

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2008-020

March 18, 2009

EDMONTON POLICE SERVICE

Case File Number F3890

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Summary: In a request to access information under the *Freedom of Information and Protection of Privacy Act* (the “Act”), the Applicant asked the Edmonton Police Service (the “Public Body”) for a video allegedly capturing police officers assaulting an individual, and an internal report investigating the matter. The Public Body refused access to all of the information under section 17 of the Act, on the basis that the requested records contained the personal information of third parties and disclosure would be an unreasonable invasion of their personal privacy.

The Adjudicator found that the Applicant established that it was desirable to subject to public scrutiny the Public Body’s investigation and resolution of serious allegations of misconduct involving police officers. With respect to the personal information in the investigation report, the Adjudicator found that this desirability of public scrutiny outweighed the applicable presumptions against disclosure, being those based on personal information in a law enforcement record, personal information relating to employment history, and names appearing with other personal information. He also found that the desirability of public scrutiny outweighed the possibility of unfair harm and unfair damage to the reputations of the officers who were investigated and the individual who had allegedly been assaulted.

However, because the Applicant established only that it was the investigation and resolution process of the Public Body that required public scrutiny, rather than the actions of the particular officers who were investigated, the Adjudicator found that the

desirability of public scrutiny did not require disclosure of the officers' names and identification numbers. The Adjudicator confirmed the decision of the Public Body to refuse the Applicant access to this personal information, and a small amount of other personal information of third parties the disclosure of which would be an unreasonable invasion of personal privacy. He ordered disclosure of the remaining information in the report.

With respect to the personal information in the video, being that of the officers involved and the individual allegedly assaulted, the Adjudicator found that the desirability of public scrutiny did not outweigh the applicable presumptions against disclosure and the relevant circumstances relating to unfair harm and unfair damage to reputation. Disclosure of the video had a much greater risk of unfair harm and unfair damage to reputation, as it did not contain the background or context that was available in the report, such as the viewpoints of the officers involved. Moreover, the factor relating to public scrutiny had less weight in relation to the video, given that the bulk of the report was to be disclosed. Finally, unlike the written personal information in the report, the video captured personal information in the form of physical images, the disclosure of which the Adjudicator found would result in an unreasonable invasion of personal privacy. He accordingly confirmed the decision of the Public Body to refuse the Applicant access to the video.

The Applicant raised the application of section 32 of the Act, under which information must be released by a public body if disclosure is "clearly in the public interest". The Adjudicator found that this section did not apply to the information in the records at issue.

Statutes and Regulations Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(h), 1(h)(ii), 1(n), 1(n)(i), 1(n)(ii), 1(n)(iv), 1(n)(vi), 1(n)(vii), 1(n)(viii), 1(n)(ix), 1(q), 17, 17(2), 17(2)(a), 17(2)(e), 17(4), 17(4)(b), 17(4)(d), 17(4)(g), 17(4)(g)(i), 17(5), 17(5)(a), 17(5)(c), 17(5)(e), 17(5)(f), 17(5)(g), 17(5)(h), 18, 20, 27(1)(a), 27(2), 32, 32(1), 32(1)(a), 32(1)(b), 32(2), 67(1)(a)(ii), 69(6), 71(1), 71(2), 72, 72(2)(a) and 72(2)(b); *Police Act*, R.S.A. 2000, c. P-17; *Police Service Regulation*, Alta. Reg. 356/90, s. 17; *Fatality Inquiries Act*, R.S.A. 2000, c. F-9. **CAN:** *Canadian Charter of Rights and Freedoms*, 1982, s. 2(b); *Criminal Code*, R.S.C. 1985, c. C-46. **BC:** *Freedom of Information and Protection of Privacy Act*, S.B.C. 1992, c. 61, ss. 22(2)(a), 22(2)(f), 22(2)(h) and 22(3)(b) [now R.S.B.C. 1996, c. 165]. **ON:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, s. 23; *Police Services Act*, R.S.O. 1990, c. P.15.

Authorities Cited: **AB:** Orders 96-003, 96-011, 97-002, 97-009, 2000-005, 2001-020, F2003-005, F2003-014, F2003-016, F2004-015, F2004-024, F2004-026, F2005-016, F2006-008, F2006-011, F2006-030 and F2008-013; *University of Alberta v. Pylypiuk*, 2002 ABQB 22; *In the matter of Ostopovich*; *In the matter of Galloway* (November 25, 2005), unreported, Alta. Prov. Ct.; *Canadian Broadcasting Corporation v. Calgary Police Service*; *Shah v. Calgary Police Service*; *Calgary Herald v. Calgary Police Service* (May 18, 2007), unreported, Calgary 0701-04017, 0701-04156 and 0701-04157,

Alta. Q.B. **CAN:** *R. v. Dymont*, [1988] 2 S.C.R. 417; *Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403. **BC:** Orders 13-1994 and 71-1995. **SK:** *Spence v. Prince Albert (City) Commissioners of Police*, [1987] S.J. No. 724 (QL) (Sask. Q.B.). **ON:** Orders P-634 (1994), M-1053 (1997) and PO-1779 (2000); *Duncanson v. Toronto (Metropolitan) Police Service Board* (1999), 175 D.L.R. (4th) 340 (Ont. S.C.J.); *Criminal Lawyers' Association v. Ontario (Ministry of Public Safety and Security)*, 2007 ONCA 392, leave to appeal to the Supreme Court of Canada granted [2007] S.C.C.A. No. 382 (QL) (but appeal not yet heard).

I. BACKGROUND

[para 1] In a request to access information under the *Freedom of Information and Protection of Privacy Act* (the “Act”), dated October 17, 2006, the Applicant asked the Edmonton Police Service (the “Public Body”) for the following:

We want all records in relation to the attached story in the Edmonton Sun about a man being assaulted by Edmonton Police Service officers at the Hope Mission and the related Criminal Code and Police Act investigations.

[para 2] In a news article dated January 27, 2006, the *Edmonton Sun* had reported that police officers of the Public Body were allegedly caught on a surveillance camera beating a homeless person outside the Hope Mission in Edmonton on December 31, 2004. The Hope Mission operates a men’s emergency shelter. The news article had further reported that the Public Body’s internal affairs section was investigating the incident, following a complaint on January 11, 2005, to determine whether criminal charges were warranted. In a subsequent article dated March 10, 2006, the *Edmonton Sun* reported that Crown prosecutors had recommended against criminal charges, on the basis that there was insufficient evidence and no reasonable likelihood of conviction.

[para 3] In an e-mail dated October 19, 2006, the Public Body wrote to the Applicant as follows:

Re: Your request for “all records in relation to the attached story in the Edmonton Sun about a man being assaulted by Edmonton Police Service officers at the Hope Mission and the related Criminal Code and Police Act investigations.”

Please advise if you wish to proceed with the request for ALL records or if you would like to narrow your request to the Internal Affairs Final Report. Should you like your request to remain for ALL records, I will prepare a fee estimate.

[para 4] In an e-mail dated October 20, 2006, the Applicant responded to the Public Body, narrowing the initial access request as follows:

How about if we start with the Report and the Video. If I want more after viewing them, I can deal with it then.

[para 5] By letter dated November 21, 2006, the Public Body refused to give the Applicant access to the report and video, relying on the exception to disclosure set out in section 17 of the Act (disclosure harmful to a third party's personal privacy).

[para 6] By fax dated November 24, 2006, the Applicant requested that this Office review the Public Body's decision to refuse access to the information in the report and video. Mediation was authorized but was not successful. The matter was therefore set down for a written inquiry.

[para 7] In the course of the inquiry, the Public Body challenged the jurisdiction of the Commissioner (or his delegate) to hear this matter. It based its objection on alleged non-compliance with section 69(6) of the Act, which requires an inquiry to be completed within 90 days unless the Commissioner notifies the parties that the period is being extended, and provides an anticipated date for the completion of the review. This jurisdictional issue was added to the inquiry, by letters to the parties dated April 11, 2008.

[para 8] As the Commissioner's delegate, I concluded in Order F2008-013, dated October 9, 2008, that I had jurisdiction to continue this inquiry. This Order addresses the substantive issues.

II. RECORDS AT ISSUE

[para 9] As indicated in the preceding part of this Order, the Applicant narrowed the access request to include only a video and what the Public Body called the "Internal Affairs Final Report". The records at issue, submitted by the Public Body *in camera*, are therefore a video capturing surveillance by a camera outside the entrance of the Hope Mission on December 31, 2004 (the "Video"), and a final report of the Public Body's Internal Affairs Major Case Section dated September 21, 2006 (the "Report"). The Report is 93 pages and the Video is three to four minutes long. The Applicant was denied access to these records in their entirety.

[para 10] By way of additional background, the Report is the result of a "service investigation" under the *Police Act* and *Police Service Regulation*, following a complaint reported by a member of the public (who is not the Applicant). The Report is not itself the result of a criminal investigation by the Public Body, but rather an investigation into whether policing standards, policies or procedures were breached – in other words, police disciplinary matters. The Report refers to an associated criminal investigation but states that no criminal charges were pursued. Given this context, the Report primarily contains information about the "related *Police Act* investigation", as set out in the Applicant's initial access request of October 17, 2006. However, it also reveals information about the "related *Criminal Code* investigation".

[para 11] I note that partway through the Report, the page numbers at the top and bottom of each page become inconsistent. When I refer to page numbers in this Order, they are the original ones at the top of each page of the Report. The reason for the discrepancy is that page 41 of the Report is missing from the copy of the records at issue submitted *in camera*. I do not need to see page 41, as it is part of a policy and procedure the substance of which is reproduced again elsewhere in the Report.

III. ISSUES

[para 12] The original Notice of Inquiry, dated February 12, 2008, set out the following issue (although I have slightly reworded it):

Does section 17 of the Act (disclosure harmful to a third party's personal privacy) apply to the records/information?

[para 13] Both the Applicant and the Public Body made initial and rebuttal submissions on the above issue.

[para 14] After I concluded that I had jurisdiction to continue this inquiry, I added the following issue, by letters to the parties dated October 15, 2008:

Does section 32 of the Act (disclosure in the public interest) apply to the records/information?

[para 15] Only the Public Body provided further submissions on the above issue. The Applicant had addressed it in the first round of submissions.

