPS withheld on the basis of section 24, as that is the provision relied on to withhold the next-highest number of records.

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?

[para 167] Section 24)(1)(a) and (b) provide as follows:

> *24(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal*
>
> > *(a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council,*
> >
> > *(b) consultations or deliberations involving*
> >
> > > *(i) officers or employees of a public body,… .*

[para 168] Some of the redacted information to which the CPS applied section 24 is advice given by its own members or is consultation in which its own members were engaged, but some of it is advice given by or consultations engaged in with individuals employed by other organizations.

[para 169] In Order F2008-008, the Adjudicator considered whether section 24 applies when the advice that is given is given by someone other than an employee or service provider of the Public Body. He said the following:

> [para 42] In my view, for information to be developed by or on behalf of a public body under section 24(1)(a) of the Act, the person developing the information should be an official, officer or employee of the public body, be contracted to perform services, be specifically engaged in an advisory role (even if not paid), or otherwise have a sufficient connection to the public body. I do not believe that general feedback or input from stakeholders or members of the public normally meets the first requirement of the test under section 24(1)(a), as the stakeholders or members of the public do not provide the information by virtue of any advisory "position". This is even if the public body has sought or expected the information from them.
>
> [para 43] To put the point another way, the position of the party providing information under section 24(1)(a) – or the relationship between that party and the public body – should be such that the public body has specifically sought or expected, or it is the responsibility of the informing party to provide, more than merely thoughts, views, comments or opinions on a topic. General stakeholders and members of the public responding to a survey or poll are not engaged by the public body in a sufficient advisory role. They have simply been asked to provide their own comments, and have developed nothing on behalf of the public body.
>
> [para 44] I distinguish the foregoing, however, from situations where a public body might ask a specific stakeholder – who has a particular knowledge, expertise or interest in relation to a topic – to provide advice, proposals, recommendations, analyses or policy options for it, thereby engaging the stakeholder to develop information "on behalf of" the public body. In other words, I

> do not preclude the possibility of a stakeholder providing advice, etc. by virtue of its position, and therefore within the meaning of section 24(1)(a) of the Act. In such a case, the stakeholder (again, even if not paid) would be specifically engaged in an advisory role and therefore have a sufficiently close connection to the public body. This may be what occurred in the context of the inquiries that gave rise to some of the previous orders of this Office, which are discussed above.

[para 170] In the present case, some of the participants in the meeting whose comments were recorded in the notes, or were contained in email communications about the meeting, were not officials or employees of the CPS. The same is true of some of the persons involved in some of the other emailed communications concerning the Applicant.

[para 171] I agree with the reasoning of the Adjudicator in Order F2008-008. With respect to the participants in the meeting, I find that all of the officials, or members of other organizations, who attended the meeting shared a mutual concern as to how to proceed with respect to the related matters involving the Applicant. The discussions that took place informed the on-going decision-making by all the participants, including the CPS, as to how to proceed relative to the matters of concern involving the Applicant. Each of them was responsible to make or advise upon decisions so as to try to achieve an optimal outcome relative to the interests they were representing, and each of them, including the CPS, were consulting with and/or providing relevant information on the related matter to one another. As such, I find that they were all either CPS officials or employees, or, for the subject-matter at hand, they were persons who were "specifically engaged in an advisory role and therefore [had] a sufficiently close connection to the public body" to be considered as advisors of the Public Body within the terms of sections 24.

[para 172] While I note that the Applicant expresses her view that the involvement of non-CPS personnel in CPS investigations is improper, and takes the matter outside the scope of section 24(1)(b), she has not explained the basis for this belief or provided any authority for this viewpoint, and I do not see that such consultations are inherently problematic. Police forces must necessarily and routinely involve third parties or organizations in their investigations and in discharging their peace-keeping responsibilities, as well as in seeking information for these purposes, and they must share necessary information in the course of doing so. The other parties involved in the ongoing discussion were not directing the CPS's investigation but were providing information relevant to the matter, respecting which CPS had decision-making responsibilities. Indeed considerable portions of the discussion did not concern an investigation so much as efforts by the CPS to effectively engage in its peace-keeping function, which the other participants were attempting to support.

