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

PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. MI09-1

Cornwall Community Police Services Board

Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9188
TTY: 416-325-7539
http://www.ipc.on.ca

PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. **MI09-1**

INVESTIGATOR: **Mark Ratner**

INSTITUTION: **Cornwall Community Police Services Board**

SUMMARY OF COMMISSIONER INITIATED COMPLAINT:

On January 14, 2009, the Cornwall Community Police Service (the Police) executed a search warrant at a residence located within the City of Cornwall. A sign was placed on the lawn outside the residence stating that the residence had been the subject of a search warrant. The lawn sign identified the Police as the source of the sign and provided the address of the property where the search warrant had been executed.

The following day, an article appeared in the Cornwall Standard Freeholder providing details regarding the search warrant and the placement of the sign. The article described the lawn sign as being part of a new Police program. Under the program, signs would be placed in front of residences where search warrants had been executed in relation to the investigation of a drug offence.

Based on the information contained in the news article, the Information and Privacy Commissioner/Ontario (IPC) initiated an investigation to determine whether the posting of the lawn signs was in accordance with the provisions of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

Background Information

The IPC contacted the Police to obtain additional information regarding the sign posted on January 14, 2009 and inquired about the scope of the Police Lawn Sign program. The Police provided information to the IPC verbally, and in writing.

The Police confirmed that a search warrant had been executed at the property in question, that a quantity of illegal drugs had been found, and that arrests had resulted. The Police also stated that the property in question was a four-unit building, and that one of the units was the subject of the warrant and the resulting search. The Police stated that the search was conducted in response to an anonymous tip related to suspected drug trafficking, and that the individuals present in the residence at the time the warrant had been executed had been charged with the possession of controlled substances.

The Police also confirmed that the sign that had been posted was the first lawn sign in what was intended to be a larger program, where the Police would post signs in front of residences where drug search warrants had been executed. The Police later stated that lawn signs would only be posted if charges had been laid in connection with the search, and confirmed that 30 signs had been purchased for the purpose of carrying out the Lawn Sign program.

In written materials provided to the IPC, the Police have explained the purpose of the Lawn Sign program as follows:

> … Cornwall has, for many years, been experiencing a disproportionately severe drug problem, which has understandably caused the residents extreme concern and anxiety. Cornwall Police has, over the last several years, utilized all available resources in responding to the problem. It is constantly responding to public concerns and queries about whether or not the drug problem is being adequately addressed by law enforcement, and, if so, by what measures and with what results.
>
> The Lawn Sign program arose in direct response to the public's concerns and a corresponding need to protect the public and assure residents of Cornwall that the drug problem was being actively addressed.

An April 15, 2009 article in the Cornwall Standard Freeholder indicated that the Police were temporarily halting the Lawn Sign program and that approximately six lawn signs had been posted to that date. The article further indicated that the Police were planning a town hall meeting in order to receive feedback from the community on the Lawn Sign program. The Police subsequently confirmed to the IPC that the Lawn Sign program was on hold pending the outcome of our investigation.

Conduct of the Investigation

In addition to its communication with the Police, the IPC considered information provided by two other parties that had expressed an interest in the posting of the lawn signs and the IPC's investigation.

The IPC was contacted by an individual who identified himself as the owner of the property that had been searched on January 14, 2009. The individual explained that he did not live in the residence, but rented it to a tenant.

The individual expressed concern about negative publicity that may have been caused as a result of the lawn sign, including the fact that it may negatively impact the value of the property. Further, the individual expressed concern that the presence of the sign may cause the property to be targeted for theft by individuals who may suspect that drugs or money may be on site.

The Canadian Civil Liberties Association (CCLA) wrote to the IPC to provide its position on the Police's Lawn Sign program. In its submission to our office, the CCLA raised questions concerning both the propriety and the legality of the program.

Specifically, the CCLA stated that, in its view, there is no evidence that the program will assist the goal of reducing drug-related criminal activities in Cornwall. While the CCLA acknowledged that information about the "execution of a search warrant should be publically available when an interest is expressed in obtaining it", it objected to the Police "affirmatively publicizing" such information through the placement of a lawn sign.

The CCLA maintained that publicizing a search warrant's execution through a lawn sign without properly contextualizing such information was not appropriate. It noted that the placement of the lawn signs in front of a property without further details concerning a search could result in significant damage to the reputation of individuals residing at the residence.

