



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER MO-2356

Appeal MA07-72

Toronto Police Services Board



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NATURE OF THE APPEAL:

The Toronto Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for “all policies and procedures, forms or report formats that are followed in response to a ‘domestic’ call.”

Shortly after submitting his request, the requester sent the Police a clarification letter that identified the specific forms, reports and procedures that he was seeking.

The Police then issued a decision letter to the requester, granting him partial access to these forms, reports and procedures. They withheld portions of these records pursuant to the discretionary exemptions in sections 8(1)(c) and (e) (law enforcement) of the *Act* and the mandatory exemption in section 9(1)(d) (relations with other governments).

The requester (now the appellant) appealed the Police’s decision to this office. During the mediation stage of the appeal process, the Police issued a revised decision letter to the appellant, granting him full access to some records. They reiterated that they were withholding portions of the remaining records pursuant to sections 8(1)(c), 8(1)(e) and 9(1)(d) of the *Act*.

This appeal was not resolved in mediation and was moved to the adjudication stage of the appeal process for an inquiry.

I started my inquiry by sending a Notice of Inquiry to the Police. In response, the Police submitted representations to this office and also attached a copy of the reply representations that they submitted in Appeal MA06-333. (In that appeal, the same appellant is seeking access to other records relating to domestic violence held by the Police. I recently disposed of some of the issues in that appeal in Interim Order MO-2347-I.)

After reviewing the Police’s representations, I sent the same Notice of Inquiry to the appellant, along with the non-confidential portions of their representations. In response, the appellant submitted representations to this office.

One of the records located by the Police is a Victim Impact Statement that they received from the Ministry of the Attorney General. The Police claim that this record is exempt from disclosure under the mandatory exemption in section 9(1)(d) of the *Act*. In his representations, the appellant states that, “I will abandon my request as it relates to all Victim Services forms from the Attorney General’s office not already released to me.” Consequently, I have concluded that this record is no longer at issue in this appeal. Given that the Police did not claim the section 9(1)(d) exemption for any other records, that exemption is also no longer at issue.

RECORDS:

The following records remain at issue in this appeal:

Record	Page number(s)	Police's decision	Exemptions claimed
Policy, Service or Conduct Report	14-15	Withheld in full	Sections 8(1)(c) and (e)
Procedure 01-15 Bail Hearings and Detention Orders	20-29	Withheld in part	Sections 8(1)(c) and (e)
Procedure 04-24 Victim Impact Statements	30-32	Withheld in part	Sections 8(1)(c) and (e)
Procedure 04-31 Victim Services Program	33-35	Withheld in part	Sections 8(1)(c) and (e)
Procedure 04-32 Taped Investigative Interviews	36-40	Withheld in part	Sections 8(1)(c) and (e)
Procedure 05-06 Child Abuse	41-50	Withheld in full	Sections 8(1)(c) and (e)
Procedure 05-11 Fail to Comply/Fail to Appear	51-55	Withheld in part	Sections 8(1)(c) and (e)
Procedure 05-22 Abuse of Elderly or Vulnerable Persons	56-61	Withheld in full	Sections 8(1)(c) and (e)
Procedure 05-27	62-69	Withheld in part	Sections 8(1)(c) and (e)

Criminal Harassment			
Procedure 12-08 Disclosure, Duplication and Transcription	70-78	Withheld in full	Sections 8(1)(c) and (e)
Procedure 13-02 Complaint Intake	79-84	Withheld in full	Sections 8(1)(c) and (e)
Procedure 13-09 Civilian Discipline Process	85-88	Withheld in full	Sections 8(1)(c) and (e)
Procedure 13-16 Special Investigations Unit	89-97	Withheld in full	Sections 8(1)(c) and (e)

The 12 procedures in the above chart are from the Police's Policy and Procedure Manual.

DISCUSSION:

LAW ENFORCEMENT

Sections 8(1)(c) and (e) state:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

- (c) reveal investigative techniques or procedures currently in use or likely to be used in law enforcement;
- (e) endanger the life or physical safety of a law enforcement officer or any other person;

The term "law enforcement" is used in several parts of section 8, and 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)

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.)].

