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

INTERIM ORDER MO-2347-I

Appeal MA06-333

Toronto Police Services Board

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NATURE OF THE APPEAL:

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

> All information relating to domestic violence incidents including domestic related assaults, harassment, threatening, trespass. Broken out or identified by division, gender of accused, court time before final resolution, and type of final resolution.
>
> All [Toronto Police Service] policies relating to domestic violence [occurrences].

By way of background, municipal police forces in Ontario are governed by the *Police Services Act* (the *PSA*). Regulation 3/99 of the *PSA* requires both chiefs of police and police services boards to develop "procedures" and "processes" on specific matters. In particular, section 12(1)(d) of this regulation requires every chief of police to develop and maintain procedures and processes for undertaking and managing criminal investigations into "domestic occurrences." In accordance with this requirement, the Police's Policy and Procedure Manual includes a section on domestic violence (Procedure 05-04).

The Police issued a decision letter to the requester granting him access to two pages of records containing statistics relating to domestic violence for 2005. In addition, the Police's decision letter informed him that they do not provide the public with access to their policies and procedures and directed him to an Ontario government website that contains information on policing standards.

The requester (now the appellant) appealed the Police's decision to this office. On the appeal form submitted by the appellant, he stated the following:

> The Police Service has both statistics and a policy on Domestic Violence which have not been provided. They routinely, in some cases quarterly, send out Domestic Violence related statistics to government bodies and regulators. They have a domestic violence unit and it must have a policy governing it, and the [Toronto Police Service] has not [denied] the existence of such a policy, only that they will not release it to me …

During the mediation stage of the appeal process, the appellant stated that he expected the Police to issue an access decision with respect to their policy on domestic violence. In response, the Police stated that the appellant had withdrawn this part of his request. However, they agreed to issue an access decision with respect to any such records.

The Police then issued a supplementary decision letter to the appellant granting him partial access to Procedure 05-04. Although the Police disclosed most of Procedure 05-04 to the appellant, they withheld specific portions of this 13-page record pursuant to the discretionary exemptions in sections 8(1)(c) and (e) (law enforcement) of the *Act*.

With respect to the appellant's claim that the Police have additional statistics that they have not disclosed to him, the Police responded that they have provided the appellant with all of the

records that are currently available. Consequently, whether the Police have conducted a reasonable search for responsive records is an issue in this appeal.

This appeal was not resolved in mediation and was moved to the adjudication stage of the appeal process, in which an adjudicator may conduct an inquiry under the *Act* to review an institution's access decision. I started my inquiry by sending a Notice of Inquiry to the Police, who submitted representations in response. I then sent the same Notice of Inquiry to the appellant, along with a complete copy of the Police's representations. In response, the appellant submitted representations.

Next, I sent the appellant's complete representations to the Police and invited them to reply to his representations. The Police submitted reply representations to this office, which included both confidential and non-confidential portions. I sent the non-confidential portions of the Police's reply representations to the appellant and invited him to submit sur-reply representations. In response, the appellant submitted sur-reply representations to this office.

I have another appeal before me (MA07-72), in which the same appellant is seeking access to other records held by the Police. I will be disposing of that appeal in a separate order.

RECORD:

The record at issue is Procedure 05-04 (Domestic Violence) of the Police's Policy and Procedure Manual. The portions of this record that have been withheld by the Police consist of procedures that their officers are required to follow when responding to domestic violence incidents. This withheld information, which I will describe in general terms, requires police officers to:

- employ a specific safety technique to protect themselves (pages 4-5, 8 and 12)
- make a specific determination about the parties (pages 5 and 10);
- take victims to various locations (pages 6, 7 and 9);
- provide a specific service to the parties (page 6);
- interview witnesses (page 6);
- collect specific evidence from the victim (pages 6 and 10);
- provide victims with specific advice/consult with victims (pages 7 and 10);
- locate a suspect (page 8);
- address the possible existence of firearms (pages 6, 10 and 12);

- provide assistance to victims and information to other persons (pages 10 and 11);

- obtain search/arrest warrants (pages 6, 9, 10 and 11).

In the copy of the record at issue that the Police provided to this office, they highlighted in green those portions that they have withheld from the appellant. Some portions of the record at issue are also highlighted in grey, but it appears that the Police have disclosed those portions to the appellant. Consequently, the only portions of this record that are at issue in this appeal are those that the Police have highlighted in green.