The CCLA further stated that the placement of signs could also stigmatize "anyone else who may own, live in or even spend time at the impugned property, regardless of their knowledge of any alleged drug activity." The CCLA further noted that the children of parents suspected of illegal activity may be unfairly stigmatized, as well as parents of children that were suspected of illegal activity.

The CCLA's submission also raised concerns regarding the legality of the Lawn Sign program, and expressed the position that the Lawn Sign program did not constitute an appropriate exercise of police power.

DISCUSSION:

The following issues were identified as arising from the investigation:

Is the information "personal information" as defined in section 2(1) of the *Act*?

As stated above, each lawn sign contains the words "Drug Search Warrant" and identifies the Police as the source of the sign. Each sign contains a space where the Police enter the address of the residence that had been searched. In the present case, the unit number of the residence that had been searched was also included on the lawn sign.

The definition of "personal information" is set out in section 2(1) of the *Act*, which states, in part:

> "personal information" means recorded information about an identifiable individual, including,
>
> …
>
> (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,
>
> …
>
> (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;

Information will only qualify as "personal information" under the *Act* where there is a reasonable expectation that an individual will 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.)].

In the materials provided to the IPC, the Police have taken the position that the information appearing on the lawn sign does not qualify as personal information under the *Act* and have stated:

> … [T]he information identified on the Lawn Sign does not identify any individual, but only an address. … The tenant who was ultimately arrested and charged was not an owner of the building. The building was owned by a different individual who was not arrested, charged or suspected to be involved in any wrongdoing related to the drug search. The fact that the Lawn Sign stipulated that a search warrant had been executed at the unit address did not reveal any identifying information about any individual involved. Rather, the information disclosed related to the unit searched [emphasis in original].

The Police have made reference to a number of previous IPC orders to support their position that the information on the lawn signs does not qualify as "personal information".

The Police made reference to Order-23, where former Commissioner Sidney Linden concluded that property assessment information relating to the value of a property was information about a property, rather than information about an identifiable individual. As a result, the former Commissioner concluded that property assessment information did not qualify as personal information under section 2(1) of the *Freedom of Information and Protection of Privacy Act* (the provincial *Act*). (Section 2(1) of the provincial *Act* is the provincial equivalent of section 2(1) of the *Act*, which is at issue in this privacy investigation report).

The Police also made reference to findings of the IPC in Order PO-2349, (where information relating to water tests on a property was found not to be personal information); Order PO-2322 (where records relating to remediation of land contaminated by salt was found not to be personal information); and Order PO-2191 (where a house address used as a reference point for the purpose of an investigation into a motor vehicle accident in the vicinity of that address was found to not be personal information).

I have considered the materials provided by the Police in this regard. For the reasons set out below, I am satisfied that the information at issue in this privacy complaint qualifies as personal information.

In the circumstances of a case such as this one, the proper classification of address information under the *Act* was considered by former Assistant Commissioner Tom Mitchinson in Order PO-2265. In that case, the appellant had sought the street address, city, postal code and specific unit numbers of units that were subject to applications before the Ontario Rental Housing Tribunal. The former Assistant Commissioner stated:

> It is well established that an individual's address qualifies as "personal information" under paragraph (d) of section 2(1) of the *Act*, as long as the individual residing at the address is identifiable. However, previous orders have found that if an address is not referable to an identifiable individual it does not constitute personal information for the purposes of the *Act*. For example, in Order PO-2191, Adjudicator Frank DeVries found that an address contained on an occurrence report for a motor vehicle collision was not "personal information". He determined that the address was simply a reference point used by the Police to identify where the collision took place, and that there was no indication that the address was referable to an identifiable individual or that any individual at that address was in any way involved in the incident.

In concluding that the address information at issue in that appeal qualified as personal information, Assistant Commissioner Mitchinson stated further:

> 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.

The reasoning of PO-2265 was followed by Assistant Commissioner Brian Beamish in Order MO-2019, which was an appeal of a decision of the York Regional Police Services Board to deny access to a list of addresses that the police had identified as illegal drug "grow houses" or chemical labs. In concluding that the address information in that case was personal information, Assistant Commissioner Beamish stated:

> 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 [emphasis added].

I agree with the reasoning set out by former Assistant Commissioner Mitchinson and Assistant Commissioner Beamish and apply it to the circumstances of this case. Based on the above, the appropriate consideration in determining whether an address is personal information is whether the disclosure of that address could reasonably be expected to identify an individual and would reveal something inherently personal about the individual rather than something that is properly construed as a characteristic of the property.