[para 16] By letters dated October 23, 2008, this Office notified two persons who, in my opinion, were affected by the Applicant's request for review under section 67(1)(a)(ii) of the Act. They are the police officers whose conduct was investigated by the Public Body following the events in question. The affected police officers were given an opportunity to make representations during the inquiry, but neither of them did.

IV. DISCUSSION OF ISSUES

A. Does section 17 of the Act (disclosure harmful to a third party's personal privacy) apply to the records/information?

[para 17] Section 17 of the Act requires a public body to withhold personal information if disclosure would be an unreasonable invasion of a third party's personal privacy. The provisions of section 17 that are relevant to this inquiry are as follows:

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

(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

(a) the third party has, in the prescribed manner, consented to or requested the disclosure,

...

(e) the information is about the third party's classification, salary range, discretionary benefits or employment responsibilities as an officer, employee or member of a public body or as a member of the staff of a member of the Executive Council,

...

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

...

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

...

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

...

(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

(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny,

...

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

- ...
- (e) *the third party will be exposed unfairly to financial or other harm,*
 - (f) *the personal information has been supplied in confidence,*
 - (g) *the personal information is likely to be inaccurate or unreliable,*
 - (h) *the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant,*
- ...

[para 18] Under section 71(1) of the Act, the Public Body has the burden of proving that the Applicant has no right of access to the information that it withheld. In the context of section 17, the Public Body must establish that the severed information is the personal information of a third party, and may show how disclosure would be an unreasonable invasion of the third party's personal privacy. Having said this, section 71(2) states that if a record contains personal information about a third party, it is up to the Applicant to prove that disclosure would not be an unreasonable invasion of the third party's personal privacy. Because section 17 sets out a mandatory exception to disclosure, I must also independently review the information, and determine whether disclosure would or would not be an unreasonable invasion of personal privacy.

[para 19] In their submissions, the Applicant and Public Body cite several criminal and constitutional decisions that they believe stand for or against disclosure of information, as the case may be. I did not find the cases to be entirely applicable to the present inquiry, as many were not in the context of access to information legislation or involved very different facts. Nonetheless, I extrapolated the principles from those cases where relevant, such as where they suggested that disclosure of the personal information in the records at issue would harm personal privacy or, conversely, allow public scrutiny. I also point out that it was sometimes unnecessary for the parties to rely on criminal or constitutional decisions for the propositions that they cited. This is because the relevant sections of the Act, or orders under it, already stand for the propositions presented. For example, section 17 already sets out a mandatory exception to disclosure if there would be an unreasonable invasion of personal privacy, and requires a balancing of the presumptions and relevant circumstances that are for and against disclosure. Finally, given the existence of section 17 of the Act, it was unnecessary, in my view, for the parties to make arguments about the constitutional status of privacy rights in Canada.

1. Personal information of third parties

[para 20] Section 17 of the Act can apply only to the personal information of a third party. Section 1(n) 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 21] I find that the Report contains the personal information of third parties, as defined above. For the purpose of discussion, I will call the police officers whose conduct was investigated the “members involved” (as the Report does), so as to distinguish them from other police officers mentioned in the Report. I will call the individual who was allegedly assaulted or beaten in the Video the “unidentified male” (again as the Report does).

[para 22] The Report contains the names and identification numbers of the members involved, which are their personal information under sections 1(n)(i) and 1(n)(iv), respectively. As each member is identified, other information in the report is “recorded information about an identifiable individual.” This personal information includes their police rank (i.e., job title/position), and their recorded activities at the time of the events in question or during the investigation.

[para 23] The phone numbers of certain individuals appear in the Report, which is personal information under section 1(n)(i). There is also a small amount of information about the health of one of the members involved, which is personal information under section 1(n)(vi). Further, the Report contains the employment start date and length of service of each member involved, which is their personal information under section 1(n)(vii) (employment history).

[para 24] There are views and opinions expressed throughout the Report. Where an individual expresses an opinion about one of the members involved or the unidentified male, it is the personal information of the members or the unidentified male, as the case may be, under section 1(n)(viii). Where the individual's view or opinion is not about someone else (e.g., about events generally), it is that individual's personal information under section 1(n)(ix). Either way, the view or opinion is the personal information of a third party vis-à-vis the Applicant.

[para 25] The Report contains the names, and in some cases the job titles or positions, of other police officers, civilian staff of the Public Body, the individual who reported the complaint that gave rise to the investigation, and other members of the public. This is all personal information of third parties. Pseudonyms used by the unidentified male and his believed real name are his personal information. In addition to names and job titles/positions, there is other recorded information about some of the foregoing individuals, as the Report discloses their activities or statements at the time of the events in question or during the investigation. Further, some of the information about the unidentified male is about his physical health, which is personal information under section 1(n)(vi). His race or ethnic origin is also mentioned, which is personal information under section 1(n)(ii).

[para 26] Other information in the Report is not personal information, such as headings and dates (other than the employment start dates mentioned earlier). There are also policies and procedures of the Public Body reproduced in the Report. I considered whether they might indirectly reveal the allegations against the members involved that are addressed in the Report. I find that they do not, as the policies and procedures are comprehensive and cover a wide range of topics. The policies and procedures therefore reveal no personal information. As section 17 of the Act protects only the personal information of a third party, the Public Body had no authority to withhold the non-personal information in the Report under that section.

[para 27] Although the names and job titles/positions of the third parties mentioned in the Report constitute personal information, information about the performance of work responsibilities by an individual is not, generally speaking, personal information about that individual, as there is no personal dimension (Order F2004-026 at para 108; Order F2006-030 at para. 10). Absent a personal aspect, there is no reason to treat the records of the acts of individuals conducting the business of the Public Body or of other bodies as "about them" (Order F2006-030 at para. 12). I therefore find that the recorded activities and statements of the investigating officer, staff sergeants, other police officers and civilian staff of the Public Body, and two individuals carrying out their employment responsibilities as security personnel of another body, do not constitute personal information.

[para 28] Where there is associated information suggesting that an individual performing work-related responsibilities was acting improperly, there are allegations that the work-related act of an individual was wrongful, or disclosure of information is likely to have an adverse effect on the individual, the record of the act or activities and

information about them potentially has a personal dimension, and thus may be the individual's personal information (Order F2006-030 at paras. 12, 13 and 16). In this inquiry, I find that the recorded activities and statements of the members involved constitute personal information, even though the activities and statements were in the context of the members' employment. The fact that allegations of wrongdoing were made against the members adds a personal dimension to their activities at the time of the events in question and during the investigation.

[para 29] I also find that the recorded activities of individuals associated with another organization (at the bottom half of page 2 of the Report) constitute personal information, as I do not believe that their conduct was part of their employment responsibilities.

[para 30] Under section 1(q) of the Act, a record means a record of information in any form and specifically includes "images". I find that the Video contains personal information, as it consists of the images of the individuals appearing in the Video, being the members involved and the unidentified male. Although the Applicant argues that the unidentified male has not been conclusively *identified*, he is nonetheless *identifiable*. An individual does not have to be identifiable by every person reviewing a particular record in order for there to be personal information about that individual; the individual needs only to be identifiable by someone. In this particular case, even if neither the Public Body nor I can conclusively identify the individual in the Video, he is identifiable by other persons viewing the Video, such as his friends, his family members and himself.

[para 31] In a letter to the Public Body dated February 11, 2008, the Applicant pointed out that technology may be used to obscure the facial features of the unidentified male. This raises the possibility that the faces of the members involved may likewise be obscured. However, even if faces are obscured, there remains personal information in the Video. It is possible for the identities of the members involved to be ascertained through other sources, such as a publicly available decision. It is also possible that the unidentified male is identifiable through his clothing. As a result, I find that all of the activities captured on the Video remain information about identifiable individuals. I reach the same conclusion even if the faces are not clear enough to permit identification as a result of the quality of the Video or the proximity of the camera.

2. Presumptions of an unreasonable invasion of personal privacy

[para 32] Before addressing the applicable presumptions, I note that section 17(2) of the Act enumerates situations where disclosure of a third party's personal information is *not* an unreasonable invasion of personal privacy. The Applicant indirectly raises section 17(2)(a), under which disclosure is not an unreasonable invasion of privacy if the third party has consented to the disclosure. The Applicant submits that there is no indication whether the consent of the unidentified male was requested. However, section 17(2)(a) applies only if the third party has, in fact, consented. As I have no evidence that the unidentified male has consented to disclosure, I find that section 17(2)(a) does not apply.

[para 33] Section 17(4) of the Act enumerates situations where the disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy. I will now discuss the presumptions that are applicable in this inquiry.

(a) *Law enforcement record [section 17(4)(b)]*

[para 34] The Public Body submits that a presumption of an unreasonable invasion of personal privacy would arise if the personal information in the records at issue were disclosed, because the information is an identifiable part of a law enforcement record under section 17(4)(b) (and disclosure is not necessary to dispose of the law enforcement matter or to continue an investigation). The Public Body also cites the following definition under section 1(h) of the Act:

1(h) "law enforcement" means

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

[para 35] I find that the investigation conducted by the Public Body constitutes law enforcement under section 1(h)(ii) above. The investigation was a police and/or administrative investigation that could lead to a penalty or sanction under section 17 of the *Police Service Regulation*, which penalty or sanction could be imposed by the Public Body on the members involved. As the Report was in the context of and was the result of that law enforcement investigation, the Report is a law enforcement record under section 17(4)(b).

[para 36] I also find that the Video is a law enforcement record. It was used as a record for the purposes of the law enforcement investigation, and the investigating officer refers to it in the Report. It may also be said that it formed part of "the complaint that gave rise to the investigation" under section 1(h)(ii), as a copy of it was submitted to the Public Body in the context of the complaint that was made about the members involved.

[para 37] Because I have found that both the Report and Video are law enforcement records, disclosure of all of the personal information in the records at issue is presumed to be an unreasonable invasion of personal privacy under section 17(4)(b) of the Act.

(b) *Employment history [section 17(4)(d)]*

[para 38] The Public Body submits that a presumption of an unreasonable invasion of personal privacy would arise if the personal information of the members involved were disclosed, because their personal information relates to employment history under section 17(4)(d) of the Act. The term “employment history” describes a complete or partial chronology of a person’s working life such as might appear in a résumé or personnel file; documents recording complaints or investigations into complaints may be regarded as part of a person’s “employment history” if the complaints are substantiated and a record of some related disciplinary action is entered in a personnel file (Order F2003-005 at para. 73). The results or conclusions of an investigation may be part of a personnel file and therefore of a person’s employment history (Order F2004-015 at para. 83).