DISCUSSION:

LAW ENFORCEMENT

General principles

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.)].

The Police claim that the discretionary exemptions in sections 8(1)(c) and (e) of the *Act* apply to the withheld portions of the record at issue. These sections read:

> 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;

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 state that the withheld portions of the record at issue qualify for exemption under sections 8(1)(c) and (e) of the *Act*. In particular, they submit that this information includes "techniques and procedures used to address domestic violence, and would reveal investigative techniques, that if known could put the police in harm's way and also endanger the victims of domestic abuse or violence."

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 victims of domestic violence 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 appellant's representations

The appellant submits that the Police have offered no explanation as to how disclosure of the withheld portions of the record at issue would allow an alleged offender to circumvent their investigative techniques or procedures.

The appellant further submits that the techniques or procedures that have been withheld are "quite well known" in the legal community because they are disclosed in domestic violence court proceedings. He also provided me with several publicly available documents on domestic violence published by other levels of government, including a "Handbook for Police and Crown Prosecutors on Criminal Harassment" issued by the federal Department of Justice; an excerpt on domestic violence from a "Policing Standards Manual" issued by the Ontario Ministry of the Solicitor General; a "Domestic Violence Handbook for Police and Crown Prosecutors in Alberta," and an excerpt on "Police Protocol" from the Hastings and Prince Edward District School Board's Policy and Procedure Manual.

In addition, he states that the Police appear to acknowledge in their representations that the techniques or procedures are "enforcement" rather than "investigative" in nature. In particular, he cites a passage from the Police's representations in which they refer to the "law enforcement procedures" in the record at issue.

The appellant further submits that the Police's representations on section 8(1)(e) have "little credibility," because they have failed to provide any "identifying information" with respect to potential victims or "examples of actual harm caused by persons who had knowledge of the withheld information …"

The Police's reply representations

In response to the appellant's submission that the techniques or procedures that have been withheld are "quite well known" in the legal community, the Police state that although the withheld investigative techniques or procedures may be disclosed in domestic violence court proceedings, an access request under the *Act* is a "completely separate process." They further submit that the withheld investigative techniques or procedures are not always disclosed in such proceedings.

In addition, in response to the appellant's submission that the withheld information is already publicly available, the Police submit that although their procedures may be rooted in publicly available policing standards, this does not mean that these procedures should be disclosed. Moreover, they assert that the appellant has not provided copies of any procedures issued by another police service.

The appellant's sur-reply representations

The appellant reiterates that the Police have not provided "full and proper reasons" to support their section 8(1)(c) claim. He submits that the Police have admitted in their reply representations that, "there are … criminal cases where these techniques are revealed …" He further asserts that he is entitled to information that "is already in the public record" and provided me with copies of additional publicly available documents on domestic violence, including the Calgary Police Service's "Domestic Violence Protocol."

Analysis and findings

At the outset, 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.

The record at issue is Procedure 05-04 (Domestic Violence) of the Police's Policy and Procedure Manual. The portions of this record that have been withheld by the Police consist of procedures that their officers are required to follow when responding to domestic violence incidents. 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 record at issue, subject to necessary exemptions that should be limited and specific.

I have carefully considered the parties' representations (including the confidential portions of the Police's reply representations) and reviewed the withheld portions of the record at issue. For the reasons that follow, I find that most of these withheld portions do not qualify for exemption under sections 8(1)(c) or (e) of the *Act*, except for some limited portions that are exempt under section 8(1)(e).

Employing a specific safety technique to protect themselves (pages 4-5, 8 and 12)

The Police have withheld portions of the record at issue that require their officers to employ a specific technique to protect themselves when responding to domestic violence incidents (pages 4-5), including references to an internal safety system (pages 8 and 12).

In my view, these withheld portions of the record at issue contain a safety technique and related administrative procedure that officers are required to follow, not "investigative" techniques and procedures, as contemplated by section 8(1)(c). Consequently, I find that this information does not qualify for exemption under section 8(1)(c).

With respect to section 8(1)(e), the Police assert that disclosure of the withheld information in this appeal "could put the police in harm's way and also endanger the victims of domestic abuse or violence." I am satisfied that disclosure of the specific safety technique that officers must

employ to protect themselves (pages 4-5), coupled with two related references to an internal police system (pages 8 and 12), could reasonably be expected to endanger the physical safety or life of a police officer. 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) of the *Act*.