[para 173] Accordingly, I find that not only members of the CPS, but also the other involved parties, qualified as advisors or consultants to the CPS both in the context of the proceedings of the meetings that were recorded, and in the context of the other emailed communications that related to the matters in which the Applicant was involved and about which these bodies were mutually concerned.

[para 174] If I am wrong in my conclusion that these other organizations/individuals are properly regarded as consultants/advisors to the CPS, an alternative analysis applies that has the same result. The non-CPS parties who were involved in the recorded discussions, including the

LSA's lawyer, were acting as representatives of third parties, including employees or officials of the LSA, who were either named or whose identities could be determined or inferred from the context. The contributions to/involvement in the conversations by these representatives revealed the manner in which they were acting on behalf of or in support of the interests of their third party clients. On the basis of the idea that what a lawyer does on behalf of their client is the client's personal information, the lawyers' participation in the discussions constituted or revealed third party personal information of individuals who were, either directly or as LSA employees or officials, the lawyers' clients. While the CPS did not claim that section 17(1) applied in each case in which such participation was recorded (in some cases claiming only section 24(1)), section 17(1) is a mandatory exception that applies even if it has not been claimed. As the presumption under section 17(4)(g)(i) would arise with regard to this recorded personal information, and as there is no factor in favour of disclosure that would outweigh it, section 17(1) is an alternative ground for withholding the contributions to the discussions by non-CPS participants that were withheld under section 24(1)(a).

[para 175] With respect to the various CPS members who were involved in the meetings and emailed communications, it is clear from the context and communicated information that each of them was tasked with making various kinds of decisions as to how to proceed in the related matters of concern.

[para 176] I also note that the contributions of the various participants in the meetings and emails did not necessarily take the form of direct requests for advice and direct replies. Rather, while there was a question to be addressed (concerns about the activities of the Applicant) that underlay the discussions as a whole, the conversations and communications presumably moved spontaneously from one sub-topic to another, and, in the case of the group meeting, from one speaker to another. I do not find it necessary, therefore, to try to strictly segregate requests for advice from advice, nor statements that take the form of definitive assertions or conclusions from statements that are offered tentatively so as to elicit or provide the basis for further discussion. Nor do I treat the description of a single step to be taken as a 'decision' in contrast to a 'deliberation' where the step is one about which discussion will continue. With respect to the meeting notes in particular, it is also impossible to be precise because the notes took a summary form, and depended on the note-taker's understanding of what was being said.

[para 177] Given these observations, I find that the following redacted information constitutes advice within the terms of section 24(1)(a):

- page 6: the fifth and final redactions; the fifth redaction indicates an option for action; the final redaction is an instance in which the summarizing nature of the information makes it difficult to distinguish between "advice" within the terms of section 24(1)(a) and "consultations and deliberations" within the terms of section 24(1)(b); because the redacted information reflects the reasons for proposed future actions, I accept the CPS's characterization of it as advice
- page 8: the portions of the final email for which section 24(1)(a) was claimed are withholdable on that basis; *(the first and next-to-last redactions in the body of this email, consist of the name of a person employed to provide advice, which is not information*

subject to section 24)(1)(a)[30] *(section 17(1) rather than 24(1)(a) was claimed for this information in any event, and these redactions are among those for which I will be providing third party notice)*

- page 9: the second (final) email is the same as the final email on page 8, and the same comments apply – i.e., that the redactions in the body of the second email for which section 24(1)(a) was claimed meet the terms of this provision
- page 10: the final redaction in the body of the first email meets the terms of section 24(1)(a), in that it provides information and advice for decisions to be made by the recipient, together with others, in his role in addressing the ongoing matters relating to the Applicant; although the provider of the advice was not a member of CPS, she was specifically engaged in a consultative role within the terms of the discussion at paras 168 to 173 above, and therefore had a sufficiently close connection to the CPS to be considered as an advisor to it at the same time as acting on behalf of her own client
- page 38: the second redactions consists of advice within the terms of section 24(1)(a)
- page 63: the information in the third redaction falls within the terms of section 24(1)(a); while the sender of the email was asking questions that would inform her own decision making, she was at the same time providing information and asking questions that would help the CPS member focus his decision-making relative to matters relating to the Applicant (which were the subject of an ongoing discussion among a number of participants including the CPS, and private individuals and organizations).