[para 39] I find that the information in the Report is part of the employment history of the members involved, as the Report contains the results or conclusions of an investigation into an employment-related matter and might be retained on their personnel files. I also find that the information in the Video “relates” to the members’ employment history. The Video was used for the purpose of the investigation into the members’ conduct in the course of their employment, and it is referred to in the Report. Accordingly, the presumption against disclosure under section 17(4)(d) applies to the personal information of the members involved in all of the records at issue. I find that section 17(4)(d) does not apply to the personal information of any other third parties.

(c) *Name plus other personal information [section 17(4)(g)]*

[para 40] The Public Body submits, with respect to the members involved as well as other third parties, that there is a presumption against disclosure because the personal information consists of the names of third parties appearing with other personal information about them, or the disclosure of the names themselves would reveal personal information about the third parties, under section 17(4)(g) of the Act. I agree that the presumption applies to some of the information in the Report. In the case of the members involved, the unidentified male, the reporter of the complaint and the individuals associated with an organization mentioned on page 2 of the Report, their names appear with, or would reveal, the fact that they were subject to an investigation, conducted themselves in a particular way, or provided information in the course of the investigation. The names of the members involved and the unidentified male in the Report may also be said to “appear”, under section 17(4)(g)(i), with their personal information in the Video, as the Report and Video have been treated together for the purpose of the Public Body’s investigation, the Applicant’s access request and this inquiry.

[para 41] However, I find that the presumption against disclosure under section 17(4)(g) does not arise in connection with information relating to other police officers and civilian staff of the Public Body, and the security personnel of another body, as their names appear with, or would reveal, only non-personal information about their employment activities. Where a name (which constitutes personal information) appears only with the fact that an individual was discharging a work-related responsibility (which

is not personal information), the presumption against disclosure under section 17(4)(g) does not apply (Order F2004-026 at para. 117). Moreover, with respect to the job titles or positions of the foregoing individuals, this type of information has been found to fall under section 17(2)(e), which states that information about the classification or employment responsibilities of an individual is *not* an unreasonable invasion of personal privacy (Order F2004-026 at para. 105). I make the same finding here.

[para 42] There are two instances where I find that disclosure of the personal information of an employee of the Public Body, other than the members involved, would give rise to the presumption against disclosure under section 17(4)(g). The first is at the very bottom of page 12 of the Report, where information about the work-related activities of the investigating officer has a personal dimension. The second is on page 13, where the telephone number of a sergeant is indicated. These two items of information with a personal dimension appear in conjunction with the names of the individuals found elsewhere.

3. Relevant circumstances to consider

[para 43] In determining whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy – even where there are presumptions against disclosure under section 17(4) of the Act – all of the relevant circumstances must be considered, as required by section 17(5). The Public Body submits that disclosure of personal information in the records at issue would unfairly damage the reputations of the members involved and the unidentified male [section 17(5)(h)], and it indirectly raises the possibility of unfair harm [section 17(5)(e)]. It further argues that personal information is likely to be inaccurate or unreliable [section 17(5)(g)], or was supplied in confidence [section 17(5)(f)]. The Applicant argues in favour of disclosure on the basis that it is desirable for the purpose of subjecting the activities of the Public Body to public scrutiny [section 17(5)(a)].

[para 44] The Public Body noted section 17(5)(c), which requires a consideration of whether the personal information that has been requested is relevant to a fair determination of the Applicant's rights. It found that the section did not apply, as the Applicant was not named in the investigation conducted by the Public Body, was not implicated by it, and had no information to provide for the purpose of the investigation. I agree that section 17(5)(c) is not relevant to this inquiry.

[para 45] I will now discuss specific provisions of section 17(5) in more detail, as well as one non-enumerated relevant circumstance.

(a) The desirability of public scrutiny [section 17(5)(a)]

[para 46] A factor weighing in favour of disclosure of the personal information of third parties is that disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny, under section 17(5)(a) of the Act. For public scrutiny to be a relevant circumstance, there must be evidence that

the activities of the public body have been called into question, which necessitates the disclosure of personal information in order to subject the activities of the public body to public scrutiny (Order 97-002 at para. 94; Order F2004-015 at para. 88).

[para 47] In determining whether public scrutiny is desirable, I may consider whether more than one person has suggested that public scrutiny is necessary; whether the applicant's concerns are about the actions of more than one person within the public body; and whether the public body has not previously disclosed sufficient information or investigated the matter in question (Order 97-002 at paras. 94 and 95; Order F2004-015 at para. 88). However, it is not necessary to meet all three of the foregoing criteria in order to establish that there is a need for public scrutiny (*University of Alberta v. Pylypiuk* at para. 49). What is most important to bear in mind is that the desirability of public scrutiny of government or public body activities under section 17(5)(a) requires some public component, such as public accountability, public interest or public fairness (*University of Alberta v. Pylypiuk* at para. 48; Order F2005-016 at para. 104).

[para 48] The Applicant submits that there have been repeated stories over the years about Edmonton inner city residents being abused by police, and attaches letters discussing various allegations regarding the treatment of individuals by members of the Public Body. These and other letters, written on behalf of the Criminal Trial Lawyers' Association, question the objectivity of investigations into police misconduct and allege that the Public Body has failed in the past to treat seriously certain matters that warranted a criminal investigation or criminal charges. The Applicant, by way of another attached letter, raises an incident allegedly showing that there is a "code of silence" under which members of the Public Body are encouraged not to give evidence against one another in investigations into possible misconduct. In short, all of these letters and the Applicant's submissions point to concerns about the integrity and quality of the Public Body's internal investigations into the foregoing types of matters. The Applicant also expresses concerns about decisions of prosecutors not to prosecute police officers when, in the Applicant's view, there was a reasonable likelihood of conviction and it was in the public interest to prosecute.

[para 49] The Applicant argues that because of decisions of the Public Body and prosecutors not to lay criminal charges against the members involved in this inquiry, the information in the records at issue has been shielded from public scrutiny. The Applicant cites *Canadian Broadcasting Corporation v. Calgary Police Service*; *Shah v. Calgary Police Service*; *Calgary Herald v. Calgary Police Service* (May 18, 2007), unreported, Alta. Q.B., which dealt with whether a police disciplinary hearing should be held in private or in public. I do not find this decision to be entirely applicable to this inquiry, as the Report and Video are in the context of an investigation as to whether disciplinary charges should be brought, not a disciplinary hearing itself. As will be discussed later in this Order, the desirability of public scrutiny generally increases as a complaint moves through the resolution process or reaches the stage of a formal proceeding.

[para 50] Nonetheless, the Applicant has called into question the failure of the Public Body to lay criminal charges against a police officer or police officers who, in the

Applicant's belief, assaulted a homeless person. The Applicant has raised the possibility that the Public Body has not properly investigated and disposed of this particular matter under the *Criminal Code* or *Police Act*. These scenarios involve processes carried out by more than one person within the Public Body, as several police officers and civilian staff participate in investigations into alleged police misconduct. Moreover, the Applicant has referred to the possibility that more than one officer is participating in a culture where they insulate or protect one another from findings of misconduct.

[para 51] The Public Body argues that only the Applicant has called the activities of the Public Body into question. However, section 17(5)(a) can still be relevant where only one person believes that public scrutiny is necessary, if the activity that has been called into question, though arising from a specific event and known only to those immediately involved, is such that it would be of concern to a broader community had its attention been brought to the matter (Order 2004-015 at para. 89; Order F2006-030 at para. 23). This reasoning holds if an allegation of impropriety has a credible basis (Order F2006-030 at para. 23). Here, I believe that the Public Body's decision as to whether and how to proceed with a matter involving serious allegations against police officers would be of concern to the broader community. While the allegations may or may not be true, they have a credible basis, given the complaint that was reported by a member of the public to the Public Body and the existence of video footage that allegedly captures some form of wrongdoing.

[para 52] With respect to the number of persons who have called the activities of the Public Body into question, the letters submitted as supporting documentation by the Applicant were written on behalf of the Criminal Trial Lawyers' Association, which suggests that this particular matter, like the matters raised in these other letters, are of concern to a group of criminal trial lawyers. I also note that the allegations and investigation in this case were the subject of some degree of media attention, given a news article published in the *Edmonton Sun* (to which the Applicant referred in the initial access request). The news article quotes a civil liberties lawyer who questions the time it took for the Public Body's investigation in this particular matter to conclude.

[para 53] The Public Body has already investigated the conduct of the members involved – through the *Police Act* investigation that resulted in the Report as well as the associated criminal investigation – which militates against subjecting the matter to further scrutiny. However, the concern raised by the Applicant is regarding the Public Body's handling and resolution of the allegations of police misconduct. Disclosure of the Report itself would be necessary in order to scrutinize the investigation that led up to it.

[para 54] I considered whether the public availability of a disciplinary decision submitted by the Public Body in this inquiry means that disclosure of the personal information in the records at issue is not necessary in order to scrutinize the activities of the Public Body. This decision relates to the events in question and provides details about the circumstances surrounding the complaint in this case. However, I find that the decision does not reduce the need for public scrutiny. The central concern of the Applicant is that allegations of an assault or beating of a homeless person have not been

satisfactorily resolved by the Public Body. Although the aforementioned decision alludes to those particular allegations, the decision is not about them. The Public Body's resolution of the allegations of assault or beating – for instance, the reasons why it did not lay criminal charges under the *Criminal Code*, or whether and why it proceeded in a particular fashion or in respect of particular charges under the *Police Act* – remains to be publicly scrutinized. Disclosure of the Report is the means by which such public scrutiny is possible.

[para 55] Given all of the foregoing, the Applicant has shown that more than one person has suggested that public scrutiny of the Public Body's activities is necessary in this case; that the concerns about the quality and integrity of the Public Body's internal investigations are about the actions of more than one person within the Public Body; and that the Public Body's previous disclosure of information and its own investigation does not obviate the need for public scrutiny. There is also a public component to the matter, as it is desirable for the Public Body to be publicly accountable in its resolution of cases involving serious allegations of police wrongdoing, the Criminal Trial Lawyers' Association has publicly raised concerns regarding the integrity and quality of the Public Body's investigations, and the specific investigation in this case was the subject of some degree of media attention.