Making a specific determination about the parties (pages 5 and 10)

The Police have withheld portions of the record at issue that require their officers to make a specific determination about the parties. I am satisfied that the process for making this determination is an "investigative" technique or procedure, for the purposes of section 8(1)(c).

However, I am not persuaded that disclosure of this investigative technique or procedure could reasonably be expected to hinder or compromise its effective utilization. This technique or procedure is cited in at least two publications on domestic violence that are publicly available. The appellant provided me with a "Policing Standards Manual" issued by the Ontario Ministry of the Solicitor General. This manual contains advisory guidelines to assist police services in complying with their duty under Regulation 3/99 of the *PSA* to develop "procedures" and "processes." Chapter LE-024 (Domestic Violence Occurrences) of this manual sets out guidelines on handling domestic violence occurrences and recommends specific procedures that police services should integrate into their own written procedures on domestic violence. 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 In addition, Chapter LE-024 itself is publicly available on the website of at least one advocacy group: http://fact.on.ca/Info/dom/police00.pdf

Although this publicly available manual uses slightly different terminology, it recommends that police officers make the same determination about the parties when investigating domestic violence incidents (see section 20 on page 7) as the Police have withheld from the record at issue. Similarly, the "Domestic Violence Handbook for Police and Crown Prosecutors in Alberta," which was provided to me by the appellant, is posted on the Alberta Ministry of Justice's website: www.justice.gov.ab.ca/publications/Default.aspx?id=4373 This publicly available handbook recommends that police officers in Alberta make this same determination about the parties when investigating domestic violence incidents (see pages 55, 61, 81-82).

In my view, 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. Moreover, even if this investigative technique or procedure was 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).

Given that this investigative technique or procedure is accessible in publicly available records, I am also not persuaded that disclosure could reasonably be expected to endanger the life or physical safety of a police officer, a victim of domestic violence or any other person. Consequently, I find that this information does not qualify for exemption under section 8(1)(e).

Taking victims to various locations (pages 6, 7 and 9)

The Police have withheld portions of the record at issue that require their officers to take domestic violence victims to specific, named locations (pages 6 and 9) and to arrange transportation to other unnamed places of safety (page 7).

In my view, taking or arranging transportation for victims to such locations is not an "investigative" technique or procedure, as contemplated by section 8(1)(c). Consequently, I find that this information does not qualify for exemption under section 8(1)(c).

With respect to section 8(1)(e), I am satisfied that disclosure of the named locations (pages 6 and 9) 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) of the *Act*.

However, the withheld portion of the record at issue that refers to places of safety (page 7) is generic and does not name or identify any specific facilities or locations. The fact that victims of domestic violence may be brought to places of safety is generally known to the public. In my view, disclosure of this generic information could not reasonably be expected to endanger the life or physical safety of victims of domestic violence. I find, therefore, that this latter information is not exempt under section 8(1)(e) of the *Act*.

Providing a specific service to the parties (page 6)

The Police have withheld portions of the record at issue that require their officers to contact a named agency that provides a specific service to both the suspect and victim in domestic abuse cases. This agency's website states that it "is mandated by the Ontario Ministry of Citizenship and Immigration to provide [type of service] for government, policing services, shelters, community agencies and [others] who serve abused and sexually [assaulted] women and victims of domestic violence."

In my view, providing the parties with the service provided by this agency is not an "investigative" technique or procedure, as contemplated by section 8(1)(c). Consequently, I find that this information does not qualify for exemption under section 8(1)(c).

With respect to section 8(1)(e), I am not persuaded that disclosure of this information could reasonably be expected to endanger the life or physical safety of a police officer, victim of domestic violence, or any other person. The type of service referred to in the withheld portions

is provided to individuals across the justice system and is publicly known. It is difficult to see how disclosing this information could reasonably be expected to lead to the harms contemplated by section 8(1)(e). Consequently, I find that this information do not qualify for exemption under section 8(1)(e).

Interviewing witnesses (page 6)

The Police have withheld a portion of the record at issue that requires their officers to interview specific witnesses other than the suspect and victim. I am satisfied that interviewing witnesses is an "investigative" technique or procedure, for the purposes of section 8(1)(c).

However, I am not persuaded that disclosure of this investigative technique or procedure could reasonably be expected to hinder or compromise its effective utilization. In my view, the public is generally aware that the Police interview the types of witnesses specified in this withheld portion of the record at issue when investigating allegations of domestic violence. The fact that this particular technique or procedure is generally known to the public leads me to the conclusion that its disclosure could not reasonably be expected to hinder or compromise its effective utilization. Consequently, I find that this information does not qualify for exemption under section 8(1)(c).

