Information and Privacy Commissioner,
Ontario, Canada

Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER PO-3587

Appeal PA14-201

St. Joseph's Healthcare Hamilton

March 18, 2016

Summary: The appellant made a request to the Windsor Police Service under the *Municipal Freedom of Information and Protection of Privacy Act* for a variety of records, including the Crisis Outreach and Support Team (C.O.A.S.T.) training materials. The Windsor Police Service transferred the portion of the request dealing with C.O.A.S.T. training materials to St. Joseph's Healthcare Hamilton (the hospital). The hospital issued a decision denying access to the records and claiming the application of the exclusion in section 65(8.1)(d) (hospital teaching materials). During the mediation of the appeal, the hospital also claimed the application of the discretionary exemption in section 20 (danger to health or safety). The appellant raised the possible application of the public interest override in section 23. In this order, the adjudicator finds that neither the exclusion in section 65(8.1)(d) nor the exemption in section 20 apply. The hospital is ordered to disclose the records to the appellant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 20 and 65(8.1)(d).

Orders and Investigation Reports Considered: Orders PO-2693 and PO-2694.

Cases Considered: *Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* 46 O.R. (3d) 395 (C.A.).

OVERVIEW:

[1] This order disposes of the issues raised as a result of an appeal of an access

decision made under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The Windsor Police Service (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA*) for, amongst other records, general C.O.A.S.T. (Crisis Outreach and Support Team) records held by the Windsor Police Service including training materials, guidelines and regulations, as well as procedures and criteria for referral.

[2] The police located responsive records and disclosed the following to the requester:

- Power Point training for Patrol Officers;
- A presentation to the Windsor Police Services Board;
- A memorandum of understanding; and
- A Windsor Police Services Board resolution.

[3] The police also transferred the portion of the request dealing with C.O.A.S.T. training materials to St. Joseph's Healthcare Hamilton (the hospital) under section 18 of *MFIPPA*. The hospital subsequently issued a decision to the requester, denying access to the C.O.A.S.T. training materials, claiming that section 65(8.1)(d) (hospital teaching materials) of the *Act* applied. This section excludes a class of records from the scope of the *Act*.

[4] The requester, now the appellant, appealed the hospital's decision to this office.

[5] During the mediation of the appeal, the hospital issued a revised decision to the appellant, providing access to several pages of the records, but withholding the remainder. In its decision letter, the hospital advised that partial access to the records was granted under section 22(a) (information published or available to the public). With respect to the information that the hospital withheld, it advised the appellant that the application of the exclusion of hospital teaching materials in section 65(8.1)(d) of the *Act* applied. The hospital also claimed the application of the discretionary exemption in section 20 (danger to health or safety) in the alternative.

[6] In turn, the appellant advised the mediator that he believes there is a compelling public interest in the disclosure of the records at issue. The possible application of section 23 of the *Act* (the public interest override) was therefore added as an issue in the appeal.

[7] The appeal was then transferred to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry. The adjudicator assigned to the appeal sought and received representations from the hospital and the appellant, which were shared in accordance with this office's *Practice Direction 7*. The appeal was then

transferred to me for final disposition. For the reasons that follow, I do not uphold the hospital's decision and order it to disclose the records to the appellant.

RECORDS:

[8] The records remaining at issue consist of:

- Tab 1: Crisis intervention team training materials, pages 1-6 and 8-17;
- Tab 2: Crisis intervention and support program training materials, pages 2-34, 59-89 (with the exception of the bottom of page 81, which was disclosed), 91-114, 116, 121-131, 137-151, and 165;
- Tab 3: Crisis intervention and support program training materials, pages 2-15; and
- Tab 5: Crisis intervention and support program training materials, pages 45-57.

ISSUES:

A. Does section 65(8.1)(d) exclude the records from the *Act*?

B. Does the discretionary exemption at section 20 apply to the records?

DISCUSSION:

Background

[9] This request was initially made to the Windsor Police Service, as one of its officers had received C.O.A.S.T. training. As previously stated, the Windsor Police Service subsequently transferred the portion of the request relating to the C.O.A.S.T. training materials to the hospital.