[para 56] In arguing that public scrutiny is warranted in this inquiry, the Applicant has pointed to other matters involving similar alleged mistreatment of individuals that may not have been properly addressed and/or similar internal investigations by the Public Body that may not have been properly carried out. The Applicant has also pointed to the circumstances of this particular case, which involves allegations of an assault or beating of a homeless person by police, yet no resulting criminal charges under the *Criminal Code* and possibly no serious disciplinary consequences under the *Police Act*. As stated in another order of this Office, given the serious nature of the matter, it is desirable for the response to the incident by the Public Body to be sufficiently transparent to enable those affected, and the public generally, to know whether it was an appropriate response – that justice was done and can be seen to have been done (Order F2004-015 at para. 92). I find that the Applicant has established that it is desirable, under section 17(5)(a) of the Act, to subject to public scrutiny the activities of the Public Body in the context of its investigation and resolution of the serious allegations in this matter.

[para 57] However, I find that the Applicant has not established that the individual conduct of the particular members involved, in the course of their employment as representatives of the Public Body, requires public scrutiny. Although the letters provided by the Applicant suggest an alleged pattern of improper conduct on the part of various members of the Public Body, the Applicant's concerns in this inquiry are directed toward "the integrity and quality of EPS internal investigations" and "the integrity of the public complaints process in relation to allegations of serious misconduct by police officers". Although the allegations of misconduct form the background to the investigation in this matter, the Applicant does not assert that it is the specific conduct of the members involved that amounts to the activities of the Public Body requiring public scrutiny. Even if this was implied, the implication was not sufficient for me to conclude

that section 17(5)(a) is engaged with respect to the individual conduct of the members involved. I further note that the Applicant did not specifically request access to the identities of the members involved; rather, the access request was directed at the incident in question and the Public Body's investigation of it.

[para 58] Even where the activities of a public body have been called into question, the disclosure of personal information must be necessary in order to subject the activities of the public body to public scrutiny (Order 97-002 at para. 94; Order F2004-015 at para. 88). In other words, section 17(5)(a) of the Act militates in favour of disclosing only that amount of personal information as is required for public scrutiny to be achieved. As the Applicant has established that it is the investigation and resolution process of the Public Body that requires public scrutiny, rather than the actions of the particular members involved, I find that public scrutiny does not require disclosure of the names and identification numbers of the members. This point does not apply to the members' ranks or job titles, as disclosure of their ranks or job titles would not identify them. Moreover, I find that disclosure of the ranks is necessary to subject the Public Body's investigation to public scrutiny, as the level of experience or seniority of the members involved may be relevant to the investigator's findings.

[para 59] Having said all of the above, I note that even if their names and identification numbers are withheld in the Report, it is possible for the members involved to be identified by other means, such as the publicly available decision and perhaps certain contextual information in the Report. Information in the Report about their statements and activities at the time of the events in question or during the investigation, and other information relating to them, is therefore still their personal information. Despite this, I find that disclosure of this personal information is necessary in order to subject the Public Body's investigation and resolution process to public scrutiny. For instance, one would need to know what conduct was being investigated, and what information was provided by the members and considered by the investigating officer.

[para 60] I find that disclosure of the names and titles of other police officers and civilian staff of the Public Body would be necessary for the purpose of public scrutiny. For instance, knowledge of who provided information during the investigation would permit an evaluation of the source and reliability of information that was considered relevant by the investigating officer. Disclosure of the identity of the investigating officer would provide an understanding, for instance, of his experience in conducting similar investigations. Given the Applicant's concern about the integrity and quality of the Public Body's internal investigations, as well as the suggestion that members of the Public Body protect one another from findings of misconduct, I do not believe that it is sufficient to know what the Public Body did generally as a collective entity in the context of the investigation. In order to publicly scrutinize the Public Body's resolution of the allegations against the members involved, it is necessary to know the roles, acts and statements of individual representatives of the Public Body in the course of the resolution process.

[para 61] With respect to the names of the unidentified male (being his believed real name as well as pseudonyms that he gave to the members involved), the individual who reported the complaint, individuals associated with another organization on page 2, and the security personnel of another body, I find that disclosure of these names – as well as other identifying information in the form of addresses, a job title and the name of the organization on page 2 – is not necessary in order to subject the activities of the Public Body to public scrutiny. However, to the extent that the foregoing individuals remain identifiable even if this information is withheld, disclosure of their remaining personal information in the Report would need to be disclosed to subject the Public Body’s investigation to public scrutiny. For instance, the conduct of the unidentified male at the time of the events in question is relevant to understanding what was being investigated, and information provided by members of the public is relevant to understanding what was considered by the investigation officer.

[para 62] With respect to the Video, the personal information in it of the members involved and the unidentified male is what gave rise to the Public Body’s investigation, and the contents of the Video may be relevant to some of the conclusions of the investigating officer. Because of the relevance of the activities of the members involved and the identified male at the time of the alleged assault, I find that some of their personal information in the Video would need to be disclosed for the purpose of public scrutiny. While I find that their identities (i.e., faces) would not need to be revealed, they may still be identifiable by other means discussed earlier, in which case there would still be personal information about them in the Video. This remaining personal information about the conduct of the members involved and the unidentified male is the information that would require disclosure in order to scrutinize the investigation by the Public Body.

[para 63] To summarize, the Applicant has shown that it is desirable to subject to public scrutiny the Public Body’s investigation and resolution of the allegations against the members involved in this inquiry. The Applicant has done so based on the seriousness of the allegations, the credible possibility that they were not properly resolved in this particular case, and the presence of a public component – including the views of the Criminal Trial Lawyers’ Association in comparable matters and a desirability for the Public Body to be publicly accountable in its resolution of cases involving allegations of serious police wrongdoing. In order to subject the activities of the Public Body to public scrutiny, I find that disclosure of certain personal information of the members involved, other police officers and civilian staff of the Public Body, the unidentified male, and other members of the public, would be necessary. This accordingly weighs in favour of disclosure under section 17(5)(a) of the Act.

(b) *Unfair damage to reputation and unfair harm*
[section 17(5)(h) and section 17(5)(e)]

[para 64] The Public Body submits that disclosure of personal information in the records at issue may unfairly damage the reputation of the members involved and the unidentified male, which would be a relevant circumstance under section 17(5)(h) of the Act. It cites an Ontario decision involving an access request for court dockets listing

police officers charged under that jurisdiction's *Police Services Act*. There, it was found that disclosure of information relating to allegations of improper professional conduct against police officers would cause them excessive personal stress, and that given the limited information contained in the records, it was reasonable to expect that disclosure of information identifying the police officers by name would unfairly damage their reputations, particularly those who were ultimately acquitted [Ontario Order M-1053 (1997) at paras. 41 and 45, cited in *Duncanson v. Toronto (Metropolitan) Police Service Board* (1999), 175 D.L.R. (4th) 340 (Ont. S.C.J.) at para. 37].

[para 65] The decision cited by the Public Body refers to personal stress experienced by the police officers in that case. The Public Body also states, at one point in its submissions, that the release of unchallenged allegations of misconduct “could cause harm” to the members involved in this inquiry. These references indirectly raise the possible application of section 17(5)(e), which sets out the relevant circumstance that the third party will be exposed unfairly to financial or other harm. I must independently review this factor in any event. For ease of discussion, I will treat the circumstances relating to unfair damage to reputation and unfair harm together.

[para 66] The focus of what is now section 17(5)(h) is *unfair* damage to reputation (Order 97-002 at para. 75). Disclosure of the consequences that flow from a proper process may negatively affect reputation but it is not unfair (Order F2004-015 at para. 100). Conversely, disclosure of unsubstantiated allegations may unfairly damage reputation (Order 97-002 at para. 85, citing B.C. Order 71-1995). There may also be unfair damage to reputation where allegations are contained in a “preliminary” or “interim” report, as opposed to one following a process where the affected individuals were given an opportunity to defend themselves (Order 97-002 at paras. 86 and 87).

[para 67] On one hand, the foregoing principles suggest that disclosure of the personal information of the members involved in the records at issue would unfairly damage their reputations. The Report and Video are not in the context of a formal disciplinary hearing or criminal trial, such as would give the members an opportunity to make full answer and defence. The Report may be characterized as “preliminary” or “interim”, to the extent that the disciplinary allegations against the officers that are addressed in it are not formally substantiated in the Report, but are simply one step in the Public Body's overall resolution of the matter. On the other hand, the Report is “final” insofar as the investigation is concerned, and the officers had an opportunity to give their viewpoints regarding the particular disciplinary allegations. In view of these competing considerations, I find that section 17(5)(h) is relevant, but to a limited extent. I also distinguish below the relevance of this factor as between the Report and the Video.

[para 68] The test under section 17(5)(e) is whether disclosure would result in *unfair* harm to a third party (Order 2001-020 at para. 37). The Public Body did not specifically explain the nature of the harm that would be caused by release of the particular records at issue in this inquiry. However, as I can surmise that the members involved would suffer some degree of stress if their personal information in the records at issue were disclosed, I find that psychological harm would result. I also find that the harm would be unfair, as

the allegations are not formally proven or disproven in the Report. Likewise, the activities of the members that are shown on the Video have not been reviewed in a formal proceeding that has determined whether there was any wrongdoing.

[para 69] I conclude that the members involved would suffer unfair harm and unfair damage to their reputations if their personal information in the records at issue were disclosed, and that the circumstances under sections 17(5)(e) and 17(5)(h) of the Act are therefore relevant. Having said this, I give greater weight to these factors in relation to the Video than in relation to the Report. The Video depicts the very conduct that is the subject of the allegations of misconduct raised by the Applicant. The Video captures physical images of the members involved, which are more private and intimate than the words conveying their personal information in the Report. Disclosure of images on a video poses, in my view, a greater risk of an unreasonable invasion of personal privacy. Moreover, the Video in this inquiry does not contain the contextual information that exists in the Report. There is a lesser degree of unfair harm and unfair damage to reputation if the Report were disclosed, as it sets out the background to the events in question, the viewpoints of the members involved, and other contextual information that permits a reader to more fairly assess the matter and the Public Body's investigation of it.