Given that it is generally known to the public that the Police interview witnesses to domestic violence incidents, I am also not persuaded that disclosure of 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. Consequently, I find that this information does not qualify for exemption under section 8(1)(e).

Collecting specific evidence from the victim (pages 6 and 10)

The Police have withheld portions of the record at issue that require their officers to employ techniques or procedures to collect specific evidence from the victim. I am satisfied that these techniques or procedures are "investigative," for the purposes of section 8(1)(c).

However, I am not persuaded that disclosure of these investigative techniques or procedures could reasonably be expected to hinder or compromise their effective utilization. Chapter LE-024 of Ontario's publicly available "Policing Standards Manual" lists the same techniques or procedures for collecting specific evidence from the victim (see section 13(c) on page 6) as the Police have withheld from the record at issue. In addition, these same techniques and procedures are also found in the publicly available "Domestic Violence Handbook for Police and Crown Prosecutors in Alberta" (see pages 53 and 61-63).

As noted above, 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. Moreover, even if this investigative technique or procedure was 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).

Given that this investigative technique or procedure is accessible in publicly available records, I am also not persuaded that its disclosure could reasonably be expected to endanger the life or physical safety of a police officer, a victim of domestic violence or any other person. Consequently, I find that this information does not qualify for exemption under section 8(1)(e).

Providing victims with specific advice/consulting with victims (pages 7 and 10)

The Police have withheld a portion of the record at issue that requires their officers to provide a victim of domestic violence with advice on a specific issue (page 7). Another withheld portion also requires police officers to consult with the victim in a specified circumstance (page 10). In my view, the information in these portions of the record at issue does not constitute an "investigative technique or procedure," as contemplated by section 8(1)(c). Consequently, I find that this information is not exempt under section 8(1)(c).

With respect to section 8(1)(e), I am not persuaded that disclosure of this information could reasonably be expected to endanger the life or physical safety of a police officer, victim of domestic violence, or any other person. In my view, the public is generally aware that the Police consult with victims in the specific circumstance set out in the record at issue (page 10). Moreover, it is difficult to see how disclosing the specific advice that they provide to victims (page 7) could reasonably be expected to lead to the harms contemplated by section 8(1)(e). Consequently, I find that this information does not qualify for exemption under section 8(1)(e).

Locating a suspect (page 8)

The Police have withheld portions of the record at issue that require their officers to take steps to locate a suspect. I am satisfied that these portions contain information that constitutes "investigative" techniques or procedures, for the purposes of section 8(1)(c).

The Police submit that disclosure "could" allow alleged offenders to circumvent investigative techniques and procedures such as these. However, I am not persuaded that disclosure of these investigative techniques or procedures could reasonably be expected to hinder or compromise their effective utilization. In my view, the public is generally aware that the Police implement these techniques or procedures to locate a suspect when investigating allegations of domestic violence. The fact that these particular techniques or procedures are generally known to the public leads me to the conclusion that their disclosure could not reasonably be expected to hinder or compromise their effective utilization. Consequently, I find that this information does not qualify for exemption under section 8(1)(c).

Given that it is generally known to the public that the Police implement such techniques or procedures to locate a suspect when investigating allegations of domestic violence, I am also not persuaded that disclosure of 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. Consequently, I find that this information does not qualify for exemption under section 8(1)(e).

Addressing the possible existence of firearms (pages 6, 10 and 12)

The Police have withheld portions of the record at issue that set out procedures for addressing the possible existence of firearms when investigating domestic violence incidents. While some of this information constitutes "investigative" procedures and techniques for the purposes of section 8(1)(c), other withheld portions set out notification and legal procedures that officers must follow that are not investigative in nature. Given that these latter notification and legal procedures are not "investigative," I find that they do not qualify for exemption under section 8(1)(c).