[10] The hospital provided background information regarding the Crisis Outreach and Support Team (C.O.A.S.T.) program. The hospital supplies personnel and training for the C.O.A.S.T. program, which is affiliated with its mental health department. C.O.A.S.T. is a mobile crisis intervention team, consisting of mental health workers from the hospital and police officers of the Hamilton Police Service. In addition to mobile units, C.O.A.S.T. provides a 24 hour help line. The goal of the C.O.A.S.T. program is to help individuals (including adults, children and youth) and families deal with a crisis, through the development of a management plan to defuse the crisis situation. All members of the C.O.A.S.T. program, including the hospital team and the participating

police officers are required to complete Crisis Intervention Team (CIT) training, which includes subjects such as the causes of mental illness, crisis intervention techniques, community resources, the *Mental Health Act* and the duties of police officers under that Act. In 2005, the Ministry of Health and Long-Term Care began funding CIT training for Hamilton and the surrounding regions.

Issue A: Does section 65(8.1)(d) exclude the records from the Act?

[11] The hospital takes the position that the records at issue are excluded from the scope of the *Act* as a result of section 65(8.1)(d). Sections 65(8.1)(a) to (d) of the *Act* read:

> (8.1) This Act does not apply,
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> (a) to a record respecting or associated with research conducted or proposed by an employee of an educational institution or by a person associated with an educational institution;
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> (b) to a record of teaching materials collected, prepared or maintained by an employee of an educational institution or by a person associated with an educational institution for use at the educational institution;
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> (c) to a record respecting or associated with research, including clinical trials, conducted or proposed by an employee of a hospital or by a person associated with a hospital; or
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> (d) to a record of teaching materials collected, prepared or maintained by an employee of a hospital or by a person associated with a hospital for use at the hospital.

The hospital's representations

Teaching materials

[12] The hospital states that the records are part of the training materials used solely for CIT training. The teaching materials that comprise the records are provided only to officer trainees during the mandatory training sessions. Each CIT officer, the hospital states, who graduates from the training program, retains the materials as their source of reference regarding the spectrum of mental health issues they may face. In addition, the training materials provide the tools and procedures to assist the officers in safely de-escalating an individual experiencing a mental health crisis.

Collected, prepared or maintained by an employee of the hospital or by a person associated with a hospital

[13] The hospital states that the CIT training is supported by the Ministry of Health and Long-Term Care, as well as the Hamilton, Niagara, Haldimand and Brant Local Health Integration Network (LHIN). The hospital goes on to state that the training materials were prepared by one of its employees; specifically one of C.O.A.S.T.'s mental health professionals who is also the CIT Coordinator for the Hamilton region. The training materials at issue are entitled "Brantford Crisis Intervention Team Training Binder" and were used at a CIT training program held in Brantford. The hospital advises that several members of the police attended this program, which is a closed program to the extent that police officers are required to register and pay for the program. The hospital goes on to state that it does not share this training information outside of the training sessions.

For use at the hospital

[14] The hospital submits that in its region, the C.O.A.S.T. program is affiliated with its hospital-based mental health program. The hospital argues that the records at issue are used to train Hamilton Police Officers and mental health professionals who are members of its professional staff or are employees of the hospital.

[15] The hospital also states that despite its position that all of the records are excluded from the operation of the *Act*, it voluntarily disclosed some of the records to the appellant during the mediation of this appeal. The hospital states that this voluntary disclosure was not made under the *Act*.

[16] The hospital goes on to state:

> [The hospital] spent a significant period of time reviewing each page of the CIT Training Materials to ensure that the appellant was provided with as much information as possible despite the materials being excluded from the operation of FIPPA . . . For the purposes of its review of the teaching materials, [the hospital] ignored the Section 65(8.1)(d) exclusion and applied the Section 20 exemption.
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> . . .
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> Nothing in this discussion . . . should be interpreted to suggest that the Section 65(8.1)(d) exclusion does not apply to the Records.