[para 178] With respect to exercise of discretion relative to its application of both section 24(1)(a) and 24(1)(b), the CPS stated:

> With respect to the exercise of discretion in relation to the application of both s. 24(1)(a) and (b) , it is important that CPS employees feel free to ask questions and discuss process without fear of their questions being made public. Any chilling effect on the ability of CPS employees to freely consult negatively impacts the workplace. This applies also when the CPS is involved in joint investigations with other agencies.
>
> When people do not feel free to consult or are concerned that their consultations may be the subject of an access to information request, mistakes happen and the ability of members to learn from others is negatively impacted. This is why these types of consultations are protected and it is submitted this is a reasonable exercise of the discretion associated with the application of s. 24(1).

[para 179] I accept this justification with respect to both subsections of section 24(1). While it is possible the Applicant desires the redacted information in the records for the purposes of

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[30] In Order F2004-026 (at para. 89), the Commissioner stated:

> … the Public Body is entitled to withhold under sections 24(1)(a) and 24(1)(b) only the records or parts of them that reveal substantive information about the matter or matters on which advice was being sought or given (Bill 27), or about which the consultations or deliberations were being held. The remainder of the information cannot be withheld under section 24(1)(a) or (b). The latter includes the names of correspondents, dates and, in many cases, subject lines, as well as documents or parts of documents that express the fact that advice is being sought or given or that information is being conveyed, without revealing any substantive content. …

complaints she has made or might make against the participants, access to advice or consultations or deliberations by decision-makers for such a purpose in the present context would compromise the free discussions about the decisions to be made that sections 24(1)(a) and (b) are meant to protect.

[para 180] Turning to consultations or deliberations under section 24(1)(b), in Order F2012-10, the Adjudicator stated the following (at para 37):

> A consultation within the terms of section 24(1)(b) takes place when one of the persons enumerated in that provision solicits information of the kind subject to section 24(1)(a) regarding that decision or action. A deliberation for the purposes of section 24(1)(b) takes place when a decision maker (or decision makers) weighs the reasons for or against a particular decision or action. Section 24(1)(b) protects the decision maker's request for advice or views to assist him or her in making the decision, and any information that would otherwise reveal the considerations involved in making the decision. Moreover, like section 24(1)(a), section 24(1)(b) does not apply so as to protect the final decision, but rather, the process by which a decision maker makes a decision.

The Adjudicator also addressed the question of whether the person being consulted must have a delineated responsibility to provide advice to the decision maker who is requiring the advice. She said:

> … There is no requirement in section 24(1)(b) that a decision maker consult with only those whose delineated responsibility or duty it is to provide advice to that decision maker. A consultation or deliberation falls under section 24(1)(b) so long as one of the individuals enumerated in section 24(1)(b) consults or deliberates. However, unsolicited views regarding a decision will not fall under section 24(1)(b).[31]

[para 181] Given these considerations, I find that the following redactions constitute consultations or deliberations within the terms of section 24(1)(b):

- page 6: the third and fourth redactions: this redacted information reveals some considerations that were taken account in subsequent CPS decision-making
- page 19: all the information in the third redaction (including the personal information discussed above in the relevant bullet point under para161) meets the terms of section 24(1)(b); while the communication is to a person who is not a CPS member, the email is part of the discussion relative to issues concerning the Applicant in which the CPS, together with a number of individuals and organizations, were mutually engaged and making decisions, and it summarizes matters regarding which advice has been solicited

[31] See also Order F2009-047 at para 49 wherein the Adjudicator said: "I accept the Public Body's general submission that it "…applied section 24(1)(b) to protect the consultations or deliberations involving employees of a public body and third parties which lead [sic] to the decision making process and the contents of draft legislation. The Minister acted on the advice and recommendations and disclosure would divulge the basis for the action taken."

from other CPS members;[32] the information in the last redaction, which also all consists of third party personal information, meets the terms of section 24(1)(b) (the same redaction continues onto page 20); while the communication is from a person who is not a CPS member, the email is part of the discussion relative to issues concerning the Applicant in which the CPS, together with a number of representatives of other organizations or third parties, were mutually engaged and making decisions, and informs the discussion/decisions[33]