With respect to the investigative techniques and procedures for addressing the possible existence of firearms, I am not persuaded that disclosure could reasonably be expected to hinder or compromise their effective utilization. Chapter LE-024 of Ontario's publicly available "Policing Standards Manual" recommends specific procedures on firearms that police services should integrate into their own written procedures on domestic violence (see section 8(d)(v), (vi) and (vii) on page 5; section 12(d)(iv) on page 6; and section 22 on page 8). Moreover, the publicly available "Domestic Violence Handbook for Police and Crown Prosecutors in Alberta" discusses how police officers and the Crown in that province should address the possible existence of firearms in domestic violence cases (see pages 49, 56, 64, 72 73, 74, 76, 77, 79 and 127-131). I have reviewed the information in these two publicly available records relating to firearms and domestic violence, and find that it is substantially similar to the information withheld by the Police in this appeal.

As noted above, 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. Moreover, even if this investigative technique or procedure was 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).

Given that substantially similar techniques or procedures for addressing the possible existence of firearms are accessible in publicly available records, I am also not persuaded that disclosure could reasonably be expected to endanger the life or physical safety of a police officer, a victim of domestic violence or any other person. For similar reasons, I am not persuaded that disclosure of the notification and legal procedures that officers must follow with respect to firearms could

reasonably be expected to lead to the harms contemplated by section 8(1)(e). Consequently, I find that this information does not qualify for exemption under section 8(1)(e).

Providing assistance to victims and information to other persons (pages 10 and 11)

The Police have withheld portions of the record at issue that require their officers to provide domestic violence victims with specific assistance relating to safety, and to provide information to persons other than the victim for a specific purpose (page 10). The withheld portions also require officers to enter information into a specific category on the Canadian Police Information Center (CPIC) database (pages 10 and 11). Moreover, there is a reference to a specific safety response system (page 11).

In my view, these withheld portions of the record at issue contain safety techniques and administrative procedures that officers are required to follow, not "investigative" techniques and procedures, as contemplated by section 8(1)(c). Consequently, I find that this information does not qualify for exemption under section 8(1)(c).

With respect to section 8(1)(e), I am not persuaded that disclosure of these safety techniques and administrative procedures could reasonably be expected to lead to the harms contemplated by this provision, because much of this information is already in the public domain. Chapter LE-024 of Ontario's publicly available "Policing Standards Manual" recommends specific procedures on safety planning that police services should integrate into their own written procedures on domestic violence (see section 36 on page 10). Moreover, this manual recommends that a police service's procedures on domestic violence should provide for entering information into a specific category on CPIC (see section 28 on page 9). Similarly, the publicly available "Domestic Violence Handbook for Police and Crown Prosecutors in Alberta" also makes reference to this same CPIC category (see page 58). However, the Police have withheld this information from the record at issue.

Ontario's publicly available "Policing Standards Manual" also makes reference to a specific safety response system (see section 1(h)(i) on page 3). In addition, I would note that there is a detailed description of this specific safety response system on the website of the Victims Services Program of Toronto: www.victimservicestoronto.com/dv_emergency_response.htm However, the Police have withheld a portion of the record at issue that makes reference to this system (page 11).

Given that the information in these withheld portions of the record at issue is accessible in publicly available records, I am not persuaded that disclosure could reasonably be expected to endanger the life or physical safety of a police officer, a victim of domestic violence or any other person. Consequently, I find that this information does not qualify for exemption under section 8(1)(e).

The Police have also withheld a portion of the record at issue that requires their officers to provide information to persons other than the victim for a specific purpose (page 10). In my

view, the public is generally aware that police officers have a duty to provide this information to these individuals. I am not persuaded that disclosure of such 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. Consequently, I find that this information does not qualify for exemption under section 8(1)(e).

Obtaining search/arrest warrants (pages 6, 9, 10 and 11)

The Police have withheld portions of the record at issue that require their officers to consider obtaining search or arrest warrants in specified circumstances. I am satisfied that these portions contain information that constitutes "investigative" techniques or procedures, for the purposes of section 8(1)(c).

However, I am not persuaded that disclosure of these investigative techniques or procedures could reasonably be expected to hinder or compromise their effective utilization. In my view, the public is generally aware that the Police consider obtaining search or arrest warrants when investigating allegations of domestic violence. The fact that these particular techniques or procedures are generally known to the public leads me to the conclusion that their disclosure could not reasonably be expected to hinder or compromise their effective utilization. Consequently, I find that this information does not qualify for exemption under section 8(1)(c).

Given that it is generally known to the public that the Police consider obtaining search or arrest warrants when investigating allegations of domestic violence, I am also not persuaded that disclosure of 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. Consequently, I find that this information does not qualify for exemption under section 8(1)(e).