In order to meet the “investigative technique or procedure” test in section 8(1)(c), the institution must show that disclosure of the technique or procedure to the public could reasonably be expected to hinder or compromise its effective utilization. The exemption normally will not apply where the technique or procedure is generally known to the public [Orders P-170, P-1487]. In addition, the techniques or procedures must be “investigative.” The exemption will not apply to “enforcement” techniques or procedures [Orders PO-2034, P-1340].

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

In the case of section 8(1)(e), the institution must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated [*Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.)].

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

Summary of the parties’ representations

The Police’s representations

The Police claim that the discretionary exemptions in sections 8(1)(c) and (e) of the *Act* apply to the withheld information in the records at issue. In particular, they submit that disclosure of the withheld information in the Policy, Service or Conduct Report and the 12 procedures from their

Policy and Procedure Manual “would reveal investigative techniques that if known could put the police in harm’s way and also endanger the many citizens and victims of crime.”

Moreover, the Police submit that these techniques and procedures are designed to protect victims of domestic violence. They assert that disclosure could allow alleged offenders to “circumvent the techniques and procedures put in place and possibly cause harm to victims and officers.” They further assert that disclosure would erode the trust between crime victims and police officers, which could result in “many cases” not being reported.

In addition, the Police submit that these techniques or procedures are clearly “investigative” in nature and they are not generally known to the public. The Police also referred me to their reply representations in Appeal MA06-333, which include both confidential and non-confidential representations. The Police’s non-confidential representations in Appeal MA06-333 are similar to those in the appeal before me and are summarized in Interim Order MO-2347-I. I will not reveal the substance of the Police’s confidential representations in this order, other than to point out that the Police submit that their previous experience with the appellant supports the application of the section 8(1)(e) exemption to the withheld information in the records at issue.

The appellant’s representations

The appellant touches on a number of different issues in his representations, including whether the Police have conducted a “comprehensive search” for domestic violence statistics. The issue of whether the Police have conducted a reasonable search for such statistics is addressed in Interim Order MO-2347-I, and I will not, therefore, address that issue in this order.

With respect to the discretionary exemptions in sections 8(1)(c) and (e), the appellant submits that the withheld information in the records at issue does not fall within these exemptions. In particular, he points to the “Definitions” section on page 2 of Procedure 05-11 (Fail to Comply/Fail to Appear) as an example of information withheld by the Police that does not fall within the section 8(1)(c) exemption. He submits that there is no “common sense explanation as to how definitions would be exempt as an investigative technique not [known] ...”

With respect to whether section 8(1)(e) applies to the withheld information, he states that the Police must demonstrate that their reasons for resisting disclosure are not frivolous or exaggerated. He submits that disclosing information such as the “Definitions” section on page 2 of Procedure 05-11 could not reasonably be expected to “cause foreseeable harm to a victim or officer.”

Analysis and findings

Background

As noted above, the Police have withheld the Policy, Service or Conduct Report in its entirety and 12 procedures from their Procedure and Policy Manual, either in whole or in part, pursuant to sections 8(1)(c) and (e) of the *Act*.

Neither the Police nor the appellant provided any background information about these records. However, I have reviewed the *Police Services Act* (the *PSA*), which governs both the Ontario Provincial Police and municipal police services in Ontario. Section 56(1) of the *PSA* states that any member of the public may make a complaint “about the policies of or services provided by a police force or about the conduct of a police officer.” Consequently, it appears that the Policy, Service or Conduct Report that is at issue in this appeal is the form that the Police fill out when a complaint is filed under section 56(1) of the *PSA*.

Moreover, section 12 of Regulation 3/99 (Adequacy and Effectiveness of Police Services) of the *PSA* requires chiefs of police to develop and maintain procedures and processes for undertaking and managing criminal investigations into specific matters, such as child abuse and criminal harassment. Consequently, it appears that the Police developed and maintained a Procedure and Policy Manual, including the 12 procedures at issue in this appeal, for the purposes of complying with section 12 of Regulation 3/99 of the *PSA*.

Public accountability purpose

In assessing whether the withheld information in the records at issue should be disclosed, it is important to bear in mind the public accountability purpose of the *Act*, which is set out in section 1(a). This provision states, in part, that one purpose of the *Act* is to provide a right of access to information under the control of institutions in accordance with the principles that information should be available to the public and that necessary exemptions from the right of access should be limited and specific. In accordance with the public accountability purpose set out in section 1(a) of the *Act*, the public has a right to access the information in the records at issue in this appeal, subject to necessary exemptions that should be limited and specific.