- page 20: the entire first redaction, including (as just noted) the first three lines of it that begin on page 19, meets the terms of section 24(1)(b); while the communication takes the form of a request for advice and information made to the CPS by the representative of a third party, the material that is conveyed informs the advice that the CPS member is called upon to give as well as his decision regarding the requested information; *(the first part of the redaction, which continues from page 19, is also withholdable third party personal information, as are parts of the remainder)*
- page 21: the second and third redactions meet the terms of section 24(1)(b) (therefore, I need not consider the section 20(1) exceptions that were also applied)
- page 22: the first redaction (which continues from page 21); the email containing the final redaction (which continues on page 23) replicates that on page 20, and I reach the same conclusion (that section 24(1)(b) applies to the entire redaction, *(and section 17(1) also applies)*
- page 23: the first redaction is the conclusion of the redaction on the preceding page, and, as just discussed, falls within the terms of section 24(1)(b) *(and section 17(1))*
- page 26: the second redaction meets the terms of section 24(1)(b) *(and the last two sentences meet the terms of section 17(1))*
- page 28: the eighth redaction *(which is also withholdable as consisting of third party personal information)* meets the terms of section 24(1)(b); the comment in the text associated with footnote 33 applies
- page 37: the first redaction consists of consultations and deliberations within the terms of section 24(1)(b); the content of the final twelve words of the first line and the first word of the second line is information that was shared from other pages of the records, which is a factor that should be taken into account in the exercise of discretion relative to this information
- page 40: the second redaction consists of consultations and deliberations within the terms of section 24(1)(b); therefore, I need not consider the section 20(1) exceptions that were claimed; *(this redaction also consists of withholdable personal information of a third party)*
- page 42: the first redaction (two sentences) and final redaction (last sentence) consist of consultations and deliberations within the terms of section 24(1)(b); while the emails were between CPS and a person who is not a CPS member, they were part of an ongoing discussion relative to issues concerning the Applicant in which the CPS, together with

[32] The collaborative nature of the discussion also characterizes the other emails discussed below where the recipient is not a member of the CPS.

[33] The same applies to other emails discussed below where the sender is not a member of the CPS.

representatives of third parties/organizations, were mutually engaged; however, since the (redacted) fourth sentence in the first email on this page is of the same type as information in the part of the final email that was disclosed, and is very similar to information on page 40 that was also disclosed, I will ask the CPS to re-exercise its discretion with respect to the former

The two contiguous redactions in the center of the page were originally withheld under section 27, but the CPS is no longer relying on section 27; rather, it now takes the position that section 24(1)(b) applies; earlier orders of this office have held that a satisfactory explanation must be given for the late raising of a discretionary exception; the CPS advises that the initial application was an error (in that the lawyer who was initially thought to have been given legal advice to the CPS had not being doing so in fact), but the intention had still been to protect consultations by the CPS; since the email in question was part of the ongoing discussion described above, and did, in my view, constitute part of the consultations and deliberations in which CPS was seeking relevant information from other parties about a common concern, I accept the explanation that the wrong provision was applied in error, and that section 24(1)(b) applies[34]

- page 46: the final redaction consists of consultations and deliberations within the terms of section 24(1)(b); while the communication takes the form of a request for advice and information made to the CPS by the representative of a private organization (the LSA), the material that is conveyed informs the decision the CPS member is to make regarding the advice that he is called upon to give as well as his decision-making regarding further information he is being requested to provide
- page 47: the final redaction consists of consultations and deliberations within the terms of section 24(1)(b); the comments respecting the redaction on page 46 apply
- page 50: the third (major) redaction on the page contains some personal information, but it consists in its entirety of consultations and deliberations within the terms of section 24(1)(b); again, while the person providing the information was not a member of the CPS, the person was engaged together with the CPS in an ongoing way in finding solutions to a common concern, and the information given meets the claimed exception in that it informs and reflects the reasons for the CPS member's decision making as to how to address the concern
- page 53-54: the third (major) redaction on pages 53-54 contains some personal information, but it consists in its entirety of consultations and deliberations within the terms of section 24(1)(b); again, while the people engaging in the discussion were not all members of the CPS, those who were not were engaged together with the CPS in an ongoing way in finding solutions to a common concern, and the information given meets the requirement of the provision in that it informs and reflects the reasons for the CPS member's decision making as to how to address the concern.
- page 62: the second and fourth redactions (which include some third party personal information) consist of consultations and deliberations within the terms of section 24(1)(b); the sender was not a CPS member but the information informs and reflects CPS decision-making; the fact some of the information in the final sentence of the second