[para 70] With respect to the personal information of the unidentified male in both the Report and Video, I find that disclosure would cause unfair harm and unfair damage to reputation, given the nature of the personal information. It reveals the individual's state and conduct at the time of the events in question, his interaction with security personnel and police, details about a possible violation of the law on his part, and the fact that he was apparently homeless or in need of shelter. I also find that disclosure would cause unfair harm and unfair damage to reputation because the personal information exists in the context of an investigation rather than a formal proceeding, and the unidentified male did not have the opportunity to explain his conduct.

[para 71] I do not find that any other third parties would suffer unfair harm or unfair damage to reputation if their personal information were disclosed. The personal information of most of the other third parties consists only of their names and titles, the disclosure of which would merely reveal that they acted a particular way in the course of their employment duties. Such disclosure would not cause harm or damage to reputation. In the case of the person who reported the complaint and the individuals associated with another organization mentioned on page 2 of the Report, I do not believe that disclosure of their identities or other personal information would cause them harm or damage to reputation. Disclosure may arguably affect them by breaching implied confidences, but this involves the factor relating to information supplied in confidence, which I will now discuss.

(c) *Information supplied in confidence [section 17(5)(f)]*

[para 72] The Public Body submits that when personal information is disclosed for a particular purpose, the person supplying the information does not expect that it "will be broadcast publicly or released to third parties without their consent" and that, in such circumstances, the reasonable expectation that the information will not be further

divulged “must be protected” [*Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403 at para. 75, citing *R. v. Dymont*, [1988] 2 S.C.R. 417 at pp. 429-30]. In the context of this inquiry, the Public Body accordingly argues that the individuals identified in the Report would have lodged the complaint or participated in the investigation on the implicit understanding that their personal information, and their views regarding the members involved and events, would be collected, used and disclosed only for the purpose of the investigation.

[para 73] In some circumstances, the context in which third party personal information is given during an investigation, and the sensitivity of the events recorded, may make it reasonable to conclude that personal information was supplied in confidence; if so, this is a factor weighing against disclosure under section 17(5)(f) of the Act (Order F2003-014 at para. 18; Order F2003-016 at para. 35). Here, the investigation was in the context of an employment-related matter, involving allegations of misconduct. One of the members involved sent e-mails containing personal information to the investigator. The other member involved provided personal information during a telephone conversation and by e-mail. The investigation was conducted, and the information was supplied, for the purpose of determining whether disciplinary charges under the *Police Act* should be laid and formal hearings should be held. I also note that personal information supplied by the members during the associated criminal investigation is referenced in the Report. Given the foregoing, it is *possible* that the members involved had the expectation that they supplied personal information about themselves and others in confidence.

[para 74] However, in the absence of more specific submissions, I find that section 17(5)(f) is not relevant. In my view, it is not sufficient to assert, very generally, that individuals subject to an investigation supply information in confidence. The Public Body did not refer to any specific facts suggesting that these *particular* members involved, in this *particular* context, understood that they were supplying personal information in confidence. I also note that the officers themselves had an opportunity to make submissions in this inquiry but did not do so.

[para 75] I distinguish other inquiries in which information was found to be supplied in confidence (e.g., Order F2003-014 at para. 18; Order F2003-016 at para. 36). In these other inquiries, there was evidence that third parties were specifically told that information would remain confidential. I also distinguish a Saskatchewan decision cited by the Public Body, in which a court found that information about a police disciplinary hearing should not be disclosed in an affidavit, as it was subject to confidentiality [*Spence v. Prince Albert (City) Commissioners of Police*, [1987] S.J. No. 724 (QL) (Sask. Q.B.)]. That case involved different facts that supported the finding of confidentiality, including the existence of a legislative provision that required disciplinary matters to be closed to the public.

[para 76] With respect to the personal information given by other police officers and civilian staff of the Public Body, I also do not see any indication that the information was supplied in confidence. The nature of the information and the context in which it was

provided do not lead me to believe that there was any expectation of confidentiality. With respect to the personal information of the security personnel of another body who interacted with the members involved, I also do not find that personal information – whether about themselves or about others – was provided in confidence. The security personnel were carrying out their employment responsibilities, which would routinely involve notifying police about security matters. I do not believe that such professional security staff would have a reasonable expectation that their names would remain confidential. Further, there is no indication of any risk to their safety, such as would suggest that they supplied their names in confidence.

[para 77] As for individuals who report a complaint to police, they may or may not supply personal information in confidence or have an expectation of confidentiality. The question depends on who they are, the nature of their contact with police, and other circumstances. In this inquiry, given the context and the particular individual, I do not believe that the individual who reported the complaint intended for his identity or the information that he provided to the Public Body to remain confidential. I also considered whether the identity of the reporter was information subject to police informer privilege under section 27(1)(a) of the Act, which the Public Body must refuse to disclose where it relates to a person other than a public body under section 27(2). However, no evidence was presented to me that police informer privilege exists in this case, and the circumstances do not suggest to me that it does. In any event, even if the individual who reported the complaint intended for his identity to remain confidential, or there exists police informer privilege, my later conclusions in this Order do not result in disclosure of his name.

[para 78] I also do not have any reason to believe that the staff of the organization mentioned at the bottom half of page 2 of the Report had an expectation of confidentiality when they supplied personal information to the Public Body. In the absence of an indication otherwise, I find that section 17(5)(f) of the Act is not relevant to their personal information. I acknowledge the possibility that these individuals may have intended for their identities to remain confidential, but again note that I do not later order the disclosure of their names in any event.

(d) *Inaccurate or unreliable information [section 17(5)(g)]*

[para 79] The Public Body submits that, until a hearing on the merits of a complaint against police officers is conducted, the information and allegations in the context of an investigation are unproven and may involve hearsay. It argues that the members involved in this case have not had the opportunity to challenge the accuracy and reliability of the information in the records at issue.

[para 80] In the absence of more specific submissions from the Public Body, I find that section 17(5)(g) of the Act is not relevant to this inquiry. For the circumstance under that section to be relevant, the personal information in the records at issue must be *likely* to be inaccurate or unreliable, not just possibly inaccurate or unreliable. In my view, the Public Body should have explained what particular personal information in the Report is

likely to be inaccurate or unreliable, and for what reasons. It is not sufficient to assert, very generally, that information is wrong or that allegations are unproven. I further note that section 17(5)(g) cannot be relevant to the Video, as it is an accurate and reliable reflection of what took place.

(e) *Names and titles of individuals performing work-related activities
[non-enumerated relevant circumstance]*

[para 81] The list of relevant circumstances under section 17(5) of the Act is not exhaustive. Where personal information in the form of names and titles in a record merely reveal the activities of staff of a public body (or other body or organization) in the course of performing their duties, this is a relevant circumstance weighing in favour of disclosure of the names and titles (Order F2003-005 at para. 96). Disclosure of the names and titles of employees, acting in their formal representative capacities, is generally not an unreasonable invasion of their personal privacy (Order F2000-005 at para. 116; Order F2006-008 at para. 42).

[para 82] I find that this factor is relevant to the names and titles of the police officers and civilian staff of the Public Body (but not the members involved), and to the names and titles of the security personnel of another body (but not the individuals associated with a different organization mentioned on page 2 in the Report), as the accompanying information reveals only that the other police officers, civilian staff and security personnel carried out a work-related function or responsibility.

4. Weighing the presumptions and relevant circumstances

(a) *Personal information of the members involved*

[para 83] With respect to the personal information of the members involved in the records at issue, there are presumptions against disclosure under section 17(4)(b) (law enforcement record), section 17(4)(d) (employment history) and section 17(4)(g) (name plus other personal information). Under section 17(5) of the Act, relevant circumstances in favour of withholding their personal information are unfair damage to reputation and unfair harm. I found earlier that the factors relating to information supplied in confidence and inaccurate/unreliable information are not relevant. A relevant circumstance in favour of disclosing some of the personal information of the members involved is the desirability of public scrutiny. The personal information to which I refer is primarily information about their conduct and statements during the events in question or the investigation. As discussed earlier, the Applicant did not establish that knowing the identities of the particular members involved was necessary for public scrutiny, so this factor does not weigh in favour of disclosing their names and identification numbers.

[para 84] The Public Body submits that the privacy rights of the third parties in this inquiry outweigh the desirability of public scrutiny. It points to the nature of the records and the fact that they arose in an employment context. It states that a significant amount of information about this matter is available to the Applicant and the public, given that a

related disciplinary decision is publicly available. It also cites a B.C. order involving a request to access files regarding complaints against police officers, which I discuss further below.

[para 85] The Applicant suggests that information relating to *Criminal Code* and *Police Act* complaints should not be considered a matter of personal information. However, the fact that information relates to a *Criminal Code* or *Police Act* complaint does not mean that it is not personal information. Personal information remains as such if it is “recorded information about an identifiable individual” under section 1(n) of the Act. Still, it is possible that the nature and content of the records at issue are such that there would be no unreasonable invasion of personal privacy, under section 17, if personal information of the members involved were disclosed.

[para 86] This inquiry requires a balancing of the desirability of public scrutiny with the possibility of unfair harm and unfair damage to reputation to the members involved. When contemplating disclosure in view of unfair damage to reputation – and unfair harm by extension – one should consider the nature of the allegations raised, the type of records at issue, and the position occupied by the individual whose conduct was being questioned [Order 97-002 at para. 81, citing Ontario Order P-634 (1994)]. In this inquiry, the allegations of misconduct are serious and the individuals involved are police officers, whom the public holds to a very high standard of conduct. On the other hand, the Report and Video exist in the context of an investigation; they have not been prepared or presented in a more formal proceeding that tests the evidence more thoroughly and allows those whose conduct is impugned to make full answer and defence.

[para 87] In B.C. Order 13-1994, cited by the Public Body and referenced above, the former B.C. Commissioner referred to four levels of complaints in the resolution process: (1) complaints currently under investigation and not yet resolved; (2) complaints resolved informally (such as through mediation); (3) complaints determined after an internal disciplinary hearing; and (4) complaints determined after a public inquiry. The former B.C. Commissioner made the following comments, referring to provisions of B.C.’s *Freedom of Information and Protection of Privacy Act* that are comparable to those in the Alberta Act:

With respect to the identity of the police officers involved in the complaints process, it is my view that their privacy interests diminish as each level increases. Where a complaint is under investigation, the presumption is section 22(3)(b) applies [personal information compiled and is identifiable as part of an investigation into a possible violation of the law], as well as the factors listed in section 22(2)(f) (information supplied in confidence) and 22(2)(h) (disclosure may unfairly damage the reputation of any person referred to in the record).