In the case of this privacy investigation, the address information appearing on a lawn sign appears in connection with information on the sign indicating that a search warrant for drugs has been executed by the Police on that property. Although the name of an individual is not present on the lawn sign, once a sign is posted, there is a reasonable expectation that the name of an affected individual can be connected to an address by a neighbouring resident or by anyone using a reverse address directory, a mailbox, or a building directory.

Furthermore, a person viewing the sign would likely infer that one or more individuals present in the unit listed on the sign was suspected of the possession of drugs, that the residence was searched for drugs by the Police, and that criminal charges may have been laid. In my view, this sort of information, which relates to alleged criminal activity, is inherently personal, and is therefore not merely "information about a property". This finding is consistent with the cases discussed above [MO-2019 and PO-2265] where municipal addresses were found to be personal information.

In contrast, the cases that have been referred to by the Police in their submissions deal with circumstances where the address reveals information related to a property, not the occupants or owners [Order 23, PO-2349, PO-2322 and PO-2191].

Based on the above, I am satisfied that the disclosure of information that takes place through the posting of a lawn sign is a disclosure of personal information. I am therefore satisfied that the address information that appears on the sign qualifies as "personal information" under the *Act*.

Was the disclosure of the "personal information" in accordance with section 32 of the *Act*?

In this case, the disclosure at issue is the disclosure of personal information that takes place when the Police post a lawn sign outside of a residence indicating that a drug search warrant has been executed at the property.

In order for a given disclosure of personal information to be permissible, the institution in question must demonstrate that the disclosure is in accordance with at least one of the statutory exceptions set out in section 32 of the *Act*. In this case, the Police have stated that the disclosure of the personal information on the lawn signs is in accordance with both sections 32(a) and 32(e) of the *Act*. I will address the applicability of each of these sections of the *Act* in turn.

Section 32 of the *Act* sets out the rules relating to the disclosure of personal information. It contains a prohibition on the disclosure of personal information that is subject to a list of limited and specific exceptions. Section 32 of the *Act* states, in part:

> An institution shall not disclose personal information in its custody or under its control except,
>
> (a) in accordance with Part I;
>
> …
>
> (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or a treaty;
>
> …

Was the disclosure in accordance with section 32(a) of the *Act*?

Section 32(a) of the *Act* permits the disclosure of personal information where that disclosure is in accordance with Part I of the *Act*. Part I of the *Act* deals with requests for access to general records through Freedom of Information (FOI) requests. The *Act* requires the disclosure of records in response to a FOI request, subject to a number of statutory exemptions. Section 32(a) provides that a disclosure of personal information made in accordance with the access provisions of the *Act* does not constitute a breach of privacy under Part II of the *Act*.

The disclosure at issue in this privacy complaint investigation is not a disclosure in response to a FOI request and section 32(a) therefore does not apply. However, in the interest of completeness, I will consider whether the disclosure of the personal information at issue would be permitted under the access provisions of the *Act*. I will therefore consider whether the Police would be entitled to disclose the address of an individual whose residence has been searched for drugs under Part I of the *Act*.

The section of Part I of the *Act* that deals with the disclosure of personal information in response to an access request is section 14, which states, in part:

> (1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> …
>
> (f) if the disclosure does not constitute an unjustified invasion of personal privacy.
>
> (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;
>
> … .

Section 14 sets out a number of presumptions in section 14(3), and factors in section 14(2) that determine whether records should be disclosed under that section. A presumption in section 14(3) can only be overcome if the personal information in question falls under an exception in section 14(4) of the *Act*, or where a finding is made under the *Act* that there is a compelling public interest in disclosure [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

In support of the position that the information on the lawn signs may be disclosed under Part I of the *Act*, the Police have made reference to Order MO-2019, which, as discussed above, involved a request by the media for access to records identifying "grow-op" houses from the York Regional Police. After considering the application of various sections of Part I of the *Act*, including section 14, Assistant Commissioner Beamish ordered the York Regional Police to disclose the majority of the records that were responsive to the request.

The Police have taken the position that a similar analysis in this case should lead to a similar result, *i.e.*, that the address information may be disclosed in response to a FOI request. In this regard, the Police made reference to the presumption against disclosure set out in section 14(3)(b) of the *Act*, and have stated in regard to Order MO-2019:

> The Assistant Commissioner determined that there was no "presumption" of invasion of privacy pursuant to Section 14(3) because the records were not "investigatory" in nature. The addresses were generated "*after the fact*" and were not compiled for the purpose of individual investigations. Similarly, in this case, the Lawn Sign was not generated as part of the investigation into the illegal drug activity and was only posted once arrests were made and charges were laid [italics added by the Police].