[34] The redacted information in the part of the email for which section 27 was formerly claimed informs the CPS member's response, including the further steps he thinks may be appropriate, as expressed in the redacted information in the first email on the page.

redaction and the first sentence of the fourth redaction was disclosed to the Applicant from other pages (for example, in the latter case, from the chart on page 56) should be taken into account as a factor in exercising discretion as to whether to withhold the same information as it appears here.

[para 182] Whether the CPS's exercise of discretion under section 24(1)(b) was appropriate has already been discussed above at paras 178 to 179. These comments apply except with respect to the specific factors to be taken account for particular items of information (where similar information has already been disclosed) as specified in the bullet points above.

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

[para 183] The relevant portions of section 20 provide as follows:

> *20(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to*
>
> > *(c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement,,*
> >
> > *...*
> >
> > *(m) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system, or*
> >
> > *...*
>
> *(3) The head of a public body may refuse to disclose information to an applicant if the information*
>
> > *(a) is in a law enforcement record and the disclosure could reasonably be expected to expose to civil liability the author of the record or an individual who has been quoted or paraphrased in the record… .*

[para 184] In its Index of Records Table 2, the Public Body indicates it applied section 20(1)(c) to information on pages 12, 21, 22 and 40. As I have already held that most of this information was properly withheld under section 17(1), I will not consider the application of section 20(1)(c) to it. The exceptions include a redaction in the middle of the final email on page 12, and the redaction of a single word on page 21 (the first redaction).

[para 185] As to the redaction on page 12, I accept CPS's submission (initial submission, para 43) that this exception applies because the Applicant's awareness of use of a procedure could undermine its effectiveness.

[para 186] As to page 21, the CPS applied this provision to page 21 (as well as 22 and 40) on the following basis: that it "protect[s] a communication system and procedure currently used by

the CPS known as a POVI. A POVI is a "potential for violence" designation. It is used to protect officer safety. As soon as those who may wish to do harm to the police understand how a safety mechanism such as a POVI works (as opposed to simply knowing it exists), they can work to defeat the system putting officers at real risk of harm including possible assault or death."

[para 187] I agree that the more extensive discussions relating to this topic on page 21 might have some of the effects with which CPS is concerned. However, as the CPS has also relied on section 24(1)(b) to withhold these discussions, and as I have held that section 24(1)(b) applies, this content can be withheld regardless. With respect to the single redacted term, (the first redaction) I do not see that the redacted information has the problematic effect described in the preceding paragraph. Although the sentence suggests that a decision to take a particular action may have been made, neither the reference in the text of the email, nor the context in which it is found, provide the kind of information with which the CPS is concerned; indeed, since it is merely a prospective action that was being discussed, it is not clear that it was ever taken, nor even whether the "follow-through" involved further decision making, in contrast to implementation of a decision. Therefore I do not believe section 20(1)(c) applies to the first redaction.

[para 188] The CPS applied section 20(1)(m) to pages 11, 17, 18, 19, 21, 22, 40, 59, and 64. I have already held that other exceptions to disclosure apply to all the information in these pages, with the exception of the single redacted word on page 21, just discussed, and the phone number of CPS member [H] that appears on both pages 59 and 64.

[para 189] With respect to the single redacted term on page 21, for the reasons just given at para 187, I do not believe that the kind of harm section 20(1)(m) is meant to protect could be caused by disclosure of this single term. I will therefore order this redacted information to be disclosed.

[para 190] With respect to the phone numbers on pages 11, 17, 18, 19 and 22, the information on page 11 makes it clear that this is a personal cell phone. I have already held that section 17(1) applies to all these redactions.