Until an allegation has been proven, the factor described in section 22(2)(a) (disclosure is desirable for the purpose of subjecting the activities of a public body to public scrutiny) does not outweigh the privacy interests

described above. Accordingly, all information which would identify the police officer should be severed if any unresolved complaints records are disclosed.

Where complaints have been resolved informally, similar factors apply, since the police officer has not been through a formal legal process. This respects the concerns expressed by the B.C. Federation of Police Officers, that informed resolutions must be encouraged. Release of information which protects confidentiality by severing identifiable information should not, in my view, hinder the mediation process. However, by level (3), the matter has been dealt with and the factor in section 22(2)(h) would have significantly less weight. Severing of information which would identify the officer may not be required at this or later stages.

(B.C. Order 13-1994 at part 14, “Guidelines for severance of complaint files”.)

[para 88] The foregoing comments suggest that police officers are entitled to a greater level of privacy until such time as complaints or allegations against them reach a disciplinary hearing or public proceeding. Where a complaint is determined after an internal disciplinary hearing (level 3) or public proceeding (level 4), the former B.C. Commissioner’s view was that severing of information that would identify the police officer in question may not be necessary. I agree with this general approach. In other words, where a matter has been found to be serious enough to warrant a disciplinary hearing, whether private or public, the relevant circumstance relating to public scrutiny may be found to outweigh the fact that the record is in the context of an investigation into a possible violation of the law (i.e., a law enforcement record), as well as outweigh the possibility of unfair harm and unfair damage to reputation.

[para 89] I note that the former Alberta Commissioner also generally agreed with the approach set out in B.C. Order 13-1994 (Order 96-003 at pp. 11-12 or paras. 41-44). In particular, he stated:

[C]onsideration has to be given to section 16 [now section 17] with respect to invasions of personal privacy of both the complainant and the officer whose conduct is complained of. However, as the complaint proceeds through the various [s]tages, that is, as it is treated as having more substance, section 16(3)(a) [now section 17(5)(a)], which says that the head of a public body must consider whether disclosure is desirable for the purpose of subjecting activities of a public body to public scrutiny, will have increasing weight. In the initial stages however, the personal privacy of both officers and complainants is a major consideration. (Order 96-003 at p. 11 or para. 44.)

[para 90] B.C. Order 13-1994 states, on one hand, that the privacy interests of police officers are not outweighed by public scrutiny “until an allegation has been proven” but,

on the other hand, it states that their privacy interests have significantly less weight by level 3, which is where a complaint has been “dealt with” or “determined” by a formal process. These statements raise a question regarding the extent to which the privacy interests of police officers diminish where there has been a *formal process* but the allegations were *unproven*. In my view, where a complaint has been determined after a formal proceeding, disclosure of the police officer’s identity or other personal information will generally risk much less unfair harm and unfair damage to reputation, regardless of the outcome of the proceeding (although, of course, the facts and contents of the record at issue must be carefully considered in every case). Where a police officer has been found guilty, any harm or damage to reputation is probably not unfair. Where a police officer has been exonerated, there is less harm or damage to reputation on disclosure of his or her personal information, as the allegations have been proven to be unfounded and the officer has made a successful defence.

[para 91] I will now review the facts of the present case in order to determine where this matter falls on the “continuum” suggested by the former B.C. Commissioner. Here, the allegations of misconduct – which the Applicant characterizes as an “assault” or “beating” of a homeless person by police officers – are no longer under investigation. Insofar as criminal misconduct under the *Criminal Code* is concerned, I characterize the allegations as having been resolved informally because the Public Body and prosecutors did not choose to lay criminal charges. Insofar as disciplinary misconduct under the *Police Act* is concerned, however, a formal hearing resulted – but not in respect of the specific allegations of assault or beating. In other words, although the allegations of very serious misconduct in this case have not been addressed in a formal proceeding where they could be proven or disproven, a less serious allegation against one of the members involved, which arose out of the same events, did proceed to a disciplinary hearing. A less serious charge of disciplinary misconduct would also have been laid against the other member involved, but for the fact that he retired. In other words, the allegations were found to be valid enough to warrant a disciplinary hearing, even if that hearing did not take place.

[para 92] Given the foregoing, I find that the present matter is partway down the “continuum” suggested by the former B.C. Commissioner. The allegations of an assault or beating are no longer at the unresolved investigative stage where the privacy interests of police officers are highest, nor were they determined after a disciplinary hearing or public proceeding where their privacy interests are lower. However, the events in question were found to warrant disciplinary charges and a disciplinary hearing in respect of less serious allegations, which in my view pushes the matter closer to the point where the privacy interests of the members involved diminish. The matter proceeded to a formal process *generally*, even if the allegations of assault or beating did not do so *specifically*.

[para 93] Bearing in mind all of the foregoing, the applicable presumptions against disclosure under section 17(4) of the Act, and the relevant circumstances under section 17(5), I will now review the personal information of the members involved, as found in

each of the Report and Video, in order to determine whether disclosure would be an unreasonable invasion of their personal privacy.

(i) *Personal information in the Report of the members involved*

[para 94] I found earlier in this Order that disclosure of the names and identification numbers of the members involved was not necessary for public scrutiny of the activities of the Public Body in this case. As there are no factors weighing in favour of disclosing this information, I conclude that the Public Body properly withheld the names and identification numbers, under section 17 of the Act, on the basis that disclosure would be an unreasonable invasion of the personal privacy of the members involved.

[para 95] Because I have concluded that the names and identification numbers of the members involved must not be disclosed in this inquiry, their privacy interests are protected to a certain extent. However, this inquiry is complicated by the fact that the members remain identifiable by virtue of the existence of a publicly available decision. Information about them in the Report therefore remains their personal information, such as their recorded statements and activities at the time of the events in question and during the investigation. Acknowledging that the members involved are still identifiable, I find that their privacy interests are outweighed by the fact that the investigation that gave rise to the Report is no longer at the unresolved stage, a disciplinary hearing resulted in one case, and disciplinary charges would have resulted in the other.

[para 96] Again, I recognize that the specific allegations of mistreatment of the unidentified male that are raised by the Applicant – namely those relating to an alleged “assault” or “beating” – did not themselves result in a formal hearing at which the members involved would have had the opportunity to make full answer and defence. I also recognize that one of the members involved was not actually subjected to a disciplinary hearing. However, the allegations of assault or beating are very serious, and they involve police officers whom the public holds to a very high standard of conduct. As noted earlier, in addition to considering the type of records at issue – here an investigative report – one should also consider the nature of the allegations raised and the position occupied by the individual whose conduct was being investigated. I find that the serious nature of the allegations, the involvement of police officers, and the fact that related allegations proceeded to a formal disciplinary hearing in respect of one member involved, all outweigh the investigative nature of the Report.

[para 97] Moreover, the Applicant has established that it is the *investigation itself* that requires public scrutiny. A conclusion that personal information necessary to permit scrutiny of the investigation cannot be disclosed – precisely because there was no formal proceeding in respect of the allegations of assault or beating – relies on circular reasoning that would inappropriately preclude public scrutiny in this particular case. The objective of disclosure of some of the personal information in the Report of the members involved is to enable one to know whether the Public Body appropriately responded to the serious allegations of mistreatment of the unidentified male. The Applicant and the public are

already aware that charges under the *Criminal Code* did not result. On review of the Report, one will be in a better position to scrutinize the decision not to lay criminal charges, and to scrutinize decisions as to whether and why disciplinary charges should be laid under the *Police Act*, and if so, in respect of which policing standards, policies or procedures.

[para 98] In weighing all of the presumptions and relevant circumstances under section 17 of the Act, as they relate to the personal information in the Report of the members involved – other than their names, identification numbers and a small amount of additional personal information discussed below – I find that the factor relating to public scrutiny outweighs the factors militating against disclosure, being unfair harm and unfair damage to reputation. As discussed earlier, there is a reduced degree of unfair harm or unfair damage to reputation arising from disclosure of the Report, given the background and contextual information included in it, and the fact that the members involved had an opportunity to explain themselves. As also discussed earlier, I do not find that the information that is currently available to the public means that there has already been a sufficient amount of public scrutiny. The publicly available information does not address the more serious allegations of mistreatment of the unidentified male that the Applicant believes may not have been properly resolved by the Public Body.

[para 99] To support its position that none of the personal information of the members involved should be disclosed, the Public Body cites a decision under the *Fatality Inquiries Act*. In that case, the court recognized the privacy rights of police officers, found that there was a public interest in fostering frank internal reviews by the police, and concluded that the media should not have access to a court exhibit revealing information from an internal review [*In the matter of Ostopovich; In the matter of Galloway* (November 25, 2005), unreported, Alta. Prov. Ct., pp. 9-10]. That case is not entirely on point, as it was not in the context of the *Freedom of Information and Protection of Privacy Act*, which involves different considerations. To the extent that there is a public interest in fostering frank internal reviews by police, I find that the desirability of public scrutiny of the Public Body's activities in this inquiry outweighs that particular public interest, in addition to the privacy interests of the members involved.

[para 100] I confirm that I carefully considered the various presumptions against disclosure of the personal information of the members involved, particularly the one under section 17(4)(d) of the Act (employment history). I find that this presumption and the others are outweighed, under section 17(5)(a), by the desirability of scrutinizing the quality and integrity of the Public Body's investigation and resolution process. For instance, disclosure of each member's length of service, although part of their employment history, is necessary to scrutinize the Public Body's investigation insofar as the lengths of service were found to be relevant. Having said this, I find that the members' specific employment start dates do not require disclosure, as disclosure of the lengths of service are sufficient for the purpose of public scrutiny.

