Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER MO-2178

Appeal MA-030159-1

Toronto Police Services Board

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NATURE OF THE APPEAL:

The Toronto Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following:

> a) all documents pertaining to an attack on a named individual by another named individual, which took place on a specific date;
> b) copies of videotapes of interviews of the requester and another named individual, conducted on specific dates; and
> c) any documentation between two identified dates pertaining to injuries to a named individual (the requester's son) inflicted by another named individual.

The Police responded to the request with a decision letter, in which they denied access to the requested information on the basis of the exemptions found in section 38(a) (discretion to refuse requester's own information), in conjunction with sections 8(1)(a) (law enforcement) and 8(1)(f) (right to a fair trial); and section 38(b) (invasion of privacy), with reliance on the presumptions found in sections 14(3)(a) and 14(3)(b) of the *Act*.

The Police also informed the requester that access to a videotaped interview of the requester conducted at an identified hospital on a specified date could not be provided because the Police did not have a copy of the videotape.

The requester (now the appellant) appealed the Police's decision to deny access. The appellant also appealed on the basis that the Police should have the videotape of her interview at the hospital, as well as notes taken by two named officers who conducted the interview at the hospital, in their custody or control.

After this appeal was opened, the Police provided this office with some of the responsive records. These records included severed copies of 25 pages of responsive records, as well as three videotapes.

During the course of mediation, the Police conducted an additional search for records and located the videotape of the appellant's interview at the hospital. In a supplementary decision letter sent to the appellant, the Police advised the appellant that access to the videotape of her interview was denied on the basis of the same exemptions which had been applied to the other records, as well as on the basis of the exemption in section 8(2)(b) (law enforcement) of the *Act*. The Police also stated that they intended to apply this exemption to all the previously identified records as well.

The Police later informed the mediator that additional responsive records (including four videotapes of interviews with other individuals and an occurrence report) had been located; however, all five videotapes which had now been located, as well as the occurrence report, were not provided to this office at that time. Although the Police did not issue a supplementary decision letter with respect to these records, they identified for the mediator the exemptions that they believed applied to them. These exemptions were identified in the Mediator's Report, which was provided to the parties.

No other issues were resolved during mediation, and this file was transferred to the adjudication stage of the process. I sent a Notice of Inquiry to the Police, initially. One of the issues raised in the Notice of Inquiry was whether the existence of a publication ban, respecting certain information contained in the responsive records, affected the production of the responsive records by the Police to this office.

The Police provided representations in response to the Notice of Inquiry. In their representations, the Police addressed a number of the issues identified in the Notice of Inquiry, and also took the position that, as a result of a publication ban under section 486(3) of the *Criminal Code* and based on section 8(2)(b) of the *Act*, they were prevented from providing this office with unsevered copies of the responsive records, including the videotapes referred to above.

Following receipt of the Police's representations, former Assistant Commissioner Tom Mitchinson issued an Order requiring the Police to produce to this office an unsevered version of all of the records at issue in this appeal. The Police subsequently provided this office with the records.

Following the receipt of the records from the Police, I sent a modified Notice of Inquiry, along with a copy of the representations of the Police, to the appellant, who also provided representations in response to the Notice of Inquiry.

In her representations, the appellant, through her lawyer, addresses the issues raised in the Notice of Inquiry. In addition, she identifies that she is actively pursuing and/or contemplating a number of legal actions as a result of the incidents referred to in the records. The appellant indicates that one such action may include filing a complaint against the Police with the Ontario Civilian Commission on Police Services (OCCPS). She takes the position that the disclosure of the requested records is necessary to allow her to pursue these various legal actions, including her OCCPS complaint. Furthermore, the appellant states that she believes additional records responsive to her request exist.

In addition, the appellant indicates that she is seeking access to her own information as well as that of her minor son. She also states that she ought to have access to the information of her son "whose information she is entitled to under section 54 of the [*Act*]."

Following receipt of the appellant's representations, and after resolving issues regarding the sharing of those representations, I invited the Police to provide me with reply submissions in response to those of the appellant. I also requested that the Police address the issue of whether their search for responsive records was reasonable. The Police provided reply representations in response.

RECORDS:

The videotape records at issue in this appeal consist of three videotapes of the appellant's January, 2002 interview, a videotape of the appellant's October, 2001 interview, and four videotaped interviews of other individuals. The appellant was present for and participated in a

portion of one of the videotaped interviews involving another individual. The paper records consist of a three-page occurrence report (the three-page report), as well as 25 pages consisting of Occurrence Reports relating to two occurrences (pages 1-12), a Record of Arrest (page 13), Supplementary Records of Arrest (pages 14-24) and a Civilian Witness List (page 25).

DISCUSSION:

PRELIMINARY ISSUES

Nature of the Request

From the time the request for information was made to the Police, this matter has proceeded on the basis that the appellant was requesting her own personal information. However, as identified above, in her representations the appellant indicates that she is seeking access to her own information, as well as that of her minor son. She also states that she ought to have access to the information of her son "whose information she is entitled to under section 54 of the [*Act*]." In the circumstances, she appears to be referring to section 54(c) of the *Act*, which states:

> Any right or power conferred on an individual by this Act may be exercised,
>
> > if the individual is less than sixteen years of age, by a person who has lawful custody of the individual;

Previous orders have established that, under this section, a requester can exercise another individual's right of access under the *Act* if he/she can demonstrate that

- the individual is less than sixteen years of age; and
- the requester has lawful custody of the individual.

In order to meet the requirements of this section, a requester is often asked to provide documentary evidence in support. If the requirements have been satisfied, he/she is entitled to have the same access to the personal information of the child as the child him or herself would have. In these cases, the request for access to the personal information of the child will be treated as though the request came from the child him or herself (Order MO-1535).