[para 191] With respect to the phone number that appears on pages 59 and 64, the CPS says the phone numbers that were withheld were all "CPS member cell phone numbers". However, the CPS does not indicate on what basis it concluded that the number appearing on pages 59 and 64 was a cell phone number rather than a business land line. As discussed in the associated order F2020-13, I accept the CPS's argument that giving access to the public to work cell phones of police officers has the potential to cause the types of harms the CPS described; however, I have no basis for concluding that these same considerations would apply to CPS land lines. Therefore I would ask that CPS confirm that the latter two redactions are of a cell phone number. If they are, these phone number on both these pages can be withheld by reference to section 20(1)(m).[35]

[35] I have already discussed above (at page 45) that in the event the number is not a cell phone but a land line, the question arises whether it can be withheld under section 17((1) as personal information. Even if the number in question is a contact number for the person to whom it has been assigned in a representative rather than a personal capacity, it may still qualify as "personal information" by reference to section 1(n)(i) of the Act (and thus for the

[para 192] The CPS applied section 20(3)(a) to information on pages 5, 6, 8 and 9. It argues as follows:

> The statements that are protected are opinions and statements relating to the Applicant and a propensity for civil litigation and in particular the protracted litigation that culminated in the judgment of Justice Park: […] 2010 ABQB 656. The basis for that propensity is referred to and it (sic) these statements which lead to a real risk of the Applicant attempting to restart civil proceedings in relation to these matters. For these reasons the information was protected.

[para 193] With respect to page 5, the first redaction which it appears was withheld on the basis of this provision is a description, apparently given by a person present at the meeting (although the recording of the statement is by another person who I believe to be a CPS member). The material simply refers to a court decision and some descriptive terms that were used in that decision[36], and indicates agreement with these statements. I do not presently see how quoting a court decision with approval, even if this is done in a way that suggests the relevance of the decision to a particular context to which it clearly relates, could expose the person doing so to civil liability. (While the redacted material arguably falls within the purview of "consultations and deliberations" relative to the issues being discussed at the meeting in the sense that it was intended to inform this discussion and the resulting decision-making, this exception was not claimed.) However, since the CPS also relied on section 17 to withhold this information, I will add it to the information for which I am deferring a decision in order to allow the third party whose personal information it is said to be to make representations.)

[para 194] The redactions at the bottom of page 5 and the top of the next page (page 6) are of opinions given by the person speaking (as noted by the CPS member) about the Applicant. Unlike the material described in the preceding paragraph of this order, these statements consist of the person's own opinions. I note that in contrast to the circumstances in which the Applicant brought the complaints she described in her Addendum, these statements do not assert facts which the Applicant might regard as demonstrably in error, and as likely to undermine her reputation in consequence; therefore, they are not necessarily such as would prompt the Applicant to bring a complaint. Despite this, given the number of times the Applicant has brought complaint or other proceedings against other individuals, I believe they are still reasonably likely to cause her to bring proceedings against the speaker.

[para 195] I do not believe that the application of section 20(3)(a) depends on predicting that some type of court or administrative proceeding based on this statement would be successful; an adjudicator cannot take the place of the decision maker in any such proceedings to try to decide the likely outcome, which would depend on many unknown factors. Rather, I believe it is enough

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presumption against disclosure under section 17(4)(g)(i) to arise). If that is so, however, the absence of any personal dimension to this information could be a factor that weighs in favour of disclosure. Therefore, in the event it is such a business number, I will ask the CPS to consider whether its disclosure would be an unreasonable invasion of privacy, and to make a decision accordingly.

[36] The penultimate word may not be a quote from the decision, but is illegible.

that there be a reasonable likelihood proceedings would be taken, In other words, I regard the phrase "expose to civil liability" as applicable where there is a reasonable likelihood the speaker would be subjected to a proceeding in which their liability would be determined.

[para 196] As well, although the phrase "civil liability" is often used in relation to court proceedings for damages, I do not read the phrase as necessarily confined to such proceedings. Rather, reading "liable" as "responsible by law or legally answerable"[37], I regard "civil liability" in the context of section 20(3)(a) as extending to non-criminal proceedings in which a person can be held to account in relation to some regulatory rule or regime or can be required to abide by it. I believe this would be in accord with the intention of the provision which is to ensure that persons providing information in law enforcement proceedings are able to speak freely (subject to information disclosure requirements that are imposed for the sake of fairness in the proceedings themselves).[38] While generally this concern would be in relation to third party witnesses, where law enforcement personnel would be the potential objects of proceedings taken against them by an access requestor, I believe this principle would apply to them as well.