[para 101] I concluded above that the Public Body properly withheld the names and identification numbers of the members involved in the Report. I also conclude that it properly withheld a small amount of health information about one of them (on page 14 of the Report), a telephone number of one of them (on the same page), and the aforementioned employment start dates (on pages 72 and 88). Public scrutiny is not a relevant circumstance and there are therefore no factors weighing in favour of disclosure of this information. Conversely, I conclude that the Public Body did not have the authority to withhold the remaining personal information of the members involved in the Report – being their recorded statements, recorded activities and other personal information to the extent that the members remain identifiable – because disclosure of this information is necessary to subject the activities of the Public Body to public scrutiny, and this factor outweighs the presumptions against disclosure and the possibility of unfair harm and unfair damage to reputation.

(ii) *Personal information in the Video of the members involved*

[para 102] My conclusions in this Order are to the effect that much of the Report should be disclosed. Once this occurs, the factor relating to public scrutiny has less weight in relation to the Video, given that the Report provides a synopsis of what takes place on it. Further, I find that disclosure of the personal information of the members involved that appears in the Video has a greater risk of causing them unfair harm and unfair damage to reputation, when compared to the contents of the Report. The members involved have not had the opportunity to explain the contents of the Video to the same extent that they were given the opportunity to respond to the disciplinary allegations that are addressed in the Report. Although their statements in the Report partly explain their activities depicted in the Video, they did not have the chance to explain the contents of the Video more directly and fully. Finally, the allegations addressed in the Report are discussed in a way that provides background, such as what transpired before the activities captured on video, whereas disclosure of the Video would lack context. This again heightens the degree of unfair harm and unfair damage to reputation that would result.

[para 103] Moreover, unlike the personal information in the Report, the personal information captured on the Video is of a type that suggests that it should be withheld, notwithstanding the factor relating to public scrutiny. Whereas the Report contains written descriptions of the events in question and reproduces statements made by the members involved, the Video captures images of the members themselves. The nature of this personal information – in conjunction with the greater relevance to the Video of the factors relating to unfair harm and unfair damage to reputation – results in my conclusion that disclosure would be an unreasonable invasion of the personal privacy of the members involved. In other words, I find that the factors relating to unfair harm and unfair damage to reputation, as well as the applicable presumptions against disclosure under section 17(4), outweigh the factor relating to public scrutiny of the Public Body's investigation and resolution of the allegations of police misconduct.

[para 104] I conclude that the Public Body properly withheld, under section 17 of the Act, the personal information of the members involved in the Video.

(b) *Personal information of other police officers and civilian staff of the Public Body and security personnel of another body*

[para 105] I found earlier that the presumptions against disclosure under section 17(4)(d) (employment history) applied to the personal information of the members involved, but not the other third parties mentioned in the Report. I also found that section 17(4)(g) (name plus other personal information) did not apply to the names and titles of individuals where they merely reveal that a particular work-related function was carried out. Therefore, with two exceptions that I note below, only the presumption against disclosure under section 17(4)(b) (law enforcement record) applies to the personal information of the other police officers and civilian staff of the Public Body, and the security personnel of another body. Moreover, with the two exceptions noted, the personal information in question consists only of names. As discussed earlier in this Order, the fact that the foregoing individuals carried out work-related functions is not personal information, and disclosure of their job titles and positions would *not* be an unreasonable invasion of personal privacy under section 17(2)(e).

[para 106] Under section 17(5) of the Act, a relevant circumstance in favour of disclosing the names of the foregoing individuals is the fact that this personal information in the Report reveals merely that they were performing work-related responsibilities. The factor relating to public scrutiny also weighs in favour of disclosing the identities of the other police officers and civilian staff of the Public Body, in that knowledge of their names and roles would allow a better understanding of the Public Body's investigation. As found earlier, the circumstances relating to unfair damage to reputation, unfair harm, information supplied in confidence and unreliable/inaccurate information are not relevant to the personal information of the other employees of the Public Body or the security personnel of the other body.

[para 107] Despite the fact that the Report is a law enforcement record, I find that it would not be an unreasonable invasion of personal privacy to disclose the names of the other police officers and civilian staff of the Public Body, and the security personnel of another body, who are merely identified in the Report as having carried out work-related activities. While there may be situations in which it is important to withhold the name of a police officer or other individual where disclosure involves a risk to safety or harm to law enforcement, section 18 (disclosure harmful to individual or public safety) and section 20 (disclosure harmful to law enforcement) provide the necessary protection (Order F2006-030 at para. 27). In this inquiry, there has been no suggestion of a risk to anyone's safety or harm to law enforcement.

[para 108] With respect to the identities of the other police officers and civilian staff of the Public Body, I also find that the presumption against disclosure under section 17(4)(b) (law enforcement record) is outweighed by the factor relating to public scrutiny under section 17(5)(a). Disclosure of the names of the representatives of the Public Body who initiated, conducted, participated in and provided information during the investigation permits scrutiny of the quality and integrity of the Public Body's process of resolving allegations of police misconduct.

[para 109] I conclude that disclosure of the personal information of the other police officers and civilian staff of the Public Body (i.e., employees other than the members involved), and the personal information of the security personnel of another body, would not be an unreasonable invasion of their personal privacy under section 17 of the Act. There are two exceptions, in that there is a personal aspect to work-related information about a sergeant on page 13 (a telephone number) and about the investigating officer at the bottom of page 12 (the last three words), which therefore also gives rise to the presumption against disclosure under section 17(4)(g) (name plus personal information). I find that the factor relating to public scrutiny is not relevant, so conclude that the information must be withheld.

(c) *Personal information of the unidentified male, the individual who reported the complaint, and individuals associated with another organization*

[para 110] The remaining individuals about whom there is personal information in the Report are the unidentified male, the individual who reported the complaint, and the individuals associated with another organization who are identified at the bottom half of page 2 of the Report. There is also personal information of the unidentified male in the Video.

[para 111] There are presumptions against disclosure of the personal information of the foregoing individuals under sections 17(4)(b) (law enforcement record) and 17(4)(g) (name plus other personal information). I found earlier, under section 17(5), that the circumstances relating to information supplied in confidence, unreliable/inaccurate information and work-related activities are not relevant. I found that the desirability of public scrutiny is not relevant to the names of the foregoing individuals in the Report; to addresses, a job title and the name of the organization on page 2; or to the unidentified male's face in the Video. However, I found that public scrutiny is relevant to any remaining personal information. Finally, I found that the circumstances relating to unfair harm and unfair damage to reputation are relevant, but only to the personal information of the unidentified male.

[para 112] First with respect to the Report, I find that disclosure of the names of the unidentified male (his pseudonyms and believed real name), the individual who reported the complaint, and the individuals associated with the other organization, would be an unreasonable invasion of their personal privacy, as there are presumptions against disclosure but no factors weighing in favour of disclosure. I reach the same conclusion regarding the address of the individual who reported the complaint, the job title of one of the individuals associated with the other organization, and the name of the organization, as this information risks revealing the identities of the individuals, and I did not find that the desirability of public scrutiny necessitates disclosure.

[para 113] To the extent that individuals remain identifiable even if the aforementioned names, address, job title and name of the organization are withheld, I find that the factor relating to public scrutiny outweighs the presumptions against disclosure.

Any remaining personal information – such as information about the conduct of the unidentified male, and information provided by the individual who reported the complaint and the individuals associated with the other organization – requires disclosure in order to subject the Public Body’s investigation to public scrutiny. This information is necessary to understand what was being investigated and what relevant information was gathered by the investigating officer. I therefore conclude that disclosure of the personal information in the Report of the unidentified male, the individual who reported the complaint, and the individuals associated with another organization on page 2 – other than their names, an address, a job title and the name of the organization – would not be an unreasonable invasion of their personal privacy under section 17 of the Act.

[para 114] I found earlier in this Order that it was not necessary, in the interest of public scrutiny, to reveal the face of the unidentified male in the Video. As there are no factors weighing in favour of disclosure, the Public Body properly did not reveal the unidentified male’s face. With respect to his remaining personal information in the Video, given that he may still be identifiable by other means, I find that disclosure would also be an unreasonable invasion of his personal privacy under section 17 of the Act. As discussed in relation to the members involved, the Video captures more private or intimate personal information in the form of images, the factors relating to unfair harm and unfair damage to reputation have significant weight, and the factor relating to public scrutiny has less weight in relation to the Video once the bulk of the Report is disclosed. Again, the Report provides a synopsis of what takes place on the Video, including information about the conduct of the unidentified male. Finally, the Video lacks the context that exists in the Report, and the unidentified male had no opportunity at all to explain his conduct.

[para 115] Given the foregoing, I find that, with respect to the unidentified male’s personal information in the Video, the applicable presumptions against disclosure and the circumstances relating to unfair harm and unfair damage to reputation outweigh the factor relating to public scrutiny of the Public Body’s investigation and resolution process. The Public Body therefore properly withheld all of the personal information of the unidentified male in the Video under section 17 of the Act.

5. Summary of conclusions under section 17

[para 116] I conclude that disclosure of some of the personal information in the records at issue would be an unreasonable invasion of the personal privacy of third parties under section 17 of the Act. This includes all of the contents of the Video, which consists of the personal information of the members involved and the unidentified male. In the Report, this includes the names, identification numbers, employment start dates, a telephone number and a small amount of health information of the members involved; the pseudonyms and believed real name of the unidentified male; the name and address of the individual who reported the complaint; and the names, a job title and name of the organization of certain individuals mentioned at the bottom half of page 2, who provided information to the Public Body in the course of its investigation.

[para 117] Given the submissions of the Applicant – and my own independent review of the records at issue, the presumptions against disclosure and the relevant circumstances – I conclude that disclosure of other personal information in the records at issue would not be an unreasonable invasion of the personal privacy of third parties. This consists of virtually all of the personal information in the Report of other police officers and civilian staff of the Public Body (with two exceptions), and the personal information of the security personnel of another body. It also consists of the remaining personal information of all other third parties in the Report – including the recorded activities and statements of the members involved, and the recorded activities of the unidentified male, to the extent that these individuals remain identifiable even if their names and the members’ identification numbers are withheld.

B. Does section 32 of the Act (disclosure in the public interest) apply to the records/information?

[para 118] The relevant parts of section 32 of the Act read as follows:

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

(a) information about a risk of significant harm to the environment or to the health or safety of the public, of the affected group of people, of the person or of the applicant, or

(b) information the disclosure of which is, for any other reason, clearly in the public interest.