In the circumstances of this appeal, the appellant's reference to her entitlement to access her child's personal information on the basis of section 54(a) was made in her representations. In their reply representations, the Police acknowledge that the appellant is the mother of one of the victims and seeks the information to assist with the current and future care of the child. Following my receipt of this information, I contacted the appellant's legal representative who advised that the appellant is the custodial parent of the child.

In the circumstances of this appeal, and in the absence of any evidence to the contrary, I consider the appellant to be representing both herself, as well as her son (who is less than sixteen years of age and whom the appellant has lawful custody of) on the basis of section 54(c) of the *Act*.

Publication Ban

One of the issues raised in this appeal, as identified above, is what effect, if any, the existence of a publication ban, prohibiting publication of certain information contained in the records, has on the issues in this appeal. Both the appellant and the Police provided representations regarding the impact the publication ban has on the access issues raised in this appeal.

As identified above, former Assistant Commissioner Tom Mitchinson issued an order, in letter form, requiring the Police to provide this office with a copy of the records at issue, and the Police have done so. In this decision, the former Assistant Commissioner addressed the issue of what impact, if any the publication ban had on the production of records to this office:

> … during mediation, the Police identified that a publication ban under section 486(3) of the *Criminal Code* had been imposed during a court proceeding. The Police indicated that the ban related to the identity of some of the individuals referred to in the records at issue. As a result, the Police took the position that the responsive records which had now been located (the five videotapes and the occurrence report) could not be provided to this office in their entirety. The Police also requested that the records originally provided to this office be returned to the Police.
>
> …
>
> The Police take the position that the existence of a publication ban affects the production of records to the IPC. They take the position that the records at issue can only be provided to the adjudicator in a severed form, with the material covered by the publication ban severed from the material provided to this office.
>
> The Police refer to section 486(3)(a)(i), (3.1) and (5) of the *Criminal Code* in support of their position. Those sections state:
>
> > (3) Subject to subsection (4), the presiding judge or justice may make an order directing that the identity of a complainant or a witness and any information that could disclose the identity of the complainant or witness shall not be published in any document or broadcast in any way, when an accused is charged with
> >
> > (a) any of the following offences:
> >
> > (i) an offence under section 151, 152, 153, 153.1, 155, 159, 160, 170, 171, 172, 173, 210, 211, 212, 213, 271, 272, 273, 346 or 347

> (3.1) An order made under subsection (3) does not apply in respect of the disclosure of information in the course of the administration of justice where it is not the purpose of the disclosure to make the information known in the community.
>
> (5) Every person who fails to comply with an order made under subsection (3) or (4.1) is guilty of an offence punishable on summary conviction.

The Police's representations then state:

> It is submitted that materials produced for any purpose including compliance with practice direction 1 and a Commissioner's inquiry pursuant to subsection 41(4) of the *Act* must be in compliance with the publication ban. Thus, the existence of a publication ban will affect the production of records to the Information and Privacy Commissioner in an Inquiry.
>
> The [Police] can find no authority for the proposition that production to the Information and Privacy Commissioner can be considered disclosure in the course of the administration of justice as contemplated in subsection 486(3.1) of the *Criminal Code*.
>
> The punishment for failure to comply with the publication ban is an offence under an Act of Parliament and, as such, the Head refuses to disclose non-compliant documents to the IPC pursuant to paragraph 8(2)(b) of the *Act*.

Effect of the Publication Ban

Paramountcy

In this appeal the argument that a publication ban under section 486(3) of the *Criminal Code* precludes the Police from providing records to the IPC raises the question of federal legislative paramountcy, specifically that of the *Criminal Code of Canada* over the *Act*, which is provincial legislation.

Order P-344 discussed the doctrine of federal legislative paramountcy as follows:

> The constitutional doctrine of federal legislative paramountcy can be stated as follows: where valid federal legislation is inconsistent with or conflicts with valid provincial legislation, the federal legislation prevails to the extent of the inconsistency or conflict. For the doctrine to apply, the courts have held that the inconsistency or conflict must amount to an "express

contradiction". As Professor Peter Hogg states at page 355 of his book *Constitutional Law of Canada*, (2d ed., 1985):

> The only clear case of inconsistency, which I call express contradiction, occurs when one law expressly contradicts the other. For laws which directly regulate conduct, an express contradiction occurs when it is impossible for a person to obey both laws; or as Martland J. put it in *Smith v. The Queen* [1960] S.C.R. 776, 800, "compliance with one law involves breach of the other".

In the case of *Multiple Access Ltd. v. McCutcheon et al.* [1982] 2 S.C.R. 161, (1982) 138 D.L.R. (3d) 1, the Supreme Court of Canada set out a frequently quoted test for what constitutes "express contradiction" at page 23-4:

> In principle, there would seem to be no good reason to speak of paramountcy and preclusion except where there is actual conflict in operation as where one enactment says "yes" and the other says "no"; the same citizens are being told to do inconsistent things; compliance with one is defiance of the other.

Based on the discussion set out above, the only way that a publication ban could produce inconsistency is if its terms preclude disclosure to the IPC of records that may be subject to the ban. In the context of section 486(3) of the *Criminal Code*, this depends on whether providing the records to the IPC constitutes "publication".

Publication

The term "publication" appears in a number of legal contexts. One of these is the *Copyright Act*, where section 2(2) defines it, in part, as "making copies of a work available to the public". Ontario's High Court of Justice defined "publish" in a similar way in *R v. Giftcraft Ltd.* (1984), 13 C.C.C. (3d) 192 (at paragraph 5): "[t]he root meaning of the word "publish" is "to make public".

In my view, the words "publish" and "publication" mean making information publicly known. I have concluded that providing records to the IPC does not fall within this definition. The IPC does not disclose records itself. If the IPC determines that a record is within the scope of the *Act*, and that it is not exempt, it orders the institution to disclose it. In any event, if an institution that disagrees with a determination by the IPC that the *Act* applies to a record, or that it is not exempt, the institution can request a reconsideration or bring an application for judicial review.