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 some portions of the record 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 submits that the Police have not provided sufficient evidence to substantiate their position on this issue. However, he does 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.

SEARCH FOR RESPONSIVE RECORDS

The appellant claims that the Police did not conduct a reasonable search for the records he is seeking, and that additional records exist. In particular, he stated the following in the appeal letter that he filed with this office:

> The Police Service has both statistics and a policy on Domestic Violence which have not been provided. They routinely, in some cases quarterly, send out Domestic Violence related statistics to government bodies and regulators. They have a domestic violence unit and it must have a policy governing it, and the [Toronto Police Service] has not [denied] the existence of such a policy, only that they will not release it to me …

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17 of the *Act* [Orders P-85, P-221, PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

The Police located Procedure 05-04 (Domestic Violence) of their Policy and Procedure Manual and issued a supplementary decision letter with respect to this record. Consequently, whether the Police conducted a reasonable search for this record is not at issue in this appeal. The only remaining issue is whether the Police conducted a reasonable search for the statistics relating to domestic violence sought by the appellant. The only statistics that the Police located and provided to the appellant are two pages of records containing statistics relating to domestic violence for 2005.

In the Notice of Inquiry that I sent the Police, I indicated that the appellant claims that they have additional statistics on domestic violence that they have not provided to him. I asked the Police to provide details of the searches they carried out, including who carried out the searches, what types of files were searched and the results of the searches. However, in their representations, the Police have not provided any evidence of the searches they carried out to locate records responsive to the appellant's request. Instead, their representations on the issue of reasonable search summarize the communications that took place between the Police and the appellant with respect to clarifying the scope of his request.

More importantly, the Police's representations do not contain any response to the appellant's assertion that they routinely send statistics on domestic violence to "government bodies and regulators" and whether they conducted searches for such statistics. The only evidence I have from the Police on this issue is their claim during the mediation stage of the appeal process that they have provided the appellant with all statistics that are currently available.

In his representations, the appellant reiterates his assertion that the Police have additional statistics on domestic violence that they have not provided to him and further submits that the Police send such statistics to Statistics Canada on a quarterly basis.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624]. A reasonable search would be one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request [Order M-909].

I have carefully considered the parties' representations and have concluded that the Police have not conducted a reasonable search for records containing the domestic violence statistics sought by the appellant. The Police have not provided me with any evidence of searches they may have carried out for records containing such statistics. I have no evidence before me as to whether any experienced employees of the Police expended reasonable efforts to conduct searches for such records. Consequently, I will order the Police to conduct further searches. In my final order, I will determine whether these further searches conducted by the Police are reasonable.

ORDER:

1. I uphold the Police's decision to withhold those portions of the record 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 record at issue that I have found are not exempt under sections 8(1)(c) or (e) of the *Act* by **October 27, 2008**.

3. I am providing the Police with a copy of the record at issue and have highlighted in green those portions that must not be disclosed to the appellant because they are exempt. To be clear, the non-highlighted portions must be disclosed to the appellant.

4. I order the Police to conduct further searches for records containing additional statistics on domestic violence that they may compile, including any statistics that are sent to municipal, provincial or federal government bodies (e.g., Statistics Canada) on a periodic basis.

5. I order the Police to submit detailed representations to this office that summarize their search efforts for additional records containing domestic violence statistics, including identifying who carried out these searches, what types of files were searched and the results of those searches. In addition, I order the Police to provide answers to the following questions in their representations:

   (a) Do the Police have records containing statistics on domestic violence, other than the two pages of records containing statistics relating to domestic violence for 2005 that were previously provided to the appellant?

   (b) Do the Police compile statistics on domestic violence that they provide to municipal, provincial or federal government bodies (e.g., Statistics Canada) on a periodic basis? If so, please provide details about the nature of such records.

6. I order the Police to provide me with these representations by **October 27, 2008**.

7. In accordance with section 7.07 of the IPC's *Code of Procedure* and *Practice Direction Number 7*, I may share the Police's representations with the appellant. The Police should indicate whether they consent to sharing these representations with the appellant.

8. If, as a result of these further searches, the Police identify additional records responsive to the appellant's request, I order them to provide the appellant with a decision letter regarding access to those records in accordance with sections 19, 20, 21 and 22 of the *Act*, treating the date of this order as the date of the request. I also order the Police to provide this office with a copy of any new decision letter that they issue to the appellant.

Original signed by: September 24, 2008
Colin Bhattacharjee
Adjudicator