[para 197] In view of my interpretation of section 20(3)(a) just discussed, and the Applicant's propensity to take bring complaint proceedings, I find that the statements at the bottom of page 5 and top of page 6, may be withheld by reference to section 20(3)(a). While the CPS did not rely on this provision to withhold the name of the speaker, given section 20(3)(a) applies to what the person said, the name was properly withheld by reference to section 17(1).

[para 198] With regard to the final (replicated) emails on pages 8 and 9, to portions of which section 20(3)(a) was also applied, I accept that the portions redacted on the basis of this provision meet its terms, based on the nature of the material (opinions given by the speaker), and my comments in the preceding paragraphs.

Issue 5: Did the Public Body properly apply section 27(1)(a)[39] (privileged information) to the information it severed from the records under these provisions?

[para 199] In its initial submission the CPS retracted its reliance on this provision, but claimed that section 24(1)(b) applied to the information (in page 42) it had withheld under section 27(1)(a). Therefore I do not need to consider the application of section 27(1)(a). I have accepted the CPS's arguments with respect to the application of section 24(1)(b) to this information as set out in the bullet point relating to page 42 in para 181 above.

Conclusions with respect to the redacted information (Issues 2 to 5)

[para 200] The following information should be disclosed:

[37] See the Cambridge English Dictionary on line.

[38] In this regard see B.C. Order F18-05 at paras 26 to 28., citing a decision of the Supreme Court of Canada (R v. Quesnelle, 2014 SCC 46 (CanLII))

[39] The Public Body's initial submission mentions section 27(1)(b), but it did not rely on that provision in fact.

- page 4: the first four words of the third redaction
- page 21: the first redaction
- page 32: the first redaction
- page 35: the final redaction
- page 103: the first five lines
- page 56: the redacted information in the first row of the chart; the second redacted name in the first column of the second row; the redacted information in the second and third column of the third row
- page 57: the sixth redaction (which replicates the first row of the chart just discussed), the first of the two names in the eighth redaction, and the second and third lines of the final one
- the audio recording

[para 201] Further decisions are to be made respecting the following:

- page 24: the first redaction appears to be a work number, given the number also appears on a business card in other records; if a work number, it does not appear that disclosure would be an unreasonable invasion of privacy; I ask the CPS to consider these factors and make a decision accordingly, and I retain jurisdiction to decide this question should I be asked to review the decision
- page 30: with respect to the second sentence in the first redaction, it is not clear whose "residence" is the subject of the reference; if this is personal information of someone other than the Applicant, it should be withheld; if it is personal information of the Applicant, there does not appear to be any basis for withholding it; I ask the CPS to consider these factors and make a decision accordingly, and I retain jurisdiction to decide this question should I be asked to review the decision
- page 37: with respect to the final twelve words of the first line and the first word of the second line of the first redaction, the same information was disclosed from other pages of the records at issue; I ask the CPS to re-exercise its discretion relative to this information taking this factor into account
- page 103 of the records at issue from OIPC file 000708: the information on this page that replicates the final email on page 37 should be redacted in the same manner as on page 37
- page 42: the (redacted) fourth sentence in the first email on this page is of the same type as information in the part of the final email that was disclosed, and is very similar to information on page 40 that was also disclosed; I ask the CPS to re-exercise its discretion with respect to this sentence taking this fact into account
- page 46: the third redaction is a telephone number; it is unclear if this is a work or personal number; if a work number, I direct the CPS to consider whether its disclosure would be an unreasonable invasion of privacy having regard to the factors set out in the related bullet point in para 161 above; if not, it should be disclosed; I will retain jurisdiction to decide this question should I be asked to review it
- page 57: the first redaction is of an email address; it is not clear if this is a personal or business email address; if it is personal, it may be withheld; if it is an email address at which its holder is to be contacted in a representative rather than a personal capacity, I

direct the CPS to consider whether its disclosure would be an unreasonable invasion of privacy having regard to the factors set out in the related bullet point in para 161 above, and to make a decision accordingly, and I retain jurisdiction to review this decision if requested