For the reasons that follow, I find that the information withheld by the Police in the records at issue does not qualify for exemption under sections 8(1)(c) or (e) of the *Act*, except for some limited and specific portions that are exempt under section 8(1)(e).

Section 8(1)(c)

The Police must provide “detailed and convincing” evidence to prove that the section 8(1)(c) exemption applies to the withheld information in the records at issue. Although the Police have withheld the Policy, Service or Conduct Report in its entirety and 12 procedures from their Policy and Procedure Manual, either in whole or in part, they have not provided any “detailed

and convincing” evidence in their representations that explains how or why disclosure of the withheld information in these specific records could reasonably be expected to lead to the harm contemplated by section 8(1)(c) of the *Act*.

As noted above, the Police submit that the techniques or procedures in the records at issue are clearly “investigative” in nature and not generally known to the public. They further assert that disclosure could allow alleged offenders to “circumvent the techniques and procedures put in place ...” In my view, these submissions amount to a repetition or paraphrasing of the legal tests for determining whether the section 8(1)(c) exemption applies rather than the “detailed and convincing” evidence required.

The Police have withheld the Policy, Service and Conduct Report in its entirety. As noted above, this record is the form that the Police fill out when a complaint is filed under section 56(1) of the *PSA*. The version that is at issue in this appeal is simply the template which has not been filled in by the Police or any complainant. It does not contain personal information relating to any individual.

The withheld information in a record cannot qualify for exemption under section 8(1)(c) if it does not reveal “investigative techniques or procedures.” I have carefully reviewed the Policy, Service and Conduct Report, and it clearly does not reveal any “investigative techniques or procedures.” It simply sets out the information that must be filled in when a complaint is filed under section 56(1) of the *PSA*. Consequently, I find that this record does not qualify for exemption under section 8(1)(c) of the *Act*.

The Police have also withheld 12 procedures from their Procedure and Policy Manual, either in whole or in part. With the exception of Procedure 12-08 (Disclosure, Duplication and Transcription), these procedures contain information under the following headings:

- Rationale (i.e., the rationale underlying the procedure)
- Governing Authorities (i.e., the laws and other documents that apply with respect to that procedure)
- Associated Policies or Procedures (i.e., other Police policies and procedures that are related to that procedure)
- Forms (i.e., the relevant forms used by the Police that apply with respect to that procedure)
- Definitions (i.e., definitions of the terms used in that procedure)
- Procedure (i.e., the specific rules that police officers are required to follow with respect to that procedure)

Some of the procedures also include appendices (Procedures 01-15, 04-32, 05-06, 05-22, 05-27, and 13-02.)

I have reviewed the 12 procedures in detail. The Police have withheld most of the information in these procedures and have only disclosed limited portions to the appellant. The withheld information under the following headings in these records clearly does not reveal any “investigative techniques and procedures,” as required by section 8(1)(c): Rationale, Governing Authorities, Associated Policies and Procedures, Forms, and Definitions. Consequently, I find that the withheld information under these headings does not qualify for exemption under section 8(1)(c).

Similarly, the withheld information that appears in the appendices of the procedures does not reveal any “investigative techniques and procedures,” as required by section 8(1)(c). For example, “Appendix A” of Procedure 04-32 (Taped Investigative Interviews) contains a list of the offences for which it is recommended that police officers videotape interviews. Moreover, “Appendix A” of Procedure 05-06 (Child Abuse) contains an excerpt from section 72 of the *Child and Family Services Act*. A list of offences or an excerpt from an Ontario statute does not constitute an “investigative technique or procedure.” Consequently, I find that the withheld information that appears in the appendices of the procedures does not qualify for exemption under section 8(1)(c).

The remaining information in each of the procedures appears under the heading, “Procedure.” This section of each record sets out the specific rules that police officers are required to follow with respect to that procedure. For example, the information under that heading in Procedure 05-27 (Criminal Harassment) sets out the rules that police officers are required to follow when responding to complaints of criminal harassment.

