

**ALBERTA**  
**INFORMATION AND PRIVACY COMMISSIONER**

**INVESTIGATION REPORT**  
**98-IR-011**

**March 1, 1999**

**Lethbridge Police Service and**  
**Edmonton Police Service,**  
under authority delegated by  
**Alberta Justice**

Investigation Number #1475

This matter has now been resolved based  
on the recommendations provided in this Investigation Report.

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Robert C. Clark  
Information and Privacy Commissioner

**ALBERTA**  
**INFORMATION AND