The Police also addressed the factors listed in 14(2), and in referencing MO-2019, noted that the Assistant Commissioner concluded that the information in that case should be released. The Police state that similar reasoning should apply in this case, and the information on the lawn signs should likewise be disclosed under section 14.

Further, the Police have also noted that in Order MO-2019, the Assistant Commissioner concluded that if he had found that the information had been exempt under section 14, he would have ordered the records to be disclosed under the section 16 public interest override. The Police maintain that a similar compelling public interest exists in the case of the lawn signs, and that a similar conclusion should result.

I have considered the information provided by the Police in this regard, and for the reasons set out below, I conclude that the personal information appearing on the lawn sign may not be disclosed under Part I of the *Act*.

The facts of this case are different than those of Order MO-2019. In MO-2019, the records at issue were not compiled for the purpose of investigations into possible "grow-op" houses, but rather were generated well "after the fact" for the purpose of informing members of the York Regional Police Services Drugs & Vice Enforcement Unit and select other members of the York Police about the Unit's own activities.

In contrast, in this case, the personal information at issue (*i.e.*, the address of the person who was subjected to a search warrant for drugs) was compiled by the Police during an active investigation. The Police compiled this information (the address) at the investigatory stage in order to obtain the search warrant that was executed on the very same day that charges were laid and the information was disclosed. I am therefore satisfied that the disclosure of the address would disclose information that "was compiled and is identifiable as part of an investigation into a possible violation of law" and would constitute a presumed invasion of privacy under section 14(3)(b). Accordingly, it is not necessary for me to consider the factors governing disclosure as set out in section 14(2).

However, in the interest of completeness, I will address the factors set out in section 14(2) of the *Act*, which are reproduced above. Section 14 contains both factors that weigh in favour of disclosure, sections 14(2)(a) to 14(2)(d), and factors that weigh in favour of privacy protection, sections 14(2)(e) to 14(2)(i).

In terms of the factors favouring disclosure, I note that sections 14(2)(a) and 14(2)(b) may apply in this circumstance. These factors deal with subjecting the activities of an institution to scrutiny and the promotion of public safety, respectively. However, in my view, the goals articulated through these factors may be achieved through means other than the disclosure of the personal information on the lawn signs. I therefore would have accorded these factors low weight.

In contrast, the fact that the information in question was disclosed at a very preliminary stage of the investigation and well before the accused had appeared in court, let alone convicted would have had significant weight in the section 14(2) analysis. In addition, I would consider the fact that individuals not charged may fall under suspicion as a result of the Lawn Sign program. Consequently, in this case, the factors against disclosure listed in 14(2)(e) (exposing individuals unfairly to pecuniary or other harm), 14(2)(f) (highly sensitive personal information), 14(2)(g) (the personal information unlikely to be accurate), and 14(2)(i) (may unfairly damage the reputation of a person) would be relevant and would have been accorded significant weight. Therefore, because the factors against disclosure would outweigh the factors favouring

disclosure, a section 14(2) analysis would have produced the result that the personal information in question should not be disclosed.

I have also reviewed section 14(4) of the *Act*, and in my view, none of the limitations of that section apply to allow the disclosure of personal information in this instance.

As noted above, the Police have also addressed the "public interest override" in section 16 of the *Act*, which states:

> An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

Once again, the facts of MO-2019 distinguish it from this case. In MO-2019, Assistant Commissioner Beamish stated that a compelling public interest in disclosure would be based on the same weighting of factors set out in the section 14(2) analysis, and made reference to the potential harms to public health arising out of "grow ops", and stated:

> 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.
>
> …
>
> 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.

In the present case, similar considerations do not apply. As discussed above, the presence of a grow-op poses specific and serious health and safety risks to the public. In contrast, the circumstances at issue concern the discovery of a relatively small quantity of drugs. Even the fact that larger quantities of drugs might be found on a property would not, in itself, give rise to the same public health concerns that arise from the hazards associated with "grow-ops".

A further factor considered in MO-2019 was that of consumer protection. In this regard, Assistant Commissioner Beamish stated:

> 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 [emphasis added].

This consumer protection consideration does not apply to the circumstances of this investigation. The fact that drugs have been found and a search warrant has been executed in a home will not likely impact a home's value in the same way that its value could be affected by the potential hazards and structural, mechanical, and electrical modifications associated with a home formerly used as an illegal grow-operation.