The section 8(1)(c) exemption only applies to techniques and procedures that are “investigative” in nature. I have reviewed the information that appears under the “Procedure” heading for each of the records at issue. Some of the withheld information in these records sets out administrative procedures that police officers are required to follow in the course of their work and other generic information, not “investigative” techniques and procedures, as contemplated by section 8(1)(c). For example, Procedure 05-11 (Fail to Comply/Fail to Appear) requires police officers to follow specific rules when serving documents on an accused. The procedures for serving documents properly and efficiently on a party do not constitute “investigative” techniques or procedures. Consequently, I find that such information does not qualify for exemption under section 8(1)(c).

However, I am satisfied, based on my review of each of the records, that some of the information that appears under the “Procedure” heading in each record reveals “investigative techniques and procedures.” Such information does not automatically qualify for exemption under section 8(1)(c) simply because it reveals “investigative techniques or procedures.” As noted above, this office has found in previous orders that to meet section 8(1)(c), the institution must show that disclosure of the investigative technique or procedure to the public could reasonably be expected

to hinder or compromise its effective utilization. The exemption normally will not apply where the technique or procedure is generally known to the public [Orders P-170, P-1487]. Moreover, in Interim Order MO-2347-I, I found that disclosure of a specific investigative technique or procedure could not reasonably be expected to hinder or compromise its effective utilization if it is already accessible in publicly available records.

I have reviewed the investigative techniques and procedures set out in the records and many of them are, in my view, generally known to the public. For example, Procedure 05-22 sets out procedures for collecting evidence from elderly or vulnerable persons who have allegedly been abused. In my view, the public is generally aware that the Police would use these specific procedures to collect evidence from alleged victims of abuse. Consequently, I find that these investigative techniques and procedures do not qualify for exemption under section 8(1)(c), because disclosing them could not reasonably be expected to hinder or compromise their effective utilization.

Moreover, many of these investigative techniques and procedures are accessible in publicly available records. In the inquiry that led to Interim Order MO-2347-I, the same appellant referred me to a Policing Standards Manual issued by the former Ministry of the Solicitor General (now the Ministry of Community Safety and Correctional Services) that contains advisory guidelines to assist police services in complying with their duty under Regulation 3/99 of the *PSA* to develop “procedures” and “processes.” This manual is publicly available in its entirety on the website of the Ontario Legislative Assembly’s library: www.ontla.on.ca/library/repository/ser/10256510//200107.pdf

This manual includes guidelines on a broad range of matters, including Collection, Preservation and Control of Evidence and Property (Chapter LE-020), Officer Note Taking (Chapter LE-022), Bail and Violent Crime (Chapter LE-023), Child Abuse and Neglect (Chapter LE-027), Criminal Harassment (Chapter LE-028), and Victims’ Assistance (VA-001). I have reviewed this publicly available manual and compared it to the records at issue in this appeal. In my view, it is evident that many of the Police’s procedures are based on the guidelines set out in the publicly available manual.

For example, Chapter LE-027 (Child Abuse and Neglect) of the Policing Standards Manual recommends that police services implement procedures that “address interviewing children, non-offending parents and/or person having charge of the child and alleged offenders, including the use of audio/videotaping and *R. v. K.G.B.* statements where appropriate.” (See section 4(f)(ii) on page 3). However, in the appeal before me, the Police have refused to disclose a similarly worded procedure from Procedure 05-06 (Child Abuse) (at page 46 of the records at issue).

Given that investigative techniques or procedures such as these are accessible in publicly available records, I am not persuaded that disclosing them could reasonably be expected to hinder or compromise their effective utilization. Moreover, even if these investigative techniques or procedures were not publicly available, the Police have not provided me with the “detailed and convincing” evidence required to prove that the section 8(1)(c) exemption applies

to this information. Although the Police make the general assertion that disclosure could enable suspects to circumvent the withheld investigative techniques or procedures in the record at issue, they do not explain how or why this could reasonably be expected to occur. Consequently, I find that this information does not qualify for exemption under section 8(1)(c).

In short, I conclude that the information that the Police have withheld from the Policy, Service or Conduct Report and the 12 procedures from their Procedure and Policy Manual, does not qualify for exemption under section 8(1)(c) of the *Act*. However, the Police claim that the exemption in section 8(1)(e) also applies to that information. Consequently, I will now determine whether the withheld information qualifies for exemption under that provision.