> Accordingly, I find that providing records to this office is not "publication" and is not prohibited by the order under section 486(3) of the *Criminal Code*. I therefore find that section 41(4), in conjunction with section 44 of the *Act*, authorizes me to require to be produced to the Commissioner the records at issue in this appeal.

The former Assistant Commissioner then proceeded to identify that, even if he had decided that the publication ban applies, the exception at section 486(3.1) of the *Criminal Code* would negate any such application to the production of the records to this office, as the disclosure would be "in the course of the administration of justice where it is not the purpose of the disclosure to make the information known in the community."

In that order, the former Assistant Commissioner was reviewing the issue of what impact, if any, the publication ban had on the production of records to this office in the course of an appeal. In this order I am addressing the issue of what impact, if any, the publication ban has on the production of records to the appellant.

In addressing this issue, the appellant submitted as follows:

> The [Police] claim that the records cannot be released or produced to the Information and Privacy Commissioner (IPC) except in accordance with the publication ban. The [Police] relied on the publication ban as a basis for refusing to disclose the information to the IPC. It did not address whether releasing information to the appellant or to her child in care of the appellant constituted "publication" or would constitute a violation of the publication ban.
>
> The IPC, in its decision [by former Assistant Commissioner Mitchinson, referenced above], determined that production of the records to [its] offices did not offend the publication ban imposed under section 486(3) of the *Criminal Code* and order the records produced. No review or appeal of this decision was sought by [the Police]. As such, the appellant pleads and relies on the decision of the IPC in that regard.
>
> It is submitted that producing the records to the appellant would not offend the publication ban, this is because producing the records does not constitute publication within the meaning of section 486(3).
>
> According to section 12 of the federal *Interpretation Act*, "Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects". According to the Supreme Court of Canada in *Canadian Newspapers Co. v. Canada (Attorney General)*, [1988] S.C.J. No. 67, the purpose of the publication ban provisions is:
>
> > … to foster complaints by victims … by protecting them from the trauma of wide-spread publication resulting in embarrassment and humiliation. Encouraging victims to come forward and complain facilitates the prosecution and conviction of those guilty of …

> offences. The overall objective of the publication ban imposed by [s. 486(3)] is to favour the suppression of crime and to improve the administration of justice... Section [486(3)] … restricts publication of the facts disclosing the victim's identity and it does not provide for a general ban but is limited to instances where the complainant or prosecutor requests the order or the court considers it necessary. (cited from headnote)

Since this case was decided, the *Criminal Code* has been amended to include an automatic right to a publication ban for victims of additional violent crimes in cases where the victim is a minor. See *Criminal Code* section 486. The expansion of the section has not changed the purpose for which the section was enacted, that purpose being primarily the protection of complainants and victims of crime.

In the case before the IPC, the person seeking the information is the mother of one of the two complainants ….

The appellant seeks disclosure of the records for the following purposes …

The appellant then identifies a number of purposes for which she is seeking disclosure. These relate to various anticipated or ongoing legal proceedings. She then states:

> The release of the information to the appellant for these private and personal purposes can hardly be said to constitute publication. Section 486 was enacted for the purpose of protecting victims … not for the purpose of protecting the police and or the accused. It is respectfully submitted that the publication ban has no application in the circumstances of this case.

The appellant's representations were shared with the Police, and the Police provided brief representations on the application of the publication ban, which read as follows:

> On May 18, 2004, the Ontario Court of Appeal released its decision in *D.P. v. Wagg* (2004), 71 O.R. (3d) 229 (C.A.). The case considered the production of material from a Crown brief. The Court held that the Divisional Court was correct in concluding that production of material from a Crown brief should not be compelled until the appropriate state agencies (ie: the Crown Attorney and the Police) have been given an opportunity to assess the public interest consequences involved and either a court order or the consent of all parties was obtained.
>
> As the [Police's] original submissions pre-dated the Ontario Court of Appeal decision in *Wagg*, no representations were made concerning the applicability of section 9 and 12. However, the decision in *Wagg* now requires the [Police] to make such representations and engage the interests of the Ministry of the Attorney General.

> The [Police sympathize] with the position of the [appellant], however, feels that the publication ban made under s. 486(3) of the *Criminal Code* [R.S.C. 1985, c. C-46, as amended] precludes it from providing the [appellant] with the requested material. Once made that order continues in effect until varied by a court having jurisdiction to do so [See *R. v. K.(V.)*, (1991), 68 C.C.C. (3d) 18 (B.C.C.A.)

Analysis and Findings

In this appeal, the records are requested by an individual who was personally involved in some of the matters to which the records relate. Her own videotaped statements are included in the records at issue. Furthermore, as identified above, the appellant is representing both herself and her son (who is less than sixteen years of age, and is one of the complainants whose identity is intended to be protected by the ban). Some of the records at issue include documentation pertaining to injuries suffered by the appellants' son.

I have carefully reviewed the representations of the parties regarding the possible effect the existence of a publication ban has on the issues concerning access to the records in this appeal. I have also noted the previous order of former Assistant Commissioner Mitchinson in which he stated as follows concerning the meaning of the term "publication":

> The term "publication" appears in a number of legal contexts. One of these is the *Copyright Act*, where section 2(2) defines it, in part, as "making copies of a work available to the public". Ontario's High Court of Justice defined "publish" in a similar way in *R v. Giftcraft Ltd.* (1984), 13 C.C.C. (3d) 192 (at paragraph 5): "[t]he root meaning of the word "publish" is "to make public".
>
> In my view, the words "publish" and "publication" mean making information publicly known. I have concluded that providing records to the IPC does not fall within this definition. The IPC does not disclose records itself. If the IPC determines that a record is within the scope of the *Act*, and that it is not exempt, it orders the institution to disclose it. In any event, if an institution that disagrees with a determination by the IPC that the *Act* applies to a record, or that it is not exempt, the institution can request a reconsideration or bring an application for judicial review.

