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

ORDER MO-2019

Appeal MA-050209-1

York Regional Police Services Board

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NATURE OF THE APPEAL:

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

> …all records [covering the most recent five year period] which will allow me to determine the locations where and dates when York Regional Police have identified houses which have been used for illegal drug operations, commonly referred to as "grow houses" or illegal chemical labs.

The requester, a member of the media, indicated that an internal summary listing locations would suffice.

In response to the request, the Police issued a decision denying access to the records under sections 8(1)(a), (b), & (f), 8(2)(a) and 14(1) (law enforcement) in conjunction with 14(2)(f) & (i) and 14(3)(b) & (f) (personal privacy).

The requester appealed this decision.

During mediation, the requester, now the appellant, removed a component of the request relating to the threats posed to emergency crews, police and the community by "grow houses" as he was satisfied that this did not exist. It was also determined at mediation that data were only available for four of the five years requested.

No further mediation was possible and at the close of mediation, the appellant confirmed that he still wished to seek access to certain specific columns in the four records, as follows:

- Year 2002 [21 pages] - the columns describing the date, occurrence number, address, drugs seized, and money seized;

- Years 2003 [9 pages], 2004 [13 pages], and 2005 [9 pages] - the columns describing the date, address, occurrence number, charges, plants seized, money seized, and "children yes/no".

This appeal moved to adjudication and I began my inquiry by seeking representations from the Police, which I received. I sent a modified Notice of Inquiry and the non-confidential representations of the Police to the appellant and received representations in reply.

During the course of the inquiry, both parties made representations on section 2(1) (definition of personal information) and section 16 (public interest override) of the *Act* and as a result, these require my consideration.

NOTE:

For the sake of clarity, I would draw the reader's attention to the fact that the terms "grow house", "grow lab", and "grow operation" are used interchangeably throughout the representations and this order.

RECORDS:

The records consist of a set of four charts, one for each year between 2002 and 2005. Each chart sets out in chronological order a summary of Police involvement with "grow labs". Although the chart for 2002 varies in form from the subsequent years, the information in each chart is generally the same.

As noted above, the appellant is seeking access to the following columns:

- For 2002 - the date, occurrence number, address, drugs seized and money seized for each occurrence;

- For 2003 - 2005 - the date, address, occurrence number, charges, plants seized, money seized and "children yes/no" for each occurrence.

Following mediation, the column in the 2002 chart detailing the charges laid does not appear to be at issue. However, this column has been requested for subsequent years, and for consistency, since a column of this nature does appear in the 2002 chart, I will consider this column as part of the appellant's request and at issue in this appeal. I also note that the column naming the individual or individuals charged for each occurrence was not part of the original request and is not at issue in this appeal.

DISCUSSION:

In denying access to the records at issue in this appeal, the Police take the position that releasing the information sought would interfere with a law enforcement matter. The Police also assert that releasing the information contained in those records would disclose the personal information of individuals, thereby invading their personal privacy. I will first consider the applicability of the law enforcement exemption in section 8 of the *Act*.

LAW ENFORCEMENT

The Police have claimed the application of section 8(1)(a), (b) and (f) and 8(2)(a) to the information in the records at issue in this appeal. The relevant sections read:

> 8.(1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> (a) interfere with a law enforcement matter;
>
> (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result …
> (f) deprive a person of the right to a fair trial or impartial adjudication …
>
> (2) A head may refuse to disclose a record,
>
> (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law…

The term "law enforcement" is defined in section 2(1) 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)

In determining the application of the law enforcement exemption claimed by the Police, several well-established principles must be considered. 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.)].

Except in the case of section 8(1)(e), which is not at issue in this appeal, 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*

fulfilment of the requirements of the exemption [Order PO-2040; *Ontario (Attorney General) v. Fineberg*].

Furthermore, the section 8(1)(a) and (b) exemptions does not apply where the law enforcement matter or investigation is completed, or where the alleged interference is with "potential" law enforcement matters [Orders PO-2085, MO-1578].

Section 8(1)(a) and (b): Interference with Law Enforcement Matter or Investigation

Representations

The records at issue are charts containing information about indoor grow operation seizures generated by the Police's Drugs & Vice Enforcement Unit (the "Unit"). The Police submit that these charts were prepared in the course of a law enforcement matter or investigation as contemplated by section 8(1)(a) and (b) of the *Act*.

The Police note that one of the columns subject to the request lists criminal charges laid, but does not specify if the matter is ongoing or completed, or whether it has been before the courts. The Police contend that where no charges are listed, the investigation must be considered active and disclosing the grow house address may compromise such ongoing investigations by enabling curious individuals to visit the identified locations and potentially tamper with evidence.

The Police state:

> Also in the case where the investigation is ongoing and no arrests have been made, the investigating officers may have the property under surveillance in hopes of locating the persons responsible for the crime. By releasing the location of the property, the [persons] responsible for these crimes will be 'tipped off' and [realize] that the police are looking for them and will not attend the property and be able to evade police. Obviously this will compromise the investigation and prevent police from locating the wanted person thus interfering with an ongoing law enforcement investigation.

The Police provided additional confidential materials to support their position, primarily as regards the section 8 law enforcement exemption, but also in relation to the issues of personal information and personal privacy, which are discussed later in this order. I have reviewed and considered these additional confidential submissions in the formulation of my decision.

The appellant submits that the section 8 law enforcement exemption should not apply to these records and that the Police have not met the burden of proof by providing the "detailed and convincing" evidence necessary to support the existence of a reasonable expectation of harm resulting from disclosure of the requested information, including interference with law enforcement investigations.

Analysis

For the section 8(1)(a) or (b) exemptions to apply, the Police must demonstrate the following:

(i) the activity of the Drugs & Vice Enforcement Unit in carrying out grow operation seizures constitutes "law enforcement";

(ii) there are "matters" or "investigations" in existence; and

(iii) the disclosure of the records at issue in this appeal could reasonably be expected to interfere with an ongoing law enforcement matter or investigation.

As previously noted, the records responsive to the appellant's request consist of charts prepared to summarize the activity of the Drugs & Vice Enforcement Unit in relation to grow operations. This Unit has, as one of its central purposes, the prevention, detection and investigation of illegal drug production. The activity of the Unit leads, or could lead, to charges under the *Criminal Code* or *Controlled Drugs and Substances Act*, resulting in proceedings in a court. I find, therefore, that the records do relate to activities that qualify as "law enforcement" under section 2(1) of the *Act*.

I am also satisfied that the information in the records at issue in the present appeal were prepared during a specific investigation. While the charts themselves may have been created for the purpose of providing a summary of the Unit's grow house seizures for each of the years 2002, 2003, 2004 and part of 2005, the information is derived from specific law enforcement matters or investigations.

What is not clear from a review of the records, however, is which of these matters or investigations are ongoing and which have been concluded. Although the requirement that the matter or investigation in question be ongoing under sections 8(1)(a) and (b) was clearly pointed out in the Notice of Inquiry sent to the Police, they provided no specific evidence to address this question. As noted already, those that are concluded would not qualify for the application of the section 8(1)(a) or 8(1)(b) exemptions.

Although that is sufficient to deal with the matter, even accepting for the sake of argument that all of the occurrences listed in the charts relate to ongoing matters or investigations, I would still be obliged to ask if disclosure of the records could *reasonably* be expected to interfere with the law enforcement matters or investigations. The Police have suggested that disclosure will interfere with investigations which may still be carried out, or are being carried out, into alleged criminal activities. The Police take the position that the harms resulting from disclosure include interference with the collection of evidence, surveillance, and with other aspects of investigations by members of the public equipped with the information from the records.

In my view, the evidence tendered by the Police in support of their contention that the information in the records is exempt from disclosure under sections 8(1)(a) and (b) falls short of being "detailed and convincing." The Police have failed to make a sufficient evidentiary link

between the disclosure of the records and the harm addressed by either of these sections; the remoteness of the interference the Police are asking me to draw here is not, in my view, within the realm of reasonable expectation of harm and places it in the category of mere speculation, which is inadequate to meet the requirements of sections 8(1)(a) and (b). For example, it does not seem reasonable to conclude that releasing records relating to grow-op seizures that happened as long ago as 2002 will interfere with the ongoing collection of evidence or surveillance of the property, and the Police have not provided any specific information to support such a claim. Further, the assertion that releasing information regarding any of the years in question (some of which is now four years old) will lead curious citizens to attend the properties in question and to interfere with evidence is not persuasive. The onus is on the Police to provide detailed and convincing evidence, for example, specific examples of cases where surveillance and the collection of evidence will be endangered. In the absence of such examples, a blanket assertion that the disclosure of this information will interfere with a law enforcement matter or investigation is insufficient.

I note that the appellant's representations state that the London Police Service currently post a listing of street addresses and other information relating to grow houses on their web site, a point that is acknowledged in the confidential portion of the Police's representations. However, the Police have made no submissions to the extent to which the posting of this information has interfered with the ability of the London Police Service to conduct law enforcement investigations or proceedings. This suggests that, in fact, no such interference has been experienced.

For all these reasons, I find that the responsive records do not qualify for exemption under section 8(1)(a) and (b).

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

Representations

With regard to the disclosure of information depriving an individual of the right to a fair trial, as set out in section 8(1)(f), the Police submitted the following:

> In some situations the property owner is the accused person that has [been] charged. Information in the records reveals not only the property owner's name, but also the amount of drugs seized, the amount of money seized and whether or not children [were] living in the home at the time of the crime. By disclosing this information prior to the criminal trial it may lead persons to having preconceived ideas about the accused and therefore not allowing him an impartial adjudication.

The appellant's representations on the issue of the release of the responsive records depriving an individual of the right to a fair trial are confined to the contention that section 8(1)(f) of the *Act* cannot apply because the information at issue is not personal information.

Analysis

Previous orders have held that for the section 8(1)(f) exemption to apply, the onus is on the Police to 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.)].

Order P-948 dealt with access to records pertaining to the overall cost of a police "joint-forces" team to investigate child pornography and exploitation in Ontario, as well as information pertaining to the province's financial contribution towards this project. In that order, Senior Adjudicator John Higgins canvassed the reasons of the Supreme Court of Canada in the *Dagenais* case and concluded that *Dagenais* offers guidance in determining when disclosure of information could reasonably be expected to interfere with an individual's right to a fair trial or impartial adjudication:

> The *Dagenais* case, which the Ministry cites in its representations, concerns a publication ban to prevent the television broadcast of a fictional dramatic program until the completion of four criminal charges, where there was a similarity between the subject matter of the television program and the charges faced by the accused individuals. The main issue addressed is whether the infringement of the *Charter* right to freedom of expression was justified in order to ensure that the accused individuals receive fair and impartial adjudication as contemplated in section 11(d) of the *Charter*. Speaking for the majority, Lamer C.J.C. said:
>
> > The common law rule governing publication bans has always been traditionally understood as requiring those seeking a ban to demonstrate that there is a **real and substantial risk** of interference with the right to a fair trial. (emphasis added) (page 875)
> >
> > [P]ublication bans are not available as protections against remote and speculative dangers. (page 880)
>
> In separate reasons, McLachlin J. said:
>
> > What must be guarded against is the facile assumption that if there is any risk of prejudice to a fair trial, however speculative, the ban should be ordered.
> > ...
> > Rational connection between a broadcast ban and the requirement of a fair and impartial trial require demonstration of the following. ... [I]t must be shown that publication might confuse or predispose potential jurors ... (page 950).

> In the circumstances of this appeal, I consider these comments as guidelines in deciding whether the information and reasoning provided by the Ministry are sufficient to substantiate the application of the exemptions provided by sections 14(1)(a) and (f) [sections 8(1)(a) and (f) of the municipal *Act*].

The Police have suggested that the release of the requested information "may lead persons to having preconceived ideas about the accused and therefore not allowing him an impartial adjudication". I do not accept this argument. The "persons" who may be inappropriately or adversely influenced by the disclosed information are not identified or described further in the representations. No other support is offered to assist in making the connection between the disclosure and the forecasted prejudice to a fair trial. To suggest such a finding would, in my view, require a facile assumption of the nature warned against by Madame Justice McLachlin in *Dagenais*.

Even if the information were to be disclosed directly, or through the media as contemplated, to potential jurors or to judges, the fact-finders in a criminal trial, I am not convinced that there exists a logical connection between disclosure and the assertion of "real and substantial" risk to a fair trial or impartial adjudication. To accept such a contention would be tantamount to accepting a view of the judiciary and the criminal justice system that is simplistic and does not sufficiently recognize the ability of judges and jurors to fairly adjudicate issues before them. The position of the Police is based on the assumption that the publication of even limited information regarding charges laid may deprive a person of a right to a fair trial or impartial adjudication. In my view, this does not meet the test set in *Dagenais* and followed in Order PO-948. Although not raised in the appellant's representations, I note that the names of adult individuals charged with criminal offences are routinely disclosed and published in the media with no suggestion that this compromises those individuals' right to a fair trial. In fact, the Police acknowledge in their representations that, in cases where charges are laid in relation to grow houses, the identity of the individuals charged is routinely made public by the Police.

Accordingly, in the absence of "detailed and convincing" evidence to establish a reasonable basis for the existence of the harm contemplated by section 8(1)(f) of the *Act*, this claim cannot succeed.

Section 8(2)(a): law enforcement report

Representations

On this final claim under the law enforcement exemption, the Police assert that the charts at issue constitute reports as contemplated by section 8(2)(a) of the *Act*. The Police indicate that the charts are prepared by the Unit, "which is a unit in a municipal police service which enforces and regulates the compliance with laws under the *Criminal Code of Canada* and the *Controlled Drugs and Substances Act"*.

The Police submit that the charts are created for use on a "need to know" basis only and are not available to all members of York Regional Police. The Police provide the following clarification regarding the purpose of the charts:

> The report or chart is prepared so that certain members of the organization can determine what investigations have taken place, the police officers involved and [to supply] the force with statistics on "indoor grow operations".

In responding to these representations, the appellant merely states that the responsive records should not be withheld from the public simply because they may have been created for internal use by a police force.

Analysis

This part of the law enforcement exemption permits an institution to refuse to disclose a record if it is "a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law".

In order for a record to qualify for exemption under section 8(2)(a) of the *Act*, the Police must satisfy each part of the following three-part test:

1. the record must be a report; and

2. the report must have been prepared in the course of law enforcement, inspections or investigations; and

3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law. (Order 200 and Order P-324)

There is no dispute in the present appeal that the Police are an agency charged with enforcing and regulating compliance with the law.

The key determination in evaluating the application of section 8(2)(a) in the circumstances of this appeal, therefore, lies in the characterization of the records at issue and, specifically, whether or not the records constitute "reports" as contemplated by the provision. I note that previous orders of this office have held that the word "report" means "a formal statement or account of the results of the collation and consideration of information" and that, generally, results would not include mere observations or recordings of fact (Orders P-200, MO-1238, MO-1337-I).

In Order MO-1238, Senior Adjudicator David Goodis thoroughly reviewed the history of the Commissioner's interpretation of the word "report" in responding to arguments posed to the contrary by the City of Mississauga:

> This office's interpretation of the word "report" in section 8(2)(a) is not only plausible, but also promotes the purposes of the legislation. The Commissioner's interpretation takes into account the public interest in protecting the integrity of law enforcement procedures which underlies the purpose of the exemption. To the extent that any harm could reasonably be expected to result from disclosure of law enforcement records, the various exemptions in sections 8(1) and 8(2)(b) to (d) may apply (for example, where disclosure could reasonably be expected to interfere with a law enforcement matter under section 8(1)(a), or deprive a person of the right to a fair trial under section 8(1)(f)). In addition, certain law enforcement records which consist of a formal statement or account of the **results of the collation and consideration of information** qualify for exemption under section 8(2)(a), regardless of the potential for harm from disclosure (**emphasis added**) [see, for example, Order MO-1192]. At the same time, this interpretation takes into account the public interest in openness as articulated by the Williams Commission, since records which do not meet the specific definition of report, and which do not otherwise qualify for exemption under the remaining provisions of section 8, cannot be withheld under this exemption.

I agree with the approach of Adjudicator Goodis. As already noted, the records responsive to the appellant's request are comprised of charts prepared to summarize the activity of the Unit in relation to grow operation seizures. I refer, once again, to the statement made by the Police in their own representations:

> The report or chart is prepared so that certain members of the organization can determine what investigations have taken place, the police officers involved and [to supply] the force with statistics on "indoor grow operations".

I am not persuaded that these charts constitute a formal statement or account of the results relating to the collation and consideration of information. In my view, they contain nothing more than mere recordings of fact related to the multiple indoor grow operation seizures undertaken by the Unit. Rather than being formal statements of the results of the collation and consideration of information, I find that the charts contain no analysis or consideration, and furthermore they state no results or conclusions that arise from analysis of the data they contain. They are, in fact, nothing more than informal summaries of numerous investigations, providing a limited amount of information on these investigations in a form that provides a general overview. I find, therefore, that the records are not reports within the meaning of section 8(2)(a) of the *Act*. Accordingly, the claim for exemption under this section fails.

Miscellaneous claims under the law enforcement exemption

In their representations, the Police make an oblique reference to the section 8(1)(c) exemption (reveal investigative techniques or procedures) in offering to disclose certain columns of the charts, but not the chart itself since its format and content are said to constitute an investigative tool. I also note that certain other representations made by the Police regarding harms forecast with the release of the information appear to allude to the section 8(1)(l) exemption (the

commission of unlawful acts or hampering the control of crime). However, within section 8, the Police have claimed only sections 8(1)(a), (b) and (f), and section 8(2)(a) and those were the sole exemptions before me for consideration.

Having found, for the reasons outlined above, that none of the four discretionary section 8 law enforcement exemptions claimed by the Police apply, it is unnecessary for me to consider the exercise of discretion by the Police.

PERSONAL INFORMATION

Introduction

The Police have also claimed the mandatory section 14 personal privacy exemption. In order to evaluate the application of the exemption, I must first address the question of whether the records sought by the appellant contain personal information, which they must in order to qualify for this exemption.

Personal information is defined in section 2(1) of the *Act*. This definition states, in part:

> "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, …
>
> (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.

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.)].

Police representations

In their representations, the Police remark that additional detail and columns have been included in the charts since 2002. The number of columns of information at issue is five for the year 2002, seven for 2003 and eight for each of 2004 and 2005. However, these differences are incidental. For example, the chart for 2003 has a single column for whether Canadian or U.S. currency was seized. For 2005, this is broken into two separate columns. In essence, the information requested for each year is the same.

One of the columns in each of the four responsive records lists the address of each grow house. This is the most contentious column, and the basis for the Police claiming the personal information exemption. Indeed, the Police focus their representations on the property address and provide little in the way of direct representations on whether information in any of the other columns constitutes personal information. However, I note that, generally speaking, the Police submissions appear to be premised on the belief that information in other columns, such as whether or not children were found at the address, is personal information.
The Police state:

> The information contained in the records qualifies as personal information under paragraph (d) of the definition of personal information in section 2(1) of the *Act*. The mandatory exemption at section 14 does apply to the records at issue. By disclosing the address of a property you are releasing personal information about an owner of that property. The owners' personal information, name, date of birth etc. is available through the land registry office and any municipalities [sic] assessment roles. Once an address is provided identifying the owner of that property can easily be established by connecting them to the property through public registries.
>
> By releasing the addresses contained in the records that are subject to this appeal we have now identified the names of the individuals who currently own the property. Past orders of the Information and Privacy Commission support this. Orders PO-2322, PO-2349 and P-230.

Appellant's representations

The appellant submits that a street address on its own cannot point to "an identifiable individual". The appellant refers to Order 23, in which former Commissioner Sidney Linden stated that "the municipal location of a property cannot automatically be equated with the address of its owner" and that "in many cases an individual's address may have nothing whatsoever to do with property ownership". The appellant points out that in Order 23, Commissioner Linden ultimately ordered the release of records "identified by the municipal location or address".

The appellant continues by citing Order PO-2191 in which Adjudicator Frank DeVries confronted the issue of the release of a street address, which was related to a police investigation. The appellant contends that in that order,

> …a street number was ordered released when the Commission found that 'it is not referable to any individual', but [was] rather a reference point used by police in their investigation.

The appellant's representations on the personal information issue conclude with remarks about the practices of other police services. Another police service in Ontario is offered as an example of a police force customarily listing street addresses and other information related to "grow house raids" on its website. The appellant notes that "the information is treated as a public record, as it should be in York Region".

Analysis

Property Address of Seizure

The Police referred to Order PO-2322 to support the argument that releasing the property addresses will have the effect of identifying the current property owners. In that order, former Assistant Commissioner Tom Mitchinson referred to Commissioner Sidney B. Linden's treatment of residential property addresses in Order 23 and quoted Commissioner Linden as follows:

> In considering whether or not particular information qualifies as "personal information" I must also consider the introductory wording of subsection 2(1) of the *Act*, which defines "personal information" as "...any recorded information about an identifiable individual...". In my view, the operative word in this definition is "about". The *Concise Oxford Dictionary* defines "about" as "in connection with or on the subject of". Is the information in question, i.e. the municipal location of a property and its estimated market value, **about** an identifiable individual?

The facts resulting in Order PO-2322 were distinguishable from the ones in the present appeal in that the record at issue related to salt contamination of, and repairs to, drinking wells. Former Assistant Commissioner Mitchinson concluded that this information was "about" the property in question and not "about" its owner. As such, it fell outside the scope of the definition of personal information in section 2(1) of the *Act*.

In Order PO-2265, former Assistant Commissioner Tom Mitchinson considered the issue of whether the full address - both street address and unit number - of an apartment dwelling constitutes personal information. In concluding that these addresses fell within paragraph (d) of the definition of personal information in section 2(1) of the *Act*, Assistant Commissioner Mitchinson stated:

> In this appeal, the appellant is seeking the street address, city, postal code and specific unit number that is subject to an application before the Tribunal. In my view, if all of this address-related information is disclosed, it is reasonable to expect that the individual tenant residing in the specified unit can be identified. Directories or mailboxes posted in apartment buildings routinely list tenants by unit number, and reverse directories and other tools are also widely available to search and identify residents of a particular unit in a building if the full address is known. Accordingly, I find that the full addresses of units subject to Tribunal applications consist of the "personal information" of tenants residing in those units, as contemplated by paragraph (d) of the definition.

In the present appeal, the addresses in the record relate to illegal grow house operations. The proper question for me to address is whether disclosure of these addresses would reveal something about an individual that is inherently personal in nature. In my view, it would. I agree with the substance of former Assistant Commissioner Mitchinson's findings in PO-2265. While the address of a property may not, on its face, be personal information, a "reasonable expectation of identification" arises because the address may potentially be linked, using various methods or tools such as municipal property assessment rolls or reverse directories, with an owner, resident, tenant, or other *identifiable individual*. Unlike Order PO-2322, where the record at issue contained attributes relating to the property, in this case the record also contains information relating to individuals, who may be easily identified. As in Order PO-2265, where the record at issue would have revealed the identifiable individual's involvement in a rental housing matter, the record at issue here would reveal an identifiable individual's involvement in an alleged criminal activity, whether as accused or as unfortunate "innocent owner" of the property in question. The effect is the same: personal information about the individual who can reasonably be expected to be identified will be revealed by disclosure of the requested information.

Accordingly, I find that the column in the responsive records listing municipal property addresses contains personal information as contemplated by section 2(1) of the *Act*.

Occurrence Number

In Order M-41, former Commissioner Tom Wright commented on the characterization of occurrence numbers in terms of the definition of personal information, stating: "The occurrence number has also been severed from the record but does not qualify as personal information". In Order PO-2412, Senior Adjudicator John Higgins categorized occurrence numbers of incidents at a casino as information of a non-personal nature.

In my view, the findings of Commissioner Wright and Senior Adjudicator Higgins in the above-mentioned orders are analogous to the finding of former Assistant Commissioner Tom Mitchinson regarding Rental Housing Tribunal case numbers in Order PO-2265. In that order, Assistant Commissioner Mitchinson found that because there was no reasonable expectation that an individual could be identified from the file number *by itself*, the number could not be

considered an identifying number assigned to an individual. It followed that the case number did not qualify as "personal information".

I adopt the reasoning in the aforementioned orders and find that the occurrence numbers in the present appeal do not constitute personal information under section 2(1) of the *Act*.

Charges

Under the heading "Charges" in each of the records is a listing of the charges laid under the *Criminal Code* or the *Controlled Drugs and Substances Act*. In some entries, no charges are listed. There is no reference to any individual, nor is there any unique number or identifier listed in relation to each of the charges. Viewed in isolation from the rest of the chart, this column merely contains a generic listing of criminal charges.

However, in view of my finding about the potential for linking the property address with an identifiable individual or individuals, the reality is that the charges catalogued in this column could also be connected with the identifiable individual or individuals.

Although the exercise of connecting charges with identifiable individuals could not be carried out with the assurance of complete accuracy, in my view, the linking could be done with *reasonable* accuracy and I find, therefore, that the information in this particular column qualifies as personal information.

Date

Although not a data element subject to contention, I find that the date of the grow house seizures satisfies the definition of "personal information" found at section 2(1) of the *Act*.

Similar to the reasoning above with regard to "Charges", if associated with the address, it could be linked to an identifiable individual, and reveal the date that individual's house was raided by police. I therefore find that the information in this column qualifies as personal information.

Children – Yes/No?

Beginning in 2003, the Police added a data element to the charts titled "Children Yes/No" to record information about the presence of children at the location of the grow house seizure. I have previously alluded to harms the Police have suggested will result by releasing the information in this column and note that the harms are predicated on the presumption that this data element constitutes personal information. Whether or not an identifiable individual has one or more children living with him or her is information about the individual and about the children as well if they can be identified. I accept that this information can be characterized as personal information.

Some of those entries recording the presence of children at the grow operation site contain brief notes, but for the majority of entries only the age of the child or children appears. Given that I

have found that the property address constitutes personal information, I am also persuaded that the ages of the children associated with the specific address could reasonably create a link to the identity of an individual child residing there. Furthermore, the brief notes appearing in some of the entries make reference to school grades, or the involvement of another agency or institution. In my view, this reinforces the conclusion that the information in that column is personal information about individuals who may be identified by the release of the property address of the grow operation.

Accordingly, I find that the information in the column titled "Children Yes/No" is personal information under section 2(1) of the *Act*.

Plants Seized/ Money Seized

Under the heading *Charges,* above, I found that information to be personal information because of the potential for linking the charges to a specific individual through cross-referencing the property address using the various tools or registries available to the public. I made this finding while acknowledging that the individual identified through the use of such tools may not be the same individual actually charged as a consequence of the grow house seizure.

In light of the fact that the information in the two columns referring to plants [or drugs] seized and money seized provides further detail related to charges - which I have found to be effectively linked to identifiable individuals - it follows that these data elements also constitute personal information for the purposes of section 2(1) of the *Act*.

Conclusion

In light of my finding that the chart columns listing the occurrence number relating to each of the grow house seizures do not contain personal information, any further comment on this item is unnecessary and I will order disclosure of this information.

In view of the fact that I have found that the columns containing information detailing the property address of the grow house seizure, the charges laid, the date, the plants seized, the money seized and the presence of children to constitute personal information, I must now consider the application of section 14 of the *Act*.

PERSONAL PRIVACY

Introduction

When a requester seeks the personal information of another individual, section 14(1) of the *Act* prohibits an institution from disclosing it except in the circumstances listed in sections 14(1)(a) through (f). Of these, only section 14(1)(f) could apply in this appeal. It 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 evaluating the application of section 14(1)(f), 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(4) does not apply in the circumstances of this appeal and is not, therefore, set out below; however, there are provisions of sections 14(2) and (3) which may be relevant and these 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;
>
> (b) access to the personal information may promote public health and safety;
>
> (c) access to the personal information will promote informed choice in the purchase of goods and services;
>
> …
>
> (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
>
> (f) the personal information is highly sensitive;
>
> (g) the personal information is unlikely to be accurate or reliable;
>
> …
>
> (i) the disclosure may unfairly damage the reputation of any person referred to in the record.
>
> (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
> …
>
> (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;
>
> …
>
> (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

Section 14(2) provides some criteria for the head to consider in making the determination as to whether disclosure of the personal information at issue would result in an unjustified invasion of personal privacy. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy.

If none of the presumptions found at section 14(3) applies, the institution must consider the possible disclosure of the information by weighing and balancing out the factors in section 14(2), as well as other considerations that are relevant in the context of the individual request.

If a section 14(3) presumption is established, no factor or combination of factors in section 14(2) may overcome it. A presumption can only be overcome if the personal information in question falls under section 14(4) of the *Act* or where a finding is made under section 16 of the *Act* that there is a compelling public interest in disclosure of the information which clearly outweighs the purpose of the section 14 exemption [*John Doe* v. *Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

Police Representations

The Police claim the application of section 14(3)(b), noting that the information was compiled by the Unit and is identifiable as a component of an investigation into a possible violation of law, namely offences under the *Controlled Drugs and Substances Act*. They state:

> The records are for the internal use by this Unit in order for them to continue their investigations and keep a record of the charges laid by them in relation to these investigations.

The Police also invoke the application of section 14(3)(f), contending that disclosure of the personal information at issue will constitute an unjustified invasion of personal privacy because it will reveal information about an individual's finances, income, and assets. The suggestion is that citizens could access public registries, which would reveal the property value and loans against the property, thus triggering the presumption at section 14(3)(f).

> All this information is the personal information of the property owner and reveals information regarding … his or her assets, liabilities and contributes to information about their net worth.

As to the consideration of factors under section 14(2) for the purpose of deciding whether or not the disclosure of the information constitutes an unjustified invasion of personal privacy, paragraphs (f) and (i) are specifically raised by the Police as factors weighing against the disclosure of the information at issue in the records under consideration in this appeal.

The Police submit that the records at issue reveal very sensitive personal information, as the owner is potentially identified as having had a grow house operation and having, in some cases, exposed children to this illegal activity. They also submit that "whether or not this information is true, by releasing these records you are exposing the property owner to these sensitive issues".

The Police state that in many cases, it is not the actual owner of the property who engaged in the illegal activity of a grow house, but a tenant, and disclosing the sought-after information may, in identifying the owner, unfairly damage the owner's reputation when they are actually a victim of the crime.

The Police offer representations about other issues in this appeal, which indirectly raise consideration of some of the other section 14(2) factors, specifically section 14(2)(a) and (b): subjecting the activities of the institution to public scrutiny and promoting public health and safety. The Police suggest that there are alternate means of informing the public and permitting scrutiny through accessing statistics on grow operations and Police activity in this regard in their annual report, which is available on the website.

The Police express concern about the release of potentially inaccurate or incomplete information in the charts since such inaccuracies may decrease public confidence in the operations of the Police and incomplete information may result in members of the public relying on it and thereby making uninformed decisions about where to live in the region.

Appellant's Representations

The appellant submitted that, since none of the information at issue was personal information, the mandatory exemption at section 14 could not apply in the circumstances. However, sections of the appellant's representations on other issues in this appeal are pertinent to section 14 and I will canvas some of them below.

The appellant responded to the Police representations relating to section 14(2)(a) and (b) considerations, indicating that information on the Police website purportedly "detailing sufficient grow operations" is from 2002 and out of date which limits its usefulness to the public. The appellant adds that public access to current information about grow houses, what the Ontario Association of Chiefs of Police themselves label "significant dangers", is a matter of public interest. Reference was made to legislation, aimed at addressing the issue, which was at that time before the Ontario legislature.

The appellant took issue with the suggestion that undue distress could be caused to current homeowners by public disclosure that their home had been used as a grow house, stating that the Police have offered nothing beyond speculation of harm and that, in any event, such information could actually prove useful for a current homeowner.

> I suggest that the fact a current homeowner could unknowingly purchase a home that has hidden potential perils underscores the inherent weakness in not disclosing information about where a grow operation or drug lab has been identified. The only protection a homeowner has is access to information that is 'widely available' and 'accessible'.

The appellant notes that the Police's own website indicates that there are an estimated 10,000 grow houses in the Greater Toronto Area and suggests that the scope of the problem highlights

the extent to which disclosure would permit homebuyers or homeowners to identify and repair hazards.

Finally, the appellant has suggested that the value in widely disseminating the full information sought about grow operations is that it would facilitate public participation in the discussion, decision-making and debate on this "significant danger".

Analysis

Section 14(1)(f) of the *Act* is an exception to the mandatory exemption which prohibits the disclosure of personal information. In order for me to find that section 14(1)(f) applies, I must find that such disclosure does not constitute an unjustified invasion of personal privacy.

I have considered the possible application of section 14(4) and I find that it does not apply in the circumstances of the present appeal. Accordingly, the analysis turns to review of the section 14(3) presumptions and to the balancing exercise required by section 14(2).

Section 14(3) presumptions

As noted above, sections 14(3)(b) and (f) provide:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
> > (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…
> >
> > (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances financial history or activities, or credit worthiness…

Section 14(3)(b): *part of an investigation into possible violation of law*

In evaluating the application of section 14(3)(b), I take note of the characterization of the records at issue in this appeal by the Police themselves, namely that the records were created to summarize the Unit's activity relating to grow operation seizures and to provide an overview to Unit members.

In Order MO-1498, former Assistant Commissioner Tom Mitchinson considered the application of the section 14(3)(b) presumption to a case synopsis and a statement of evidence and reached the following conclusion about those particular records:

> These two records are not investigatory in nature, and consist of a case synopsis, some of which includes the appellant's personal information as complainant; and the statement of evidence that the appellant would have provided at trial. Applying the reasoning of past orders, I find that these records are documents that were generated after the Police investigation had been completed and charges were laid and as such were **not compiled for the purpose of the investigation itself,** as required in order to fall within the scope of the section 14(3)(b) presumption (See Orders M-734 and M-841). [emphasis added]

The section of this excerpt to which I have added emphasis demonstrates, in my view, the appropriate approach to the application of section 14(3)(b) to the records at issue and I adopt it for the purposes of this appeal.

Similar to the records at issue in Order MO-1498, the records in this appeal are not "investigatory" in nature. While it may be true that certain of the seizures recorded in the charts may yet result in charges being laid, the records were generated "after the fact" and were not *compiled for the purpose* of the individual investigations themselves, but rather to inform members of the Unit and select other members of the Police about the Unit's own activities. These records are summaries of investigations and are clearly not for use in any particular investigation nor were they compiled as part of any specific investigation. In the circumstances, I find that section 14(3)(b) of the *Act* does not apply.

Section 14(3)(f): describes an individual's finances

The Police have also claimed that the section 14(3)(f) presumption relating to disclosing information about an individual's finances applies to the records.

The Police contend that the property owner, incidentally identified through the release of the property address, could also have certain information about his or her assets and liabilities relating to that property placed in the public domain through access to public registries such as the land registry or municipal rolls.

In Order PO-1786-I the Ontario Realty Corporation's decision to deny access to lists of properties sold by the corporation under section 21(3)(f) of the provincial *Act* (section 14(3)(f) of the municipal *Act*) was upheld. Former Assistant Commissioner Tom Mitchinson concluded that the individual's name, the purchase price and the location of the property contained in the lists at issue could be said to describe the individual's assets or financial activities with the result that the presumption was properly invoked. He stated:

> In my view, disclosure of the names, purchase price and property locations listed in relation to the individual purchasers (except those who consented to disclosure) would reveal information that describes their financial activities, and therefore I find that the presumption at section 21(3)(f) applies.

In my view, the simple disclosure of a street address, absent any other financial information, cannot be said to **describe** an individual's finances or assets. By the Police's own admission, additional steps are required to obtain financial information, such as obtaining information from the publicly accessible land registry system. At best, the disclosure of the street address allows a diligent individual the means to proceed by other means to obtain financial information related to that address. Unlike the records considered by Assistant Commissioner Mitchinson in Order PO-1786-I, the record at issue in this appeal contains no information relating to individuals' assets or liabilities or the value of their property.

I also note that the information which may be accessed through the land registry or municipal rolls systems is information that is, by definition, available to all members of the public as part of a public disclosure regime. In practice, a member of the public could select any property address at random and look up certain information about that property.

Similarly, the fact that an individual could take an address contained in the records at issue here, and use publicly available means to access additional information on that address does not trigger the section 21(3)(f) presumption. The Legislature has established a system to provide information about private property to the public. To conclude that using that system amounts to an unjustified invasion of personal privacy by describing the property owner's finances or assets is, in my view, not sustainable and contradicts the clear intention of the Legislature.

In summary, I find that disclosure of the information contained in the records would not constitute a presumed unjustified invasion of personal privacy as contemplated by either of sections 14(3)(b) or (f) of the *Act*.

Section 14(2) factors

I will turn now to discussion of section 14(2) of the *Act*, which outlines the factors to be considered in determining whether or not the disclosure of personal information would constitute an unjustified invasion of personal privacy, as required by section 14(1)(f).

Past orders of this office have established that the factors in paragraphs (a), (b), (c) and (d) of section 14 weigh in favour of disclosure while those in paragraphs (e), (f), (g), (h) and (i) weigh in favour of privacy protection [Order PO-2265]. Furthermore, the list of criteria in section 14(2) is not exhaustive and the head is required to consider all the relevant circumstances in reaching a conclusion [Order 99].

Based on my review of the records and the representations of the parties, I find that the considerations listed in sections 14(2)(a), (b), (f), and (i) have relevance in the circumstances of this appeal and in balancing the privacy interests of the individuals potentially affected by disclosure against the appellant's right of access. I have also considered the impact of other circumstances relevant to the determination of this balancing equation.

Factors favouring privacy protection

Sections 14(2)(f): highly sensitive personal information

In Order P-434, former Assistant Commissioner Tom Mitchinson found that for personal information to be regarded as highly sensitive, it must be established that its release would cause excessive personal distress to the individuals affected (see Orders M-1053, PO-1736). It is not sufficient that release might cause some level of embarrassment to those affected (Order P-1117).

As previously noted, the Police have raised paragraph (f) of section 14(2) for consideration and, on these facts, I agree with the Police that the requested information could potentially reveal certain details about alleged criminal activity on the part of individuals who may be identified through disclosure. I would also agree that allegations of criminal activity could be categorized as sensitive information about an individual.

I accept that information about criminal charges is highly sensitive. In the circumstances of this case, however, there is an element of remoteness in that a connection must be made between the information disclosed and the individuals charged with criminal offences. Given the possibility that the owner is not the occupier, for example, the connection will be difficult to make with any great degree of certainty. Therefore, while I accept that the consideration contemplated by section 14(2)(f) is a relevant factor weighing in favour of the protection of the privacy of individuals who may be identified by disclosure, I accord this factor low to medium weight.

Section 14(2)(i): unfair damage to reputation

Previous orders of this office have established that the relevance of section 14(2)(i) is not established simply on the basis that the damage or harm envisioned by this clause is present or foreseeable; in addition, it must be demonstrated that this damage or harm would be "unfair" to the individual involved (Orders P-256 and M-347).

It has been held that disclosure of the fact that an individual has been convicted of committing a criminal offence and has served a prison term will not *unfairly* damage the individual's reputation (Order P-679). In the current appeal, however, the information refers only to criminal charges, not convictions proven in a court of law.

The harm or damage to the reputation of individuals who may be identified by disclosure would flow from either the alleged commission of unlawful acts by persons accurately identified or, in the case of the "innocent owner", inaccurate identification as a person charged with criminal wrongdoing. I accept that in those circumstances any harm or damage to reputation would be unfair: in the first situation because the criminal charges have not been subject to proof; and, in the second situation, because of the possibility that "innocent owners" have been misidentified as being charged, or in some way involved, with alleged criminal activity.

For these reasons, I would place medium weight on this factor in favour of protecting the privacy of individuals.

Factors favouring right of access

Section 14(2)(a): disclosure desirable for subjecting Police activities to public scrutiny

Notwithstanding the determination that in the circumstances of this appeal the section 8 law enforcement exemptions do not apply, I do recognize that a degree of deference is owed to police institutions seeking to protect information gathered in the course of carrying out their law enforcement responsibilities.

I have also considered that the *Act* generally embodies the purpose and principle that the privacy of individuals under investigation for possible violations of the law should be favoured over the public interest in access to information which may facilitate public scrutiny of the investigative activities of institutions (Order 170). Indeed, the importance of this purpose is reflected in the fact that personal information attracts the protection of one of only three mandatory exemptions in the *Act*, namely section 14. This makes it clear that there is a strong right to privacy. However, this right is not absolute.

It is also central to the *Act* that, in appropriate circumstances, citizens be provided the opportunity for a glimpse inside an institution so that they may better inform themselves as to its activities. In this way, citizens may more meaningfully scrutinize and evaluate these activities.

As the appellant suggests, illegal grow operations have generated considerable public discussion over the past several years. Issues relating to grow operations and the actions taken by police forces in Ontario to combat the proliferation of such operations have been featured in the media, particularly the print media. Government and police response to the challenges and dangers posed by grow operations have been the subject of considerable scrutiny by the public. In mid-December 2005, the Ontario Legislature enacted the *Law Enforcement and Forfeited Property Management Statute Law Amendment Act, 2005*. This statute amends seven different Acts, increasing enforcement powers relating to electrical, fire safety and municipal matters and expanding Crown authority to deal with property forfeited as a consequence of illegal activities.

In my view, the current and ongoing public debate over grow operations, together with the attention given by the provincial government and law enforcement authorities in attempting to effectively counter such illegal operations, clearly point to a strong interest in ensuring an appropriate degree of scrutiny of law enforcement institutions and their activities by the public. The primary objective of section 14(2)(a) is to assist in facilitating this scrutiny.

One of the vehicles for this scrutiny is the provision of the greatest amount of information about law enforcement activities possible in the circumstances. In my view, the criminal charges laid, along with accompanying details about the money and/or plants seized at the time of each of the grow operation seizures, are part of full disclosure about police activity in this high-interest area.

For all of the reasons enunciated, I place significant weight on this factor in favouring the right of access to the information sought over the privacy interests of individuals who may incidentally identified by its disclosure.

Section 14(2)(b): promotion of public health and safety

The appellant has provided strong submissions focusing on the themes of public health and safety, describing the hazards presented to an "unsuspecting" public by grow operations and singling out the plight of current or prospective home owners potentially affected by the damage done to houses by such operations. The appellant specifically refers to the Police website's listing of these potential threats, including electrical hazards, house fires, and "criminals in our neighbourhoods". I am also aware of the dangers posed to human health by undetected mould in houses where the ventilation system has been modified to support a grow operation.

I note that the appellant mentions the estimation, cited by the Police on their website, that there are 10,000 grow houses in the Greater Toronto Area. In my view, however, whether that number is ten or ten thousand, the threat to public health and safety posed by grow operations must be taken very seriously.

In their representations, the Police referred to the potential distress visited upon homeowners who learn through the disclosure of the requested information that their home has been used as a grow house. While I acknowledge that distress may follow notification consequent to disclosure of information through this inquiry, I take the view that it is far better to know about potential hazards or threats to health and safety than not to know.

The Police also mention that there are alternate methods for prospective homeowners to make "discreet inquiries" about the historical use of the property directly through Police. However, while some citizens may be aware of this option, its existence does not negate the potential benefit in the release of the requested information into the public domain through a separate means, such as an inquiry under the *Act*. I agree with the appellant that, "[t]he only protection a homeowner has is access to information that is 'widely available' and 'accessible'".

Homeowners, armed with pertinent information about their property, may take steps to properly investigate damage or deficiencies and to remedy them, thereby minimizing or eliminating the potential for further harm. In my opinion, this factor is a relevant consideration favouring the right of access to the personal information over the protection of personal privacy and I would accord it significant weight.

Relevant circumstance: public confidence in the integrity of an institution

Section 14(2) states that "all the relevant circumstances" should be considered in determining whether a disclosure would constitute an unjustified invasion of personal privacy.

This office has recognized that in certain circumstances, the disclosure of personal information may be desirable for the purpose of ensuring public confidence in the integrity of an institution (Orders M-129 and M-173).

In the present appeal, I am of the view that this unenumerated consideration is closely related to, and expands upon, the factor found at section 14(2)(a), which is that disclosure is desirable to promote public scrutiny of the activities of an institution. As I have already described, police activities and initiatives in combating illegal grow house operations are the subject of considerable public interest. I am of the view that the soundness of those initiatives and the ability of the Police to carry them out may be informed by, and made more transparent through, public access to the information requested.

Relevant circumstance: consumer protection

In carrying out the balancing exercise contemplated by section 14(2) of the *Act*, I have concluded that it is appropriate to include consumer protection in my analysis.

This circumstance expands upon the health and safety considerations addressed by section 14(2)(b) in terms of the potential for disclosure to inform members of the public about potential hazards posed as a consequence of owning a house formerly used for an illegal grow operation. Wider availability of information about houses used for this purpose may assist prospective homeowners in choosing not to purchase such a home. Similarly, individuals may be faced with having already bought a house that appears to be worth one amount, but is actually worth considerably less due to the modifications made to the house as a consequence of it being used for the purpose of an illegal grow operation.

I will paraphrase and adapt the words of section 14(2)(c), (which relates to goods and services) by stating that access to this information may promote informed choice in one of the most significant purchases a member of the public can make: their home. Accordingly, I find that consumer protection is a relevant circumstance and I would accord it medium weight in favour of disclosing the records at issue in this appeal.

Conclusion

Having conducted the exercise of weighing the circumstances which favour disclosure of the requested information against those which favour the protection of privacy of those individuals who may be incidentally identified by its release, I find the balance to be tipped in favour of disclosure. My finding in this regard rests primarily on the desirability of promoting both public health and safety and public scrutiny of the Police activities in relation to illegal grow operations. It now falls to me to review the columns at issue, which I have already found to constitute personal information. On the issue of the disclosure of information in the column titled *Children Yes/No*, I have determined, based on the same considerations outlined in the preceding analysis, that disclosure of this information would be an unjustified invasion of personal privacy. I do not believe that a disclosure about the presence, if any, of children at these grow operation seizure locations would assist the public in evaluating either the activities of the Police to combat grow

house operations or promote consumer protection or public health and safety, the two strongest factors tipping the balance toward disclosure. In my view, any possible merit to the disclosure of that specific information is outweighed by the desirability of protecting the children who may have been involuntarily associated with an illegal grow house operation from any potential invasion of their personal privacy.

However, based on consideration of the same circumstances and factors, I find that the exception provided by section 14(1)(f) has been established in relation to the property address of the seizure, the date, the drugs seized, the money seized and the charges laid and that disclosure to the appellant of the withheld columns containing that information would not constitute an unjustified invasion of personal privacy. This information is therefore not exempt under section 14(1).

In closing, I would also observe that even if I had found this information exempt under section 14(1), I would have ordered its disclosure under section 16, the public interest override. Section 16 mandates disclosure of information otherwise exempt under section 14, among other exemptions, where a "compelling public interest in disclosure of the record clearly outweighs the purpose of the exemption." Based on precisely the same weighing of the rights of privacy and access I have undertaken in my section 14 analysis, I would find that there is a public interest in disclosure, that it "rouses strong public interest or attention" and is therefore compelling (Order P-984) and that it outweighs the purpose of the personal privacy exemption for the information I am ordering disclosed.

ORDER:

1. I uphold the decision of the Police to withhold the information pertaining to the presence of children at the locations of grow house seizures. The Police should sever out the information in this column, along with the information in those other columns not responsive to the appellant's request.

2. I order the Police to disclose to the appellant the information in the chart columns relating to the date, the occurrence number, the property addresses of grow house seizures, the charges laid, and the money and drugs/plants seized by **March 24, 2006 but not earlier than March 20, 2006**.

3. In order to verify compliance with this order, I reserve the right to require the Police to provide me with a copy of the information disclosed to the appellant pursuant to Provision 2, upon request.

Original Signed by: February 17, 2006
Brian Beamish
Assistant Commissioner