Section 8(1)(e)

Section 8(1)(e) of the *Act* gives an institution the discretion to refuse to disclose a record if doing so could reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person. The quality and cogency of the evidence that an institution must adduce to prove that the section 8(1)(e) exemption applies is not as stringent as with respect to the other section 8 exemptions, which require “detailed and convincing evidence.” In the case of section 8(1)(e), the institution must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, it must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated [*Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.)].

As noted above, the Police submit that disclosure of the withheld information in the Policy, Service or Conduct Report and the 12 procedures from their Policy and Procedure Manual “could put the police in harm’s way and also endanger the many citizens and victims of crime.” Moreover, they assert that disclosure could allow alleged offenders to “circumvent the techniques and procedures put in place and possibly cause harm to victims and officers.” They further assert that disclosure would erode the trust between crime victims and police officers, which could result in “many cases” not being reported.

In my view, the Police’s submissions in this appeal amount to a paraphrasing of section 8(1)(e) rather than evidence as to how or why disclosure of the withheld information in the records at issue could reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person. Although the nature of the section 8(1)(e) exemption allows an institution to submit evidence that is more muted than that required to satisfy the other section 8 exemptions, an institution must still provide some evidence beyond a mere paraphrasing of the words of the exemption. This would include some explanation as to why the reasons for resisting disclosure are not frivolous or exaggerated. In my view, the Police’s generic submissions on section 8(1)(e) do not meet this minimum threshold.

However, the Police also referred me to their reply representations in Appeal MA06-333, which include confidential portions that were not shared with the appellant. As stated above, I will not reveal the substance of these confidential representations, other than to point out that the Police submit that their previous experience with the appellant supports the application of the section 8(1)(e) exemption to the withheld information in the records at issue.

In my view, the Police's confidential representations in Appeal MA06-333 are an attempt to explain why their reasons for resisting disclosure are not frivolous or exaggerated, but I do not find them persuasive. These representations focus on the appellant's previous conduct when dealing with the Police and appear to suggest that disclosing the withheld information in the records at issue to him could reasonably be expected to lead to the harms contemplated by section 8(1)(e) of the *Act*.

I acknowledge the Police's concerns about the appellant's previous conduct. However, they have not pointed to any specific information in the records at issue, which, if disclosed to the appellant, could reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person. Instead, their representations appear to be based on the premise that if the Police put forward information with respect to an individual's previous misconduct, the section 8(1)(e) exemption automatically applies to large portions of the records at issue.

For example, the Police have withheld the Policy, Service and Conduct Report in its entirety. As noted above, this record is simply the form that the Police fill in when processing a complaint under section 56(1) of the *PSA*. However, they have not provided any explanation as to how disclosing this particular record to the appellant could reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person.

Similarly, the Police have withheld Procedure 12-08 (Disclosure, Duplication and Transcription) in its entirety from the appellant. This procedure sets out the rules that police officers are required to follow with respect to the duty on the Crown and the Police to disclose information to the defence in criminal cases, including their duty to copy and transcribe materials. However, the Police have not provided any evidence that explains how disclosing a record of this nature, which does not appear to touch on any safety issues, could reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person.

The Police have also withheld information from the other procedures, which appears under the following headings in each procedure: Rationale, Governing Authorities, Associated Policies or Procedures, Forms, Definitions, and Procedure. In addition, they have withheld the appendices of several procedures. In my view, disclosing this withheld information (except for limited and specific portions that I will address below) could not reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person. For example, the "Definition" section of Procedure 13-02 (Complaint Intake) contains definitions of terms such as "complaint" and "informal resolution." The Police have not provided any evidence that explains

how disclosing such information, which does not appear to touch on any safety issues, could reasonably be expected to lead to the harms contemplated by section 8(1)(e) of the *Act*.

Moreover, the “Procedure” section of each of these records sets out the specific rules that police officers are required to follow with respect to that procedure, including administrative procedures, investigative techniques and procedures, and other information. Much of this information is either generally known to the public or accessible in publicly available records, such as the Policing Standards Manual issued by the former Ministry of the Solicitor General. In my view, disclosing information that is already in the public domain could not, in most instances, reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person.