More importantly, potential home buyers have very limited opportunities to discover that a house has been used as a grow-op. This is not the case here. As will be discussed, police have legitimate means to inform the public that criminal charges have been laid, and to inform the public about the progress of criminal proceedings against individuals.

Accordingly, based on the foregoing, I am satisfied that there is not a compelling public interest in the disclosure of the personal information appearing on the lawn signs under section 16 of the *Act*.

As indicated earlier, the disclosure at issue in this privacy complaint investigation is not a disclosure in response to a FOI request and section 32(a) therefore does not apply. In any case, I have concluded that, even if Part I applied, the disclosure of the personal information on the lawn signs would not be in accordance with Part I of the *Act*. I therefore conclude that the disclosure is not in accordance with section 32(a) of the *Act*.

Was the disclosure of the "personal information" in accordance with section 32(e) of the *Act*?

Section 32(e) of the *Act* permits the disclosure of personal information for the purpose of complying with a federal or provincial statute or an agreement or arrangement made pursuant to a statute.

In this case, the Police have made reference to section 41 of the *Police Services Act* (PSA) as the statute that authorizes the disclosure of the personal information at issue and deems such disclosures to be in accordance with section 32(e) of the *Act*. It is the position of the Police that they were authorized to disclose the information appearing on the lawn signs because the

disclosure of this type of information is permitted under section 41 of the PSA and in accordance with sections 3 and 6 of O. Reg. 265/98, a regulation enacted under the PSA (the Regulation).

Sections 41(1.1) to 41(1.3) of the PSA states:

> (1.1) Despite any other Act, a chief of police, or a person designated by him or her for the purpose of this subsection, may disclose personal information about an individual in accordance with the regulations.
>
> (1.2) Any disclosure made under subsection (1.1) shall be for one or more of the following purposes:
>
> 1. Protection of the public.
> 2. Protection of victims of crime.
> 3. Keeping victims of crime informed of the law enforcement, judicial or correctional processes relevant to the crime that affected them.
> 4. Law enforcement.
> 5. Correctional purposes.
> 6. Administration of justice.
> 7. Enforcement of and compliance with any federal or provincial Act, regulation or government program.
> 8. Keeping the public informed of the law enforcement, judicial or correctional processes respecting any individual.
>
> (1.3) Any disclosure made under subsection (1.1) shall be deemed to be in compliance with clauses 42 (1) (e) of the *Freedom of Information and Protection of Privacy Act* and 32 (e) of the *Municipal Freedom of Information and Protection of Privacy Act*.

Section 41(1.1) sets out and circumscribes the authority to disclose personal information by indicating that police "may disclose personal information about an individual **in accordance with** the regulations" (emphasis added). Section 41(1.2) sets out the list of permissible purposes for such disclosures, and section 41(1.3) deems a disclosure made under section 41(1.1.) to be in compliance with the *Act*. In order to be "deemed to be in compliance" with section 32(e), the police service in question must fully comply with the Regulation [MC-060020-1].

The PSA Regulation states, in part:

> 1. In this Regulation, an individual shall be deemed to be charged with an offence if he or she,
>
> > (a) is arrested and released in accordance with Part XVI of the *Criminal Code (Canada)*; or
> >
> > (b) is served with a summons under Part III of the *Provincial Offences Act* in relation to an offence for which an individual may be arrested, even if an information has not been laid at the time the summons is served.
>
> …
>
> 3. (1) A chief of police or his or her designate may disclose personal information, as described in subsection (2), about an individual to any person if the individual has been charged with, convicted or found guilty of an offence under the *Criminal Code (Canada)*, the *Controlled Drugs and Substances Act (Canada)* or any other federal or provincial Act.
>
> (2) If subsection (1) applies, the following information may be disclosed:
>
> > 1. The individual's name, date of birth and address.
> >
> > 2. The offence described in subsection (1) with which he or she has been charged or of which he or she has been convicted or found guilty and the sentence, if any, imposed for that offence.
> >
> > 3. The outcome of all significant judicial proceedings relevant to the offence described in subsection (1).
> >
> > 4. The procedural stage of the criminal justice process to which the prosecution of the offence described in subsection (1) has progressed and the physical status of the individual in that process (for example, whether the individual is in custody, or the terms, if any, upon which he or she has been released from custody).
> >
> > 5. The date of the release or impending release of the individual from custody for the offence described in subsection (1), including any release on parole or temporary absence.
>
> …
>
> 6. In deciding whether or not to disclose personal information under this Regulation, the chief of police or his or her designate shall consider the

> availability of resources and information, what is reasonable in the circumstances of the case, what is consistent with the law and the public interest and what is necessary to ensure that the resolution of criminal proceedings is not delayed.