I agree with the former Assistant Commissioner's view that the term "publication" means making information publicly known. This interpretation is supported by dictionary definitions such as the following:

> To make public; to circulate; to make known to people in general . . . An advising of the public or making known of something to the public for a purpose.
>
> *Black's Law Dictionary* (6th ed.), p. 1233
>
> To make publicly or generally known; to declare openly or publicly; . . . to proclaim (a person) publicly as something or in some capacity or connection . . .

> to give public notice of . . . to issue or cause to be issued for sale to the public (copies of a book, engraving, etc.) . . . to make generally accessible or available; to place before or offer to the public . . .
>
> *Shorter Oxford English Dictionary* (3rd ed.), p. 1702

Here, the appellant and (in effect) her son are seeking access to their own personal information under Part II of the *Act*. In these circumstances, the simple act of the Police providing the appellant with access to these records would not constitute "making information publicly known". Rather, in granting access, the Police will be making the information known to the appellant and her son only. Making information known to individual requesters under Part II of the *Act* cannot be equated with making information known to the public. Accordingly, I find that if I were to order the Police to disclose the records to the appellant and the Police were to comply, this would not constitute a violation of the publication ban made under section 486(3) of the *Criminal Code*.

I am not persuaded that the decision in *Wagg* compels a different conclusion. *Wagg* dealt with the issue of access to the Crown brief in the context of civil litigation, and has no application in the context of a request for access to police investigation records under the *Act*. Further, the confidentiality considerations that the court speaks of in *Wagg* are very similar to those considerations reflected in the personal privacy (section 38(b)/14) and law enforcement (section 38(a)/8) exemptions I will consider below. Therefore, any order I make for disclosure will not be inconsistent with the *Wagg* principles.

In addition, under section 4(1), the *Act* provides a public right of access to information held by institutions unless an exemption applies or the request is frivolous or vexatious. The functioning of the *Act* is distinct from the processes of the courts, even where access is requested to information that falls under a publication ban. This is confirmed in *Doe v. Metropolitan Toronto (Municipality) Commissioners of Police* (June 3, 1997), Toronto Doc. 21670/87Q (Ont. Gen. Div.), in which Mr. Justice Lane stated the following with respect to the relationship between the civil discovery process and the access to information process under the *Act*, in the context of a motion to clarify an earlier order he had made granting a publication ban:

> The order which I made on October 18, 1996 herein was not intended to interfere in any way with the operation of the *Municipal Freedom of Information and Protection of Privacy Act* legislation, nor ban the publication of the contents of police files required to be produced under that Act.

Mr. Justice Lane also stated as follows regarding the interaction between the *Act* and other legislation concerning confidentiality issues (in that case, the Ontario Rules of Civil Procedure):

> … In my view, there is no inherent conflict between the *Act* and the provisions of the Rules [of Civil Procedure] as to maintaining confidentiality of disclosures made during discovery. The *Act* contains certain exemptions relating to litigation. It may be that much information given on discovery (and confidential in that process) would nevertheless be available to anyone applying under the *Act*; if so,

> then so be it; the Rules of Civil Procedure do not purport to bar publication or use of information obtained otherwise than on discovery, even though the two classes of information may overlap, or even be precisely the same.

In the same way, in the event that an order of this office were to find that certain requested information is not exempt and ought to be disclosed, and as a consequence an individual chooses to publish that information, there is no remedy under the *Act*. Rather, the remedy is found within the context of the criminal law and, in particular, in the mechanisms it provides for dealing with breaches of a publication ban.

In any event, I have found that the disclosure of the information to a requester in the context of a request under Part II of the *Act* is not "publication" and is not, accordingly, prohibited by the publication ban. I am simply not persuaded that in the circumstances of this appeal, where the requester is seeking access to information relating to her or her minor son (who is one of the complainants whose identity is intended to be protected by the ban), disclosure can be considered to be "publication" for the purpose of the ban.

PERSONAL INFORMATION

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the records contain "personal information" and, if so, to whom they relate. The term "personal information" is defined in section 2(1) as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except where they relate to another individual,
>
> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
>
> (g) the views or opinions of another individual about the individual, and

> (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

The meaning of "about" the individual

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

The meaning of "identifiable"

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

Representations and findings

The Police state that the records at issue contain personal information. The appellant agrees that the records contain personal information, and proceeds to list the categories of personal information which may be contained in the records, and identify whose personal information it is. In particular, the appellant identifies that the personal information relates to herself, her son, other family members, and other identified individuals, some of whom may have made statements to the Police.

On my review of the records, I find that a number of the records contain the personal information of the appellant, as they contain information relating to her age, sex, or marital or family status (paragraph (a)), information relating to the appellant's education or medical, psychiatric, psychological, criminal or employment history (paragraph (b)), her address, telephone number, fingerprints or blood type (paragraph (d)), her personal opinions (paragraph (e)), the views or opinions of another individual about the appellant (paragraph (g)), and the appellant's name as it appears with other personal information relating to her (paragraph (h)).

Furthermore, a number of the records contain the personal information of the appellant's son, as they contain information relating to his age and sex (paragraph (a)), information relating to his medical history (paragraph (b)), his address (paragraph (d)), and his name as it appears with other personal information relating to him (paragraph (h)).

However, some of the records do not contain the personal information of either the appellant or her son. In particular, one of the incidents referred to in a number of the records does not involve the appellant or her son, and these records do not contain their personal information within the definition of that term in section 2(1) of the *Act*. I specifically find that the three-page report, pages 9 through 12 and 22 through 24 of the records, and two of the videotaped interviews, relate to the incident which did not involve the appellant or her son. Accordingly, these records do not contain their personal information for the purpose of section 2(1) of the *Act*.