- page 59: the third redaction is a phone number, which does not appear to be a personal number given its context; if it is a personal number, it may be withheld on that basis; if it is a business cell phone it may be withheld under section 20(1)(m); if it is a business number that is not a business cell phone, I direct the CPS to consider whether its disclosure would be an unreasonable invasion of privacy having regard to the factors set out in the related bullet point in para 161 above, and to make a decision accordingly, and I retain jurisdiction to review this decision if requested
- Page 62: the fact some of the information in the final sentence of the second redaction and the first sentence of the fourth redaction was disclosed to the Applicant from other pages (for example, in the latter case, from the chart on page 56) is a factor the CPS should take into account in re-exercising discretion under section 24(1)(b) as to whether to withhold the same information as it appears here
- page 63: the second redaction is of an email address; it is not clear if this is a personal or business email address; if it is personal, it may be withheld; if it is an email address at which its holder is to be contacted in a representative rather than a personal capacity, I direct the CPS to consider whether its disclosure would be an unreasonable invasion of privacy having regard to the factors set out in the related bullet point in para 161 above, and to make a decision accordingly; I retain jurisdiction to review this decision if requested
- page 64: the redacted telephone number is the same number as the one appearing on page 59, just discussed, and the same considerations apply, including my retention of jurisdiction.

[para 202] As discussed at greater length in some of the bullet points under para 161 above, the CPS relied on the exception in section 17(1) to withheld information in a number of instances in which it was not clear to me either that disclosure of the information would be an unreasonable invasion of privacy, or that the information had been properly characterized as personal information. In some of these instances, while I thought the circumstances may warrant disclosure of this information, I did not think it was appropriate to do so without giving notification, and an opportunity to make submissions, to the person whose personal information was or potentially was implicated. In order to not further delay the issuance of the greatest part of this order, I have decided to defer my decisions with respect to this information, and to reserve jurisdiction to make them at a later point. This information is listed below.

- page 2: the sixth redaction (the name and qualifications of a participant)
- page 5: the third redaction
- page 6: The second redaction (the name of a participant in the discussion)
- page 8: The first and next-to-last redactions in the body of the final email (the name of a person employed to provide advice to the CPS)
- page 9: the name of a person employed to provide advice to the CPS (appearing twice in the (replicated) final email)
- page 14:

    - the final redaction in the first email (the name of an individual employed to provide advice to the CPS)
    - the redactions in the "From" line in the second email (the name of an individual employed to provide advice to the CPS, and an associated email)
    - the redaction in the CC line of the last email on the page
- page 15: the fifth redaction (the name and associated information of an individual employed to provide advice to the CPS)
- page 24: the final redaction (the name of a person performing services for the CPS)
- page 26: The fourth redaction (the name of a person performing services for the CPS)
- page 28: the final email address in the "Cc" line (this is the same as the email address on page 14)
- page 56: with respect to the seven lines below the chart: the following words of the first sentence: words one to three, five to ten and sixteen to twenty-four; the second sentence; the remainder of the seven lines excluding the last nine words of the third sentence
- page 58: the information that replicates the information described in the preceding bullet point.

[para 203] After the time for compliance with this order has expired, I will issue a Notice of Inquiry relating only to the information and issues just described (in para 202), and will provide the necessary notification to the parties, including the third parties whose personal information is, or is said to be, implicated. In the meantime, however, it is open to the CPS to itself consider its earlier determinations about these issues taking into account the discussion in the related bullet points under para 161, or to consult with the third parties about their views on these questions, and to make new decisions about whether the information discussed here is personal information, or whether if it is, its disclosure would be an unreasonable invasion of privacy.

IV. ORDER

[para 204] I make this order under section 72 of the Act.

[para 205] I order the CPS to provide the explanations discussed at paras 126 to 132 above to the extent this is still possible. To the extent it is not, I ask the CPS to explain why the passage of time makes it impossible to provide such explanations. I reserve jurisdiction to review the explanations, and to order a further search for records if it appears the explanations or lack thereof indicate that records may still be in the CPS's possession, if the Applicant asks me to do so.

[para 206] I order the CPS to disclose the information identified in para 200 above.

[para 207] I order the CPS to make the new decisions described at para 201 above, and retain jurisdiction to review these decisions as set out therein.

[para 208] I retain jurisdiction to make final determinations with respect to the information described at para 202 above.

[para 209] 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.

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