In order for a disclosure of personal information to be permissible under section 41(1.1) of the PSA and the related Regulation, the disclosure must satisfy the requirements set out in section 41(1.2) of the PSA, as well as the applicable provisions of the Regulation. In what follows, I consider the information supplied by the Police in this regard. Specifically, I consider the purpose of the program under section 41(1.2) of the PSA, the nature of the information disclosed under section 1 and 3 of the Regulation, and whether the exercise of discretion to disclose was proper under section 6 of the Regulation.

Purpose of the Program

Section 41(1.2) of the PSA, which is reproduced above, sets out a number of purposes under which a police service may disclose personal information. In order for a disclosure of personal information to be in accordance with section 41(1.1) of the PSA, the purpose of the disclosure must be consistent with one of the purposes listed in section 41(1.2).

In regard to the section 41(1.2) list of purposes, the Police have stated that the disclosure is "for one or more enumerated purposes such as the protection of the public, protection of victims of crime, law enforcement and the administration of justice". In addition, the Police have also made reference to the fact that the purpose of the Lawn Sign program is to address concerns raised by the public that the Police are not adequately addressing the drug problem that is present in the municipality.

I have considered the information provided by the Police, and I am not satisfied that the purpose of the disclosure is consistent with one of the purposes listed in section 41(1.2). With respect to the enumerated purposes of protection of the public, protection of victims of crime, law enforcement and the administration of justice, the Police have not provided an explanation as to how the disclosure of the personal information on the lawn signs advances or relates to these purposes. I am not satisfied that the placement of the lawn sign on January 14, 2009, or the Lawn Sign program generally advances or relates to any of these purposes.

In my view, and based on the materials provided by the Police, the primary purpose of the Lawn Sign program is to demonstrate to the public that the drug problem is being actively addressed. With regard to this purpose, I am in agreement with the Police that informing the public of steps being taken to address a drug problem is a laudable objective. However, I note that this purpose is not a listed purpose under section 41(1.2) of the PSA for the disclosure of personal information.

Furthermore, I am of the view that the posting of a lawn sign is not the only means by which the Police can satisfy this purpose. The Police have other means and tools at their disposal to inform the public that search warrants are being executed, and these means could be employed without compromising the privacy of individuals.

An additional purpose that has not been referenced by the Police is the purpose listed in paragraph 8 of section 41(1.2) of the PSA, which refers to the purpose of "[k]eeping the public informed of the law enforcement, judicial or correctional processes respecting any individual".

While I acknowledge that the posting of a lawn sign can have the result of informing the public about legal processes affecting an individual, I note that this result is *incidental* to the program, and there is no evidence to indicate that it is a purpose of the program. In my view, based on the information provided by the Police, the purpose of the Lawn Sign program is to notify the public of police activity rather than to provide them with information about a law enforcement or judicial process respecting a particular individual.

In view of the above, I am not satisfied that the purpose of the Lawn Sign program is in accordance with the PSA and Regulations, and therefore section 32(e) of the *Act*. In the interest of completeness, however, I will proceed to consider whether the Police have complied with the provisions governing disclosure set out in the Regulation.

Nature of the Information Disclosed Under Section 1 and 3 of the Regulation

Section 1 of the Regulation defines what is meant by someone having been "charged" with an offence, and section 3 of the Regulation establishes a framework setting out the information that may be disclosed in relation to individuals that have been charged or convicted of offences. Both provisions are reproduced above. In what follows, I consider whether the Police have complied with the framework established by sections 1 and 3 of the Regulation.

In their submissions, the Police noted that, in the case at hand, the lawn sign was only erected after the property had been searched and charges had been laid. However, their submissions did not address the timing of the disclosure in relation to section 1 of the Regulations, particularly section 1(a), which provides that a person is deemed to be charged for the purposes of the regulations after they have been both "arrested and released in accordance with Part XVI of the *Criminal Code*". In this regard, I am unable to determine whether the Police waited to post the sign until after the arrested individuals had been "charged" within the meaning of section 1(a) of the Regulations.

The Police have taken the position that the disclosure was permitted under section 3(1) of the Regulation because the lawn signs are only posted under the Lawn Sign program after an individual has been charged with an offence.

The Police also maintain that the information on the lawn signs is similar to information routinely disclosed by police services in Ontario in relation to individuals charged with criminal offences. In support of this position, the Police have provided examples of three press releases issued by other police services across the province that include details of police charges in relation to illegal drugs. All the press releases state that search warrants had been executed on the properties in question, and include the names of individuals charged, their ages, as well as the offence or offences in question. In two of the cases, the full address of the property searched has been included in the press releases.

I have reviewed the press releases and have considered the position put forward by the Police. I note that the disclosure of personal information at issue on the lawn signs in this case is different from the type of information appearing in the press releases provided. In the press releases, the full names and ages of the individuals that have been charged have been listed. Accordingly, a member of the public reading the release would posses a degree of certainty with respect to who had been charged.

In contrast, in the case of the Lawn Sign program, the lawn signs only list a street address and the fact that a search warrant has been executed on the property. The lawn signs do not include the name of the individuals charged, the fact that they have been charged, or the charge involved. As previously indicated, however, although the name of an individual is not present on the lawn sign, there is a reasonable expectation that the name of an affected individual can be connected to an address by a neighbouring resident or by anyone using a reverse address directory, a mailbox, or a building directory.

Furthermore, as a result of the emphasis on the property address, it is possible that other individuals residing at the address who were not charged may become unfairly associated with charges by virtue of the presence of a lawn sign. Affected individuals could include roommates, tenants, or family members of the person charged who happen to reside at the same residence. Therefore, while I have already concluded that the presence of a street address on the lawn signs entails that there is a reasonable expectation that the individual charged will be identified, I am also concerned that the signs could also have the effect of unfairly and needlessly tainting individuals who have not been charged. This concern, as previously mentioned, was also expressed by both the property owner when he contacted our office and the CCLA in its submission.

The framework set out in section 1 of 3 of the Regulation permits the disclosure of personal information about an individual that has been charged with an offence. In this case, the design of the Lawn Sign program has the effect of potentially disclosing incorrect or unfairly prejudicial personal information about individuals who have not been charged with any offence. In this regard, I conclude that the Lawn Sign program's design exceeds the framework provided under section 3 of the Regulation.

Let me be clear. I am not objecting to police issuing media releases to inform the public that individuals have been charged with offences in the appropriate circumstances. Properly tailored, a press release serves a legitimate function and public service. However, this is much different in form and substance from "planting" a lawn sign in front of a property; a sign that could be construed as identifying any number of innocent individuals. There is no parallel between this and issuing a focussed media release.

Requirements under section 6 of the Regulations

Section 6 of the Regulation, which is reproduced above, sets out the factors that a police service must consider in determining whether or not to disclose personal information under the Regulation. In Privacy Complaint MC-060020-1, Senior Adjudicator/Investigator John Higgins considered the requirements set out in section 6 of the Regulation and determined that police

services are required to adopt a discretionary approach in determining whether or not to disclose personal information under the Regulation. Before making a decision to disclose personal information under the Regulation, the Police must take into account each of the requirements of section 6.

The Police have addressed section 6 and have stated that, in deciding whether or not to release information under the *Police Services Act* (including in relation to the Lawn Sign program), they take into account the following:

- What is in the public interest?
- What is consistent with the law?
- What is reasonable in the circumstances of this case?

I will deal with each factor in turn.

With regard to the public interest, the Police have stated that:

> [p]articular consideration, in this case, was given to the overwhelming public interest in combating the Cornwall drug problem… .

With respect to this factor, I am in agreement with the Police that, as a general rule, there is a significant public interest in addressing serious drug problems. However, I also note that there is also a significant public interest in protecting privacy, particularly the privacy of innocent individuals. In my view, the public interest in protecting privacy is also a relevant factor under section 6 of the Regulation and the police have not provided information that would demonstrate that privacy was taken into account in the design of the Lawn Sign program, or in the initial decision to disclose personal information on January 14, 2009.

With regard to what is consistent with the law, the Police argue that the program is consistent with the *Police Services Act* and the Regulations, section 487.2 of the *Criminal Code*, and the *Controlled Drugs and Substances Act* on the basis that the Lawn Sign program draws a distinction between access to information about search warrants where charges have been laid and where they have not been laid.

With respect to section 487.2 of the *Criminal Code* and the *Controlled Drugs and Substances Act*, the Police observe that members of the public may generally obtain and disclose information about search warrants in court records without fear of criminal sanction once a warrant has been executed, charges have been laid, and any necessary reports are filed with the court.

In my view, the fact that a record may be available in the files of a courthouse does not, on its own, mean that a police service's decision to publish similar or identical information by way of a lawn sign is consistent with the law within the meaning of section 6 of the Regulation. In my view, access in the court context is sufficiently different as to be distinguishable. As indicated by the CCLA in its submission, in the court context access is passive – it awaits the affirmative action of an individual seeking out a particular record. In the context of the case at hand, access is actively accomplished by police action. Moreover, court access is grounded in a context where

records are filed in court where the open court principle dominates. In contrast, the police disclosure at issue arises in the context of a preliminary and potentially sensitive stage of the investigation and prosecution of an offence.

With respect to what is "reasonable in the circumstances of the case", the Police have stated that they have considered the following three factors:

- the fact that warrants will become publicly accessible information after a seizure is made and a Report to Justice is filed;

- … police services in Ontario will generally publicly release the actual identity of adults charged with crimes, their ages and specific charges laid, (including the specific address in some cases); and

- The fact that police services in Ontario … will publish, on their websites, the address of dismantled grow operations and crystal meth labs as well as the arrests and charges stemming from those operations [emphasis in original].

The Police provided a number of documents in support of the statements set out above. While the three factors to which the Police have referred may be relevant to a police services decision to consider developing a disclosure policy, I note that there are additional factors that the Police do not appear to have considered in this instance.

For example, there is no indication that the Police considered that the public interest in disclosure might be reduced in light of the nature of the charges laid or the amount of drugs found as a result of the particular search. Similarly, as discussed above, there is no indication that the Police considered whether a significant public interest in non-disclosure might be present with respect to protecting individuals who might be unfairly associated with the particular search such as family members of a person who has been charged. In addition, the Police do not appear to have properly considered whether similar practices exist in other jurisdictions in Canada. The Police have acknowledged that they are not aware of another police service in Canada that is engaged in a program similar to the Lawn Sign program.

The fact that the Police have not properly considered these relevant factors supports the conclusion that the disclosure of the personal information on the lawn signs is not "reasonable in the circumstances of this case".

Based on all of the above, I am not satisfied that either the design of the Lawn Sign program or the decision to disclose personal information in this particular case properly accounted for the purposes under section 41(1.2) of the PSA or the requirements set out in sections 1, 3, and 6 of the Regulation. I therefore conclude that the Lawn Sign program, as well as the disclosure of the personal information in question are not in accordance with section 41(1.1) of the PSA, and are therefore not in accordance with section 32(e) of the *Act*.

Conclusion on section 32

I have reviewed section 32(a) and 32(e) of the *Act* above and have concluded that disclosure of the personal information is not permitted under these provisions. I have also reviewed the remaining subsections of section 32 that have not been referenced by the Police and I conclude that none of these provisions function to permit the disclosure of the personal information in question.

Accordingly, I conclude that the disclosure in question is not permitted under section 32 of the *Act*.

CONCLUSIONS:

I have reached the following conclusions based on the results of my investigation:

1. The information on the lawn sign qualifies as "personal information" under section 2(1) of the *Act*.

2. The disclosure of the personal information on the lawn sign is not in accordance with section 32 of the *Act*.

The Police were provided with a copy of a draft of this Report. In response to the draft, the Police stated the lawn sign program "remains and will continue to remain in a state of suspension while [they] explore other avenues to effectively engage [their] community… ."

I have concluded above that the Lawn Sign program and the disclosure of personal information is not in accordance with the *Act*.

In my view, the Police's response that the Lawn Sign program "remains and will continue to remain in a *state of suspension*" [emphasis added] does not constitute full compliance with my recommendation in the draft report. I therefore recommend below that the Police cease the Lawn Sign program, and with it, the resulting disclosure of personal information.

RECOMMENDATION:

I recommend that the Police:

1. Cease the practice of posting lawn signs in front of homes indicating that those homes have been the subject of a search warrant for drugs.

In making this recommendation, I note that the Police can and should continue to take reasonable steps to achieve the laudable goal of notifying the public of their activities in the community by, for example, the release of general rather than personal information. In this way, rights of access and privacy will both be advanced.

I further note that I am not objecting to the Police issuing appropriate media releases to inform the public that an individual or individuals have been charged.

Accordingly, by **November 9, 2009**, the institution should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendation.

Original Signed by: October 16, 2009

Mark Ratner
Investigator