In addition, although pages 13 through 15 relate to an incident in which the appellant or her son were involved, these pages also do not contain the personal information of the appellant or her son, as set out in the definition of that term in section 2(1) of the *Act*.

With respect to whether the records contain the personal information of other identifiable individuals, I find that all of the records contain the personal information of individuals other than the appellant or her son, including the personal information of the accused and other named individuals as defined in paragraphs (a), (b), (d), (e), (g) and (h) of the definition of "personal information" in section 2(1) of the *Act*.

Previous orders have identified that if a record contains the personal information of a requester, a decision regarding access must be made under Part II of the *Act*. (Orders M-352 and MO-1757-I). Furthermore, the correct approach is to review the entire record, not only portions of it, to determine whether it contains the requester's personal information. This record-by-record analysis is significant because it determines whether the record as a whole (rather than only certain portions of it) must be reviewed under Part I or Part II of the *Act* (see, for example, Order M- 352). Some exemptions, including the invasion of privacy exemption, are mandatory under Part I but discretionary under Part II, and thus in the latter case an institution may disclose information that it could not disclose if Part I applied (Order MO-1757-I).

Accordingly, for Records 1-8, 16-21, 25, and the videotapes which I have found contain the personal information of the appellant or her son, the issue to be determined is whether the records qualify for exemption under section 38 of the *Act*.

With respect to the records which I have found do not contain the personal information of the appellant, I will review whether they qualify for exemption under the mandatory exemption in section 14(1) of the *Act*.

INVASION OF PRIVACY

General Principles

Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right.

Under section 38(b), where a record contains the personal information of both the requester and another individual, and disclosure of the information would constitute an "unjustified invasion"

of the other individual's personal privacy, the institution may refuse to disclose that information to the requester.

If the information falls within the scope of section 38(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the requester. This involves a weighing of the requester's right of access to his or her own personal information against the other individual's right to protection of their privacy.

Under section 14, where a record contains personal information only of an individual other than the requester, the institution must refuse to disclose that information unless disclosure would not constitute an "unjustified invasion of personal privacy", as set out in section 14(1)(f) of the *Act*, which reads:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> > if the disclosure does not constitute an unjustified invasion of personal privacy.

In both these situations, the factors and presumptions in sections 14(2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates.

Section 14(2) provides some criteria for the institution to consider in making this determination; section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; and section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Divisional Court has stated that once a presumption against disclosure has been established under section 14(3), it cannot be rebutted by either one or a combination of the factors set out in 14(2) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (*John Doe*)] though it can be overcome if the personal information at issue falls under section 14(4) of the *Act*, or if a finding is made under section 16 of the *Act* that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the exemption. [See Order PO-1764]

Section 14(3)

The Police take the position that the presumptions in sections 14(3)(a) and (b) apply to the records at issue. These sections read:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
> > (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;

> (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

The appellant acknowledges that some of the information contained in the records may consist of information which relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation, as set out in the presumption in section 14(3)(a).

With respect to section 14(3)(b), the appellant states:

> It is submitted that the presumption in 14(3)(b) does not apply because the information requested was used to prosecute the violation of the offences to which it relates and many of the documents were generated upon the completion of the investigation. The information sought was used in the eventual prosecution of [the identified offences]. … These offences were investigated and charges were laid.

The appellant then identifies that convictions were entered against the accused person for certain identified offences.

Finding

I do not agree with the appellant that section 14(3)(b) does not apply to the records at issue. As stated above, the records at issue in this appeal consist of videotaped interviews, occurrence reports, records of arrest and a witness list. Previous orders have found that the presumption in section 14(3)(b) only requires that there be an investigation into a possible violation of law (See Order P-242). Whether or not criminal proceedings are commenced against any individuals does not negate the applicability of section 14(3)(b). Furthermore, whether or not the records were used in the eventual prosecution of the offences does not affect the application of this section. It is sufficient that the personal information was compiled and is identifiable as part of an investigation into a possible violation of law. Section 14(3)(b) does not apply, however, if the information in the records was compiled after the completion of an investigation into a possible violation of law [Orders M-734, M-841, M-1086].

On my review of the records, I am satisfied that the information contained in them was originally obtained or "compiled" by the Police in the course of their investigation into the circumstances surrounding the offences referred to therein. I am also satisfied that, as part of their policing function, the Police conducted this investigation with a view towards determining whether the actions of any party should result in criminal charges. Indeed, as identified by the appellant, the information contained in the records was used in the eventual prosecution of the accused person. Accordingly, I find that the disclosure of the personal information of individuals other than the appellant or her son in all of the records would constitute a presumed unjustified invasion of their personal privacy, pursuant to section 14(3)(b) of the *Act*.

In addition, upon my review of the records, I find that a number of them also contain the personal information of identifiable individuals other than the appellant or her son which relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation. Accordingly, I find that the presumption in section 14(3)(a) also applies to the information of this type found in some of the records at issue in this appeal.

The appellant argues that a number of the factors favouring disclosure under section 14(2) apply to the information. In particular, the appellant refers to the factors in sections 14(2)(a) and (d) in support of her position that the records ought to be disclosed, and also takes the position that sections 14(2)(f) and (i) do not apply in support of the position by the Police that the records ought not to be disclosed. Those sections read as follows:

> (2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
>
> (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
>
> (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
>
> (f) the personal information is highly sensitive;
>
> (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

As set out above, the Divisional Court has ruled that once a presumption against disclosure has been established under section 14(3), it cannot be rebutted by either one or a combination of the factors set out in section 14(2). (*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767). As I have found that the presumptions in sections 14(3)(a) and (b) apply to the records at issue, disclosure of the information contained in them is presumed to constitute an unjustified invasion of the privacy of the identifiable individuals other than the appellant or her son under sections 14(1) and 38(b). I am also satisfied that sections 14(4) and 16 have no application in this appeal.