The appellant's representations

[17] The appellant states that he does not dispute that the records consist of materials collected, prepared or maintained by an employee of a hospital. The appellant's position is that the records do not qualify as being "for use at the hospital" for the following reasons:

- The records are in relation to a course offered to participants outside the hospital;
- The course participants who receive the records are not employed by, associated with, or under the control of the hospital;
- There are multiple copies of the records in use at multiple institutions, including police services that are clearly not hospitals or a type of public health authority;
- The overall interest in the records is lost when distribution is permitted outside of the organization; and
- The records are used as a reference by members of C.O.A.S.T. units in their respective communities, not in the hospital.

[18] The appellant goes on to argue that the exclusion in section 65(8.1)(b) is analogous to the exclusion at issue in this appeal, and that the test for section 65(8.1)(b) (educational institution's teaching materials) is whether disclosure would affect the academic freedom of the institution and its members. With respect to section 65(8.1)(d), which is at issue in this appeal, the appellant states:

> . . . While [the hospital's] members may conduct research activities, the record at issue is not a research document nor does it provide instruction in public or private research. It does not detail internal material applicable solely to the hospital, nor reference subjects or material known only to the institution.
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> The Record does, in fact, provide reference and instruction on the practical implementation of public health policy in a law enforcement context while the practitioners are in the community. The Record is not properly classified as "teaching material" as intended by section 65(8.1)(d). Therefore, the exemption from the *Act* does not apply.
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> This view is in the spirit of a critical function of the Act in ensuring the transparency and accountability of government institutions. There are a number of government institutions involved in the CIT training provided by [the hospital], including the Ministry of Health and Long-Term Care, the Hamilton, Niagara, Haldimand, Brant Local Health Integration Network ("LHIN"), and municipal police forces. This involves public policy, law and regulation, tax dollars, and public health. The involvement of police officers, possibly the courts and at all times the rights and freedoms of a subject or patient demands transparency, public accountability and oversight.

> The record at issue is for use in Ontario by law enforcement and mental health practitioners. It is used as intended, as "a source of reference regarding the spectrum of mental health issues they may face, the tools and procedures for officers to safely de-escalate a person experiencing a mental health crisis." These situations are presented as they might occur outside of hospitals or clinical settings. It is not "for use at" the hospital and, therefore, section 65(8.1)(d) does not apply to the Record.
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> [emphasis added]

The hospital's reply representations

[19] In response, the hospital submits that the requirement in section 65(8.1)(d) that a record be "used at the hospital" is intended to distinguish teaching materials prepared for use in a hospital program, seminar or presentation from teaching materials prepared for use by an individual or organization other than the hospital. The exclusion would be rendered "virtually meaningless" if it were interpreted so restrictively as to cover only training provided on the premises of a hospital. The hospital goes on to state that education provided by hospitals for employees, staff and third parties providing allied services may be held off-site for any number of reasons.

[20] Further, the hospital states that within the health care sector, teaching materials are used by hospitals in connection with programs and services that are provided outside of hospitals. The hospital argues that it would render section 65(8.1)(d) meaningless if the exclusion did not apply to teaching materials created by a hospital employee on behalf of a hospital merely because the course or program to which they relate was not offered on hospital premises.

[21] Moreover, the hospital argues that teaching materials are by their nature intended to be disseminated, but that control over the materials is not relinquished merely because they are made public and/or permission is granted to use them for certain purposes. The hospital states also that the records at issue are not publicly available and are not designed for use by individuals who have not completed the four-day C.O.A.S.T. training program.

[22] The hospital goes on to argue that the fact that the records are used to prepare individuals who are not hospital employees to be C.O.A.S.T. team members is not a relevant consideration because the records were created and used for the C.O.A.S.T. program, which is a hospital mental health program. The records are used in connection with services that may result in individuals being transported to the emergency psychiatric assessment unit at the hospital, and becoming patients there.