(2) Subsection (1) applies despite any other provision of this Act.

...

[para 119] In a letter to the Public Body dated February 11, 2008, the Applicant asked the Public Body to make a determination as to whether section 32 of the Act applied to the records at issue. It does not appear that the Public Body responded, which may be taken to be a refusal to apply section 32. In any event, the Public Body confirms in its submissions in this inquiry that it does not believe that section 32 applies to the information in the records at issue.

[para 120] Although the February 11, 2008 letter was sent after the Applicant’s original request for review by this Office, and after the file had reached this Office’s adjudication division, a section 32 issue may be addressed even if raised for the first time during an inquiry (Order 97-009 at para. 5; Order F2004-024 at para. 5). I formally added the section 32 issue to this inquiry because there were serious allegations of mistreatment of a member of the public by a police officer or police officers, which arguably engaged the section. I also noted that the Public Body appeared amenable to addressing the issue if it were formally added to the inquiry.

[para 121] However, applicants in future cases should not assume that an issue under section 32 will be formally added to an inquiry, just because it has been raised. In my view, an issue under section 32 does not have to be formally added to an inquiry unless there is some reasonable prospect of the section applying, or submissions from the parties are required in order to determine whether it applies. Moreover, it may be unnecessary to address arguments under section 32 where the applicant's arguments relating to public interest are essentially under section 17(5)(a) (Order F2006-008 at paras. 59 and 60). For instance, it may be redundant to address section 32 where the records at issue primarily consist of the personal information of third parties, the relevance of public scrutiny has already been considered under section 17(5)(a), and the applicant's subsequent argument is disclosure in the public interest under section 32(1)(b) – as opposed to risk of harm to the environment, health or safety under section 32(1)(a). In my view, where public scrutiny is essentially the only reason for raising section 32, the section will almost certainly not apply to the personal information of third parties if public scrutiny does not outweigh their privacy interests under section 17.

[para 122] The former Commissioner expressed concern that applications to review section 32 decisions could be used as a way of circumventing the usual review processes set out in the Act, and stated that any member of the public seeking an investigation of a section 32 decision ought to go to the head of the public body first (Order 96-011 at p. 18 or para. 54). These comments provide some guidance as to when and how issues under section 32 should be raised and dealt with. While public bodies must, in appropriate circumstances, consider the application of section 32 in any event, I believe that if an applicant making an access request specifically takes the position that a public body has a duty to release information in accordance with the section, the applicant should draw this to the public body's attention at the time of the access request, or otherwise as early as possible.

[para 123] Alerting a public body to the arguable application of section 32 at the earliest time would be in keeping with the objective of section 32, which is to bring about the disclosure of the information that it contemplates "without delay". In other words, raising the application of section 32 as an issue late in the process prevents what could have been an earlier resolution of that particular issue, and delays disclosure of information that is potentially clearly in the public interest. Having said this, it is important to add that section 32 may obviously be found by this Office to apply regardless of any previous steps taken by an applicant, such as where there is a clear risk to someone's health or safety. What is important to bear in mind is that each individual case should be dealt with in whatever manner the type of information involved suggests, and fairness to the interested parties requires (Order 96-011 at p. 14 or para. 40).

[para 124] I will now consider the application of section 32 to the information requested by the Applicant in this inquiry. The Applicant argues that the issue of the integrity of the public complaints process in relation to allegations of serious misconduct by police officers is a matter of compelling public interest, as is the ability of the media, individuals and organizations such as the Criminal Trial Lawyers' Association to publicly

comment about such issues. In support, the Applicant cites *Criminal Lawyers' Association v. Ontario (Ministry of Public Safety and Security)*, 2007 ONCA 392, in which the Ontario Court of Appeal concluded that section 23 of Ontario's *Freedom of Information and Protection of Privacy Act* violated freedom of expression under section 2(b) of the *Canadian Charter of Rights and Freedoms*.

[para 125] Section 23 of the Ontario Act provides that an exemption from disclosure of a record does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption – but section 23 may override only certain exemptions from disclosure. Because section 23 of the Ontario Act does not permit an override of other exemptions from disclosure, the Ontario Court of Appeal concluded that freedom of expression was unjustifiably infringed. The Court found that if access to information is precluded due to the inability to apply section 23, interested organizations and the public may be unable to comment on matters that might be in the compelling public interest.

[para 126] Section 32 of the Alberta Act already permits the public interest to override *any* exception to disclosure – as subsection 32(2) states that subsection 32(1) applies despite any other provision of the Act. The point discussed in the preceding paragraph therefore has limited application to the present inquiry. Still, in the Ontario matter that gave rise to the Court of Appeal case, the Office of the Ontario Information and Privacy Commissioner found that there was a compelling public interest in disclosure of certain portions of police records [*Criminal Lawyers' Association v. Ontario (Ministry of Public Safety and Security)* at para. 12; Ontario Order PO-1779 (2000) at paras. 101 and 110]. This raises the possibility of a similar conclusion here.

[para 127] However, I do not find that the present matter is sufficiently comparable to the Ontario case. There, the Office of the Ontario Information and Privacy Commissioner noted that the information requested was about a prosecution in which the Ontario Court (General Division) "... found deliberate non-disclosure or suppression of virtually every piece of evidence that was of probable assistance to the defence" as well as "an unacceptable degree of negligent conduct" by the state; it was also noted that the conclusions of the Ontario Provincial Police (OPP) as a result of its own investigation seemed to be "diametrically opposed" to the Court's view that serious improprieties in the administration of the criminal justice system had occurred [Ontario Order PO-1779 (2000) at paras. 91 and 92]. The Office of the Ontario Information and Privacy Commissioner found that "[s]uch issues generally rouse strong interest or attention and this case is no exception, as evidenced by the media coverage it has generated" and "from the public's perspective, the juxtaposition of the Court's reasons and the OPP's terse press release would appear to demand a more informative explanation" [Ontario Order PO-1779 (2000) at paras. 91 and 92].

[para 128] The facts in the present inquiry do not approach the level of seriousness that existed in the Ontario case above. Rather, I put this matter on par with the one discussed in Order F2006-011 of this Office:

I agree that the idea that police officers intimidated witnesses into giving false statements could be a matter of serious public concern. However, that is not the same thing as saying the adequacy of the investigation that was conducted to determine whether there was support for this allegation in this case is a matter of serious public concern. There is nothing in the documents that I have reviewed that persuades me that the latter is so. Thus, even if, which is not clear, the Applicant intended to argue that section 32 applied so as to require disclosure of these records even though they are subject to legal privilege, I would not accept this contention. (Order F2006-011 at para. 20.)

[para 129] As in Order F2006-011, I find that the Applicant's concerns about the adequacy or transparency of the Public Body's investigation of the allegations against the members involved in this inquiry do not engage the application of section 32 of the Act. For section 32 to apply, there must be circumstances *compelling* disclosure, or disclosure *clearly* in the public interest, as opposed to a matter that may be of interest to the public (Order F2004-024 at para. 57). The submissions of the parties, and my own review of the information in the records at issue, do not lead me to believe that information should be released on the basis that there is a clear or compelling public interest in disclosure. In particular, the contents of the Video do not give rise, in my view, to any obligation on the part of the Public Body to release it to the public, the Applicant or any other person.

[para 130] I found earlier in this Order that certain information in the Report cannot be withheld by the Public Body under section 17 of the Act. I conclude that section 32 does not apply to the remaining information in the records at issue. Although it is not strictly necessary for me to consider the application of section 32 to the information that I already found should be disclosed, I find that section 32 does not apply to the whole of the Report and Video.

V. ORDER

[para 131] I make this Order under section 72 of the Act.

[para 132] I find that disclosure of some of the personal information in the Report would be an unreasonable invasion of the personal privacy of third parties under section 17 of the Act. Under section 72(2)(b), I confirm the decision of the Public Body to refuse the Applicant access to the following personal information in the Report (page references are to those at the top of each page):

- the names (but not the ranks or job titles) of the "members involved" (i.e., the members being investigated) throughout the Report (for the sake of thorough severing, I point out that there is a first name appearing by itself that should be severed in each of two e-mails reproduced on page 17);
- the identification numbers of the members involved throughout the Report (for the sake of thorough severing, I point out that the members' identification numbers do not always appear immediately next to their names);

- the name of the “reporter” (i.e., the person who reported the complaint) on pages 1 and 2 of the Report;
- the address of the “reporter” on page 1 of the Report and in the second paragraph on page 2 (all of the words between the name of the reporter and the word “phoned”);
- the pseudonyms and believed real name of the “unidentified male” throughout the Report (I note them, possibly among other places, on pages 2, 3, 12, 72, 75, 76, 80, 81, 84, 85 and 92);
- the names of the individuals associated with another organization on page 2 of the Report (on lines 1, 3, 4 and 7 of the second paragraph; lines 2 and 4 of the third paragraph; and lines 1 and 2 of the fourth paragraph);
- the job title and the name of the organization that would identify the individuals associated with another organization on page 2 of the Report (the overall result is non-disclosure of five words between the first instance of “2004 Dec 31” and “had made him aware” and three words between “that police respond” and “to pick up” in the second paragraph, and non-disclosure of five words between “met with” and “at which time” in the third paragraph);
- the last three words on page 12 (personal information of the investigating officer);
- the phone numbers on page 13 (one instance) and page 14 (two instances);
- the six words between “advised that” and “he would not be” and the seven words between the name of one of the members involved and “that I could wait” on lines 3 and 4 of the fourth (and longest) paragraph on page 14 (health information of one of the members involved); and
- the employment start dates of the members involved on pages 72 and 88 of the Report.

[para 133] I find that section 17 of the Act does not apply to the remaining information in the Report. Under section 72(2)(a), I order the Public Body to give the Applicant access to the remaining information in the Report.

[para 134] I find that disclosure of the personal information in the Video would be an unreasonable invasion of the personal privacy of third parties under section 17 of the Act. Under section 72(2)(b), I confirm the decision of the Public Body to refuse the Applicant access to the Video.

[para 135] I find that section 32 of the Act (disclosure in the public interest) does not apply to the records at issue.

[para 136] I order the Public Body to notify me in writing, within 50 days of being given a copy of this Order, that it has complied with the Order.

Wade Riordan Raaflaub
 Adjudicator