Accordingly, I find that the records which contain the information of identifiable individuals other than the appellant or her son (namely, the three-page occurrence report, pages 9 through 15 and 22 through 24 of the records, and two videotaped interviews), qualify for exemption under the mandatory exemption in section 14(1) of the *Act*.

With respect to the records which contain the personal information of the appellant or her son and other identifiable individuals, I find that the disclosure of pages 1 through 8, 16 through 21, and 25, and the videotaped interviews remaining at issue, would constitute an unjustified invasion of another individual's personal privacy. Accordingly, subject to my discussion of the

severance of information and the possible application of the absurd result principle set out below, these records are exempt from disclosure under section 38(b) of the *Act*.

Severance

Section 4(2) of the *Act* obliges institutions to disclose as much of any responsive record as can reasonably be severed without disclosing material which is exempt from disclosure. Having found that pages 1 through 8, 16 through 21, and 25 qualify for exemption under section 38(b), I must now determine whether any portions of those records could reasonably be severed.

The key question raised by section 4(2) is one of reasonableness. Where a record contains exempt information, section 4(2) requires a head to disclose as much of the record as can reasonably be severed without disclosing the exempt information. A head will not be required to sever the record and disclose portions where to do so would reveal only "disconnected snippets", or "worthless", "meaningless" or "misleading" information. Further, severance will not be considered reasonable where an individual could ascertain the content of the withheld information from the information disclosed [Order PO-1663, *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1997), 102 O.A.C. 71 (Div. Ct.)].

After reviewing pages 1 through 8, 16 through 21, and 25, I find that it is possible to sever some of the information on these pages in such a way that the information relating to identifiable individuals other than the appellant or her son is not disclosed, but the information relating solely to the appellant or her son is disclosed. In each of the records, some of the information relating solely to the appellant or her son is set out in such a way that this information can be disclosed to the appellant without disclosing the personal information of other identifiable individuals. In particular, in this appeal, the request included a request for information "pertaining to injuries to [the appellant's son]". On pages 2, 3, 4, 20 and 21, there is specific information relating to the medical condition of the appellant's son that is severable from the other portions of those records. Furthermore, a portion of pages 4 through 5 contains information relating solely to the appellant's actions, and is also severable from the other portions of the records. Accordingly, I find that those portions of those pages of the records ought to be severed and disclosed to the appellant.

Absurd Result

Where a requester originally supplied the information contained in a record, or the requester is otherwise aware of it, the information may be found not exempt under section 38(b), because to find otherwise would be absurd and inconsistent with the purpose of the exemption. In Order M-444, Senior Adjudicator John Higgins stated:

> Turning to the presumption in section 14(3)(b), the evidence shows that the undisclosed information was compiled and is identifiable as part of an investigation into a possible violation of law … and for that reason, it might be expected that the presumption in section 14(3)(b) would apply.

> However, it is an established principle of statutory interpretation that an absurd result, or one which contradicts the purposes of the statute in which it is found, is not a proper implementation of the legislature's intention. In this case, applying the presumption to deny access to information which the appellant provided to the Police in the first place is, in my view, a manifestly absurd result. Moreover, one of the primary purposes of the Act is to allow individuals to have access to records containing their own personal information, unless there is a compelling reason for non-disclosure. In my view, in the circumstances of this appeal, non-disclosure of this information would contradict this primary purpose.
>
> It is possible that, in some cases, the circumstances would dictate that this presumption should apply to information which was supplied by the requester to a government organization. However, in my view, this is not such a case. Accordingly, for the reasons enumerated above, I find that the presumption in section 14(3)(b) does not apply. In the absence of any factors favouring non-disclosure, I find that the exemption in section 38(b) does not apply to the information at issue in the records.

Several subsequent orders have supported this position and include similar findings (see, for example, Orders M-613, M-847, M-1077 and P-1263). All of these orders have found that non-disclosure of personal information which was originally provided to an institution by a requester, or personal information of other individuals which would clearly have been known to a requester, would contradict one of the primary purposes of the *Act*, which is to allow individuals to have access to records containing their own personal information unless there is a compelling reason for non-disclosure. These orders determined that applying the presumption to deny access to the information which an appellant provided to the institution would, according to the rules of statutory interpretation, lead to an "absurd" result.

The absurd result principle has been applied where, for example:

- the requester sought access to his or her own witness statement [Orders M-444, M-451, M-613];
- the requester was present when the information was provided to the institution [Order P-1414];
- the information is clearly within the requester's knowledge [Orders MO-1196, PO-1679, MO- 1755]

However, if disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply, even if the information was supplied by the requester or is in the requester's knowledge [Orders M-757, MO-1323, MO-1378].

In most cases, the absurd result principle has been applied in circumstances where the institution has claimed the application of the personal privacy exemption in section 38(b). It has also been applied, however, in circumstances where other exemptions (for example, section 9(1)(d) of the

Act and section 14(2)(a) of the *Freedom of Information and Protection of Privacy Act*) have been claimed for records which contain an appellant's personal information (Orders PO-1708 and MO-1288).

I adopt the approach taken to the absurd result principle as set out in the orders referred to above. Applying this principle to the circumstances of this appeal, in which the basis for denying access to the records is that the disclosure of the records would constitute an unjustified invasion of the privacy of other individuals, I find that, with one exception, denying access to the appellant's own statements made to the Police would lead to an absurd result. Although I appreciate the sensitivity of the subject matter resulting in the creation of the records in this appeal, I am satisfied that denying the appellant access to information that originated with her cannot be justified on the basis that some parts of the statement may relate to other individuals as well. I find that because the information was provided to the Police by the appellant herself, its disclosure to her would not result in an unjustified invasion of the personal privacy of any other individuals. Accordingly, I am satisfied that, with one exception, the appellant is entitled to access to her own videotaped statements.

The exception relates to the appellant's videotaped statement which was made in the presence of another individual, and includes the videotaped statements of both the appellant and the other individual. During the time that the appellant was present in the interview, the statements of each of these individuals were clearly made in the presence of the other. In some circumstances, this information may also be disclosed to a requester, as to find it exempt under section 38(b) might be considered to be absurd and inconsistent with the purpose of the exemption. However, the information contained in the record is detailed and highly sensitive personal information relating to both the appellant and the other individual present in the interview. Furthermore, the record is a videotaped statement which, by its nature, includes not only verbal information but also other information relating to the individuals present (for example, body language, voice inflection, etc.). Although the appellant was present in the room when a portion of this individual's statement was made, in the circumstances, I find that the sensitivity of the information contained in this record, as well as the nature of this record and the other circumstances involved in this appeal, constitute compelling reasons for not applying the "absurd result" principle to this portion of the record. I find that disclosure of the information contained in this record would be "inconsistent with the purpose of the exemption", which must include the protection of the privacy rights of individuals other than the appellant.

Accordingly, I will order that the appellant's own videotaped statements (excluding the one which was made in the presence of another individual) be disclosed to the appellant, on the basis of the absurd result principle.

Having found that certain records or portions of records qualify for exemption under sections 14(1) and 38(b) of the *Act*, it is not necessary for me to also consider the possible application of sections 38(a) and 8 to them.

However, I have found that some severed portions of the records are not exempt under section 38(b), and that the absurd result principle applies to certain videotaped statements made by the appellant, and that these portions of the records ought to be disclosed to the appellant. I will now

review the possible application of the other exemptions relied on by the Police to these records or portions of records. In the circumstances, it is not necessary for me to review the application of these exemptions to the portions of the record which I have found qualify for exemption under section 38(b).

DOES THE DISCRETIONARY EXEMPTION AT SECTION 38(a), IN CONJUNCTION WITH SECTIONS 8(1)(a) AND/OR (f) APPLY TO THE RECORD?

Preliminary Issue - The Impact of Changed Circumstances on the Application of Discretionary Exemptions

The Police acknowledge that they are unable to raise new issues at the reply representations stage. However, they submit that the appellant's representations raise the possible application of sections 8(1)(a), 8(1)(f) and 38(a) resulting from the "change in circumstances' which occurred as a result of certain legal proceedings the appellant is currently pursuing or contemplating. The Police originally claimed that these exemptions applied to the records for certain reasons, but provided scant representations in support of their position in their initial submissions. In their reply representations, however, the Police argue that these discretionary exemptions apply for other reasons, based on the change in circumstances which has taken place since the initial request was made.

The position taken by the Police raises the possible issue of whether they can now rely on the identified discretionary exemptions as a result of these changed circumstances. I note that these exemptions were initially claimed for the records at issue. In the circumstances, I have decided to review the possible application of those sections to the records which I have found not to be exempt under section 38(b).

General principles

Section 36(1) gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right.

Under section 38(a), an institution has the discretion to deny an individual access to their own personal information where the exemptions in sections 6, 7, 8, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that information. Because section 38(a) is a discretionary exemption, even if the information falls within the scope of section 8, the institution must nevertheless consider whether to disclose the information to the requester.

Here, the Police rely on section 38(a) in conjunction with sections 8(1)(a) and (f), which read:

> A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> (a) interfere with a law enforcement matter;

> (f) deprive a person of the right to a fair trial or impartial adjudication;

The term "law enforcement," which appears in sections 8(1)(a) and (b), is defined in section 2(1) of the *Act* as follows:

> "law enforcement" means,
>
> (a) policing,
>
> (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
>
> (c) the conduct of proceedings referred to in clause (b).

Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context [*Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.)].

Where sections 8(1)(a) and (f) use the words "could reasonably be expected to", the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.), *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

It is not sufficient for an institution to take the position that the harms under section 8 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfillment of the requirements of the exemption [Order PO-2040; *Ontario (Attorney General) v. Fineberg*].

Section 8(1)(a): law enforcement matter

In order to meet the requirements of section 8(1)(a), the law enforcement matter in question must be a specific, ongoing matter. The exemption does not apply where the matter is completed, or where the alleged interference is with "potential" law enforcement matters [Orders PO-2085, MO-1578]. Furthermore, the institution holding the records need not be the institution conducting the law enforcement matter for the exemption to apply [Order PO-2085].

In support of the position that the records are exempt under section 38(a) in conjunction with section 8(1)(a), the Police identify that, during the course of this appeal, the appellant has lodged a public complaint with the Ontario Civilian Commission on Policing (OCCPS) "with respect to the records involved in this appeal". The Police state that they have since received a request from OCCPS for the relevant documentation concerning the complaint lodged by the appellant, and that the records have been provided to OCCPS. The Police then submit:

> … the release of the requested records would interfere with the investigation by OCCPS, conducted under the authority of the Police Services Act (the PSA), which were undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result.
>
> Premature release of information could impact the ability of investigators to conduct a full and impartial investigation into the very serious issues raised by the appellant …. Where information is released prematurely, the direction of the investigation can be altered by an individual who chooses to use the information to alter their evidence to suit their specific purpose….

As identified above, I have found that certain information contained in the records is exempt from disclosure under section 38(b) of the *Act*. The portions of the records remaining at issue consist of those portions of the personal information of the appellant and her son which could be severed from the records and disclosed (specifically, the information relating to the medical condition of the appellant's son on pages 2, 3, 4, 20 and 21, and a portion of pages 4 through 5 which contains information relating solely to the appellant's actions). I have also found that certain videotaped statements made by the appellant are not exempt from disclosure, on the basis that to find them exempt would produce an absurd result.

On my review of the information remaining at issue in this appeal, I conclude that I have not been provided with sufficient evidence to demonstrate that the disclosure of the portions of the records remaining at issue could reasonably be expected to interfere with a law enforcement matter. The Police's representations on this issue are brief, and in my view provide little more than speculation about the possible interference that might result from the disclosure of the records. The Police have not identified the exact nature of the investigation nor the basis upon which they state that interference with the investigation will occur, other than in the most general of ways. Based on my review of the Police's representations, and on the specific information remaining at issue in this appeal, the disclosure of those portions of the records could not reasonably be expected to result in the harms identified in section 8(1)(a). Accordingly, the portions of the records remaining at issue do not qualify for exemption under section 38(a) in conjunction with section 8(1)(a).

Section 8(1)(f): right to a fair trial

In order to meet the requirements of section 8(1)(f), the Police must show that there is a "real and substantial risk" of interference with the right to a fair trial or impartial adjudication. The exemption is not available as a protection against remote and speculative dangers. [Order P-948; *Dagenais v. Canadian Broadcasting Corp.* (1994), 120 D.L.R. (4th) (S.C.C.); Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.)].

The Police submit:

> … The change of direction of the investigation affected by this altered evidence could impact the subject officer's right to a fair trial should charges ultimately be laid, especially if the charges were based on the altered information.
>
> It is the position of the [Police] that the release of the requested records would deprive the subject officer of the right to a fair trial or impartial adjudication. Where a review by OCCPS is conducted and charges are recommended, the subject officer would face charges under the PSA.

As identified above, I have found that certain information contained in the records is exempt from disclosure under section 38(b) of the *Act*.

Again, on my review of the information remaining at issue in this appeal, I have not been provided with sufficient evidence to satisfy me that the disclosure of those portions of the records could reasonably be expected to deprive a person of the right to a fair trial or impartial adjudication. The Police's representations in support of their position are brief and general in nature. The information remaining at issue is information relating to the medical condition of the appellant's son, some information relating solely to the appellant's actions, and videotaped statements of the appellant. In my view, the disclosure of those portions of the records could not reasonably be expected to result in the harms identified in section 8(1)(f), and I find that the portions of the records remaining at issue do not qualify for exemption under section 38(a) in conjunction with 8(1)(f).

REASONABLE SEARCH

Introduction

In appeals involving a claim that additional responsive records exist, as is the case in this appeal, the issue to be decided is whether the Police have conducted a reasonable search for the records as required by section 17 of the *Act*. If I am satisfied that the search carried out was reasonable in the circumstances, the decision of the Police will be upheld. If I am not satisfied, further searches may be ordered.

A number of previous orders have identified the requirements in reasonable search appeals (see, for example, Orders M-282, P-458, P-535, M-909, PO-1744 and PO-1920). In Order PO-1744, acting Adjudicator Mumtaz Jiwan made the following statements with respect to the requirements of reasonable search appeals:

> … the *Act* does not require the [institution] to prove with absolute certainty that records do not exist. The [institution] must, however, provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records. A reasonable search is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request (Order M-909).

I agree with acting Adjudicator Jiwan's statements.

Where a requester provides sufficient detail about the records that she is seeking and the institution indicates that records or further records do not exist, it is my responsibility to ensure that the institution has made a reasonable search to identify any records that are responsive to the request. The *Act* does not require the institution to prove with absolute certainty that records or further records do not exist. However, in my view, in order to properly discharge its obligations under the *Act*, the institution must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the request.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response, the appellant must, nevertheless, provide a reasonable basis for concluding that such records exist.

In this appeal the appellant states that, in her view, additional records responsive to her request ought to exist. In her representations, which were shared with the Police, she refers to particular additional records which she believes ought to exist in relation to an earlier incident. She also refers to additional records, including videotaped statements, investigation reports and notes made by the Police officers, which would be responsive to her request.

In their reply representations, the Police indicate that a search for responsive memorandum book notes was not conducted at the time of the original request. The Police also indicate that, at the time they issued their original decision, the matter was still before the courts, and various documentation was in the custody and control of the Office of the Crown Attorney. They state that only after the conclusion of the court matter were some of the responsive records returned to them. The Police also state that other records responsive to the request may have been retained by the Office of the Crown Attorney at the Ministry of the Attorney General.

In the circumstances of this appeal, and based on the representations of both of the parties, I am not satisfied that the Police conducted a reasonable search for records responsive to the appellant's request. Indeed, the Police acknowledge that their searches for responsive records did not include searches for the memorandum book notes of the officers involved in this matter.

However, in the circumstances of this appeal, and in light of my decisions on access to the records set out above, I will not at this time require the Police to conduct further searches for responsive records. I will leave it up to the appellant to determine whether she wishes to pursue access to any additional records responsive to the request. In the event that the appellant wishes to pursue access under the *Act* to those additional records, she is invited to notify the Police of her intention to do so within 30 days of the date of this order.

ORDER:

1. I order the Police to provide the appellant with access to information relating to the medical condition of the appellant's son on pages 2, 3, 4, 20 and 21, the portions of pages 4 through 5 which contain information relating solely to the appellant's actions, three videotapes of the appellant's January, 2002 interview, and a videotape of the

appellant's October, 2001 interview, by **May 1, 2007**. I have provided the Police with a highlighted copy of pages 2, 3, 4, 5, 20 and 21 of the record, highlighting those portions which should be disclosed.

2. I uphold the Police's decision to deny access to the remaining records or portions of records.

3. I find that the Police did not conduct a reasonable search for records responsive to the request. As set out above, I leave it up to the appellant to determine whether she wishes to pursue access to any additional records responsive to the request. In the event that the appellant wishes to pursue access to those additional records, she is to notify the Police of her intention to do so within 30 days of the date of this order.

4. In order to verify compliance with the terms of this order, I reserve the right to require the Police to provide me with a copy of the records as disclosed to the appellant, upon request.

Original Signed by: March 29, 2007
Frank DeVries
Adjudicator