[23] The hospital states:

> The appellant describes the Record as providing "reference and instruction on the practical implementation of public health policy in a law enforcement context while the practitioners are in the community" . . . This is too narrow a description of the Record. Even if the description were accurate, the Record would constitute "teaching materials." The term is not defined in FIPPA and the appellant's reference to "instruction" is consistent with the common understanding of what "teaching" involves. According to the Oxford dictionary, "to teach" means to "impart knowledge to or instruct (someone) as to how to do something."

[24] Lastly, the hospital states that the appellant has raised the exclusion in section 65(8.1)(c) (records relating to or associated with research).[1] The hospital then goes on to argue how the records fit within that exclusion. The hospital did not raise the possible application of this exclusion either at the request stage, during the mediation of this appeal or in its initial representations submitted in this inquiry. However, as it is an issue relating to the scope of the *Act*, I will address it. I find that this exclusion does not apply, as the hospital has not provided sufficient evidence that the records at issue are respecting or associated with research, including clinical trials, conducted or proposed by an employee of the hospital or by a person associated with the hospital.

Analysis and findings

[25] On January 1, 2012, the *Act* was extended to include hospitals as institutions as a result of the *Broader Public Sector Accountability Act, 2010* which received Royal Assent on December 10, 2010. In addition, various amendments were made to the *Act*, including the addition of the exclusion in section 65(8.1)(d).

[26] As previously set out, section 65(8.1)(d) states:

> This Act does not apply,
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> • to a record of teaching materials collected, prepared or maintained by an employee of a hospital or by a person associated with a hospital for use at the hospital.

[27] No previous orders of this office have considered this specific section. In considering the application of this exemption, however, I am guided by the approach taken by Adjudicator John Higgins in Order PO-2694. In that order, Adjudicator Higgins was interpreting section 65(8.1)(a) (research exclusion) of the *Act*. He applied what is commonly referred to as the "modern" principle of statutory interpretation when he stated:

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[1] The appellant actually raised the exclusion in section 65(8.1)(b), not (c) in his representations.

> I must consider the modern rule of statutory interpretation, referred to in the *Rizzo Shoes* judgment of the Supreme Court of Canada, and the Divisional Court judgment in *Ontario (Ministry of Correctional Services) v. Goodis* (see above). A more recent articulation of the rule appears in Sullivan and Driedger on the *Construction of Statutes*, 4th ed., by Ruth Sullivan (Toronto: Butterworths, 2002) at p. 3:
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> > [A]fter taking into account all relevant and admissible considerations, the court must adopt an interpretation that is appropriate. An appropriate interpretation is one that can be justified in terms of (a) its plausibility, that is, its compliance with the legislative text; (b) it efficacy, that is, its promotion of the legislative intent; and (c) its acceptability, that is, the outcome complies with legal norms; it is reasonable and just.

[28] Adjudicator Higgins also confirmed that it is appropriate to consider the purpose of the *Act* when interpreting section 65 of the *Act*. After reviewing a passage from the decision in *Solicitor General*,[2] he stated:

> In my view, neither this passage nor any other portion of the judgment in *Solicitor General* stands for the proposition that it is inappropriate to consider the purpose of the statute in interpreting the exclusions found in section 65, including section 65(8.1)(a). Indeed, the Supreme Court of Canada has stated that this approach is essential to statutory interpretation. For example, in *Rizzo v. Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27, Justice Bastarache states as follows (at para. 21):
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> > Although much has been written about the interpretation of legislation [citations omitted], Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:
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> > > Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense *harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament*.
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> > > [emphasis added]

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[2] *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R. (3d) 355 (C.A.), leave to appeal dismissed [2001] S.C.C.A. No. 509.

[29] Further, in Order PO-2693,[3] Adjudicator Higgins considered both the purposes of the *Act* and the legislative purposes of section 65(8.1).[4] In doing so, he concluded the following:

> . . . the Legislature did not intend to create an exclusion from the application of the Act whose reach would be *broader than is necessary* to accomplish those state objectives. It is important to note, in that regard, that section 65(8.1)(a) only relates to the question of whether the Act applies to the records. If the Act is found to apply, this does not automatically lead to disclosure. Where the Act applies, the records could be subject to one of the mandatory and/or discretionary exemptions from the right of access, which are found in sections 12 through 22 of the Act.
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> [emphasis added]

[30] I agree with and adopt the approach taken by Adjudicator Higgins in both orders and will apply it with respect to my interpretation of section 65(8.1)(d).

[31] Consequently, in applying the modern principle of statutory interpretation to section 65(8.1)(d), it is equally important to consider the legislative purpose that underlies the addition of the provision to the *Act*, as well as the purposes of the *Act* itself, set out in section 1 which reads, in part:

> The purposes of this Act are:
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> (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
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> (i) information should be available to the public,
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> (ii) necessary exemptions from the right of access should be limited and specific, and
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> (iii) decisions on the disclosure of government information should be reviewed independently of government; …

[32] Concerning the legislative purpose of section 65(8.1)(d), as previously stated, this amendment was made by means of the *Broader Public Sector Accountability Act, 2010* (Bill 122). During the debates that took place during the readings of this bill, M.P.P. Deborah Matthews stated that the legislation would include hospitals as

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[3] This order was jointly issued with Order PO-2694 and also dealt with the application of the exclusion in section 65(8.1).

[4] The legislative intent of this section was set out in statements made by M.P.P. Wayne Arthurs during the third reading of the *Budget Measures Act, 2005*.

institutions under the *Act*, and it is clear that it was the intent of the legislature to bring hospitals within the ambit of the *Act*.[5] Therefore, I will take into consideration the purposes of the *Act* in my interpretation of section 65(8.1)(d).

[33] Based on my review of the representations of the parties and the records themselves, I am satisfied that the records consist of teaching materials designed to educate individuals about the various types of mental illnesses, and to teach them strategies to de-escalate those with mental illnesses who are in crisis. I also accept the hospital's statement that the records were prepared by one of its employees; specifically one of its mental health professionals, who is also a member of the C.O.A.S.T team.

[34] However, I am not satisfied that the records at issue qualify as being "for use at the hospital." In making this finding, the fact that the training took place at a location other than the hospital is not a defining consideration. Hospital training can and does take place off-site, and this alone does not determine whether the teaching materials are "for use at the hospital".

[35] Instead, my finding is based on the fact that the specific teaching materials at issue were used to train not only hospital employees, but also police officers, who are clearly not employees or independent contractors of the hospital. As set out in the hospital's representations, the training materials are entitled "Brantford Crisis Intervention Team Training Binder" and were used by police officers who attended the CIT training program. In addition, the hospital acknowledges that the CIT training is supported by the Ministry of Health and Long-Term Care as well as the Hamilton, Niagara, Haldimand and Brant Local Health Integration Network (LHIN). I conclude that this CIT training program is a community-based program that includes various individuals who do not work for the hospital either as employees or independent contractors, and does not seem to be specific to the hospital itself. Further, based on my review of the records and the request itself, some of the recipients of this C.O.A.S.T. training material belonged to C.O.A.S.T. teams in other municipalities wholly outside the catchment area of the hospital.[6] While I accept that the materials were prepared by a staff member of the hospital, it would appear that these training materials were used and distributed to C.O.A.S.T. team members from across the province who are not only not hospital employees (or independent contractors), but who are not affiliated with the hospital at all.

[36] The wording of section 65(8.1)(d) makes it apparent that its focus is on a hospital's internal training programs. In my view, the purpose of the exclusion in section 65(8.1)(d) is not to protect a hospital's teaching materials that are widely

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[5] The particular section at issue was not expressly addressed in the debates.
[6] Namely the cities of Brantford and Windsor.

disseminated to individuals other than its employees (or independent contractors), or beyond its own internal educational programs.

[37] Consequently, I find that the hospital has interpreted section 65(8.1)(d) too broadly to exclude the records at issue that were created for and used by police officers to assist in training them to be members of C.O.A.S.T. teams in the province. I am satisfied that the exclusion in section 65(8.1)(d) is meant to exclude teaching materials that are collected, prepared or compiled for use by hospital staff (employees and independent contractors) in internal hospital-based programs, and not materials that are used at least as much in training members of the community outside of the hospital.

[38] I find that extending this exclusion to teaching materials that are used at least as much by individuals who are not hospital employees or independent contractors, as by those affiliated with the hospital, would be an unduly broad interpretation of this provision that is contrary to the spirit and the intention of the *Act* that information should be available to the public.

[39] Therefore, I find in the circumstances of this request and appeal that the exclusion in section 65(8.1)(d) does not apply to exclude the records from the scope of the *Act*.

Issue B: Does the discretionary exemption at section 20 apply to the records?

[40] The hospital is also claiming the application of the discretionary exemption in section 20 to the records. Section 20 states:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

[41] For this exemption to apply, the institution must provide sufficiently detailed and convincing evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.[7]

[42] An individual's subjective fear, while relevant, may not be enough to justify the exemption.[8] The term "individual" is not necessarily confined to a particular identified

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[7] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.
[8] Order PO-2003.

individual, and may include any member of an identifiable group or organization.[9]

The hospital's representations

[43] The hospital submits that the disclosure of the records could jeopardize the safety of C.O.A.S.T. team members, police officers and potentially the individuals who come into contact with the C.O.A.S.T. team. The hospital states that the C.O.A.S.T. team members work in the community to safely evaluate and de-escalate individuals who are experiencing an acute mental health crisis. The hospital further states:

> These individuals may be paranoid, manic, disorientated, have serious mental health illness or have abused substances. They may be a serious risk to themselves as well as C.O.A.S.T. team members, law enforcement officers and members of the public. They may require hospitalization. In the 17 year history of the C.O.A.S.T. program, [the hospital and the police] have collaborated to bring to care thousands of emotionally or mentally disturbed individuals in crisis. It is imperative that individuals who are served by the program have trust in the C.O.A.S.T. team members and law enforcement officers participating in the program. It is vital that individuals feel sufficiently safe to open the door of their homes, accept the approach of the team, and to instinctively understand that the team's sole purpose is to offer help. It is undisputed that the mental health workers and officers participating in C.O.A.S.T. may be at grave risk while doing this job.

[44] The hospital further states that the records are one component of the CIT teaching materials, and that 40 hours of training is also provided, which involves demonstrations to provide context to the materials. It goes on to argue that disclosing the records to individuals who have not had the benefit of the training and foreseeably to those without the specialized skill and knowledge of the C.O.A.S.T. team members could result in individuals in crisis being fearful, resisting help and believing that they will automatically be taken to the hospital or arrested. The hospital submits that these individuals may not be rational, which only increases the risk to the safety of hospital staff, police officers or the individual themselves.

The appellant's representations

[45] The appellant submits that the hospital has failed to demonstrate that individuals who may have information about their mental disorders are more of a threat to health and safety than those who do not. The appellant goes on to state that the hospital's argument is at odds with the generally-held view that a patient's understanding of a

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[9] Order PO-1817-R.

diagnosis or treatment option is the first step to better health. Further, the appellant argues that the records appear to contain information that is publicly available from, for example, the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

[46] The appellant also argues that the records are used by other C.O.A.S.T. teams and states that the risk of harm is not heightened given that, for example, the Windsor C.O.A.S.T. team is prohibited from being involved as first responders in violent or potentially violent calls for service. In any event, the appellant submits that the disclosure of the records would not cause a threat to health or safety because:

- Police officers engage with members of the public regularly in the course of their duties, and have training in the use of lethal and non-lethal force. The CIT training does not change this;

- Social workers participating in the C.O.A.S.T. program choose to work with potentially mentally ill individuals in the community instead of a hospital and, when doing so, are accompanied by a police officer;

- Should an individual who has read the records be approached by the C.O.A.S.T. team, a "mediated or even straight-forward discussion of the situation is . . . most probable and desired;" and

- Providing health information to the general public that minimizes safety concerns while increasing awareness and understanding should not be discouraged or prevented.

The hospital's reply representations

[47] In response to the appellant, the hospital states that the individuals the C.O.A.S.T. team deals with may have the following types of mental disorders: schizophrenia; mood disorders; anxiety disorders; personality disorders; substance abuse; and dementia.

[48] The hospital goes on to state that the record is not intended to be used to diagnose a mental disorder, nor is it intended to provide information on the de-escalation of crisis situations to the general public. The hospital submits that it could be dangerous for untrained individuals to try to use the procedures described in the records. Given that the test in the exemption in section 20 is that disclosure of the record could reasonably be expected to seriously threaten the safety of an individual, the hospital argues that it is reasonable to expect that individuals who do not have the necessary background could draw inappropriate conclusions from the records, including the conclusion that the C.O.A.S.T. team members represent a threat, rather than a support to them.

Analysis and findings

[49] As previously stated, the hospital's argument is that the disclosure of the records could jeopardize the safety of C.O.A.S.T. team members, police officers and potentially the individuals who come into contact with the C.O.A.S.T. team. Consequently, the issue to be decided is whether the hospital has demonstrated that disclosure of the information at issue "could reasonably be expected to" give rise to the specified result, i.e. potential endangerment of these individuals or groups of individuals.

[50] The party with the burden of proof under section 20, that is, the party resisting disclosure, must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.[10]

[51] Having carefully reviewed the representations and the records themselves, in my view, the disclosure of these training materials could not reasonably be expected to seriously threaten the safety or health of an individual or result in a reasonable expectation of harm to any individual.

[52] It has been acknowledged by this office that individuals working in public positions will occasionally have to deal with "difficult" individuals. In a postscript to Order PO-1939, former Adjudicator Laurel Cropley states the following with regard to section 20 of the *Act*:

> In these cases, individuals are often angry and frustrated, are perhaps inclined to using injudicious language, to raise their voices and even to use apparently aggressive body language and gestures. In my view, simply exhibiting inappropriate behaviour in his or her dealings with staff in these offices is not sufficient to engage section 20… claim. Rather… there must be clear and direct evidence that the behaviour in question is tied to the records at issue in a particular case such that a reasonable expectation of harm is established should the records be disclosed.

[53] In the circumstances of the present appeal, I acknowledge that the C.O.A.S.T. team comes into contact and manages crisis situations with individuals who are mentally ill and may become violent, going well beyond the "difficult" individuals described above by former Adjudicator Cropley. However, in my view, this risk is inherent given the type of work the C.O.A.S.T. team engages in. I have not been provided with sufficient evidence establishing that the disclosure of the records would result in a reasonable expectation of harm above and beyond that already experienced

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[10] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

by the C.O.A.S.T. team in its day to day work. I find the hospital's argument that a mentally unstable person may become violent toward the C.O.A.S.T. team as a result of misinterpreting the content of the records is speculative at best. In addition, I note that there is no evidence before me that the appellant poses a threat to any member of the C.O.A.S.T. either with or without the records at issue.

[54] Therefore, I find that the disclosure of the information at issue could not reasonably be expected to seriously threaten the safety and/or health of any person or group of persons. Accordingly, I find that the information in the records cannot be withheld under section 20. In view of my findings regarding the application of this exemption, it is not necessary for me to consider the hospital's exercise of discretion in applying section 20, nor is it necessary for me to consider the appellant's argument that the public interest override in section 23 should apply.

ORDER:

1. I order the hospital to disclose the records to the appellant by **April 26, 2016** but not before **April 21, 2016**.

2. I reserve the right to require the hospital to provide me with copies of the records it discloses to the appellant.

Original Signed by: March 18, 2016

Cathy Hamilton
Adjudicator