For example, Chapter LE-028 of the publicly available Policing Standards Manual, which deals with criminal harassment, recommends that police services implement a procedure that requires their officers to gather “any telecommunications and computer evidence (such as email).” (See section 1(c)(v) on page 2). In the appeal before me, the Police have refused to disclose a similar procedure from Procedure 05-27 (Criminal Harassment) (at page 64 of the records at issue). However, they have not provided any evidence to explain how disclosing such information, which does not appear to touch on any safety issues, could reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person.

Similarly, the Police have withheld most of Procedure 04-31 (Victim Services Program), which includes information about a specific safety response system that the Victims Services Program of Toronto makes available to victims of domestic violence (at page 34 of the records at issue). In Order MO-2437-I, there was a reference to this same system in the record at issue in that appeal. In that order, I noted that there is a detailed description of this safety response system on the website of the Victims Services Program of Toronto: www.victimsservicestoronto.com/dv_emergency_response.htm. Consequently, I was not persuaded that disclosing this information could reasonably be expected to endanger the life or physical safety of a police officer, a victim of domestic violence or any other person, and found that it did not qualify for exemption under section 8(1)(e).

In my view, the same reasoning applies to the information relating to this safety response system in Procedure 04-31. However, there is some specific information relating to this system in that record that is not available on the website of the Victims Services Program of Toronto. I am satisfied that disclosing this specific information could reasonably be expected to endanger the life or physical safety of victims of domestic violence. In my view, there are safety reasons for withholding this information that are not frivolous or exaggerated. Consequently, I find that this information is exempt under section 8(1)(e).

In Interim Order MO-2347-I, I also considered whether the section 8(1)(e) exemption applied to portions of the record that require police officers to take domestic violence victims to specific, named locations. I found that disclosure of this withheld information could reasonably be

expected to endanger the physical safety or life of a victim of domestic violence, and it was therefore exempt under section 8(1)(e).

In my view, the same reasoning applies to similar information in Procedure 05-06 (Child Abuse). This procedure provides the names and locations of seven facilities in which child abuse victims should be interviewed (at pages 46 and 47 of the records at issue). I am satisfied that disclosing the specific names and addresses of these facilities could reasonably be expected to endanger the physical safety of a child abuse victim, particularly if an alleged offender is attempting to locate a victim. In my view, there are safety reasons for withholding this information that are not frivolous or exaggerated. Consequently, I find that this information qualifies for exemption under section 8(1)(e).

For the most part, however, the Police have not proven that the section 8(1)(e) exemption applies to the withheld information in the records at issue. In summary, I conclude that the information that the Police have withheld from the Policy, Service or Conduct Report and the 12 procedures from their Procedure and Policy Manual, does not qualify for exemption under section 8(1)(e) of the *Act*, except for the limited and specific portions identified above.

EXERCISE OF DISCRETION

The exemptions in sections 8(1)(c) and (e) of the *Act* are discretionary and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

In this order, I have found that limited and specific portions of the records at issue are exempt under section 8(1)(e). I will, therefore, assess whether the Police exercised their discretion properly in applying this exemption to those specific portions.

The Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations

In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 43(2)].

The Police submit that they have properly exercised their discretion in applying the section 8(1)(e) exemption. The appellant did not specifically address whether the Police exercised their discretion properly in applying the section 8(1)(e) exemption.

In my view, the Police exercised their discretion based on proper considerations. I am not persuaded that they failed to take relevant factors into account or that they considered irrelevant factors in applying the section 8(1)(e) exemption to those portions of the record at issue that I have found exempt under that provision. I find, therefore, that their exercise of discretion was proper.

ORDER:

1. I uphold the Police's decision to withhold those portions of the records at issue that I have found are exempt under section 8(1)(e) of the *Act*.
2. I order the Police to disclose the remaining portions of the records at issue that I have found are not exempt under sections 8(1)(c) or (e) of the *Act* by **November 29, 2008**.
3. I am providing the Police with a copy of only those records that contain information that is exempt under section 8(1)(e) of the *Act*. I have highlighted in green those portions that are exempt and must not be disclosed to the appellant. To be clear, the non-highlighted portions must be disclosed to the appellant.

Original Signed By:
Colin Bhattacharjee
Adjudicator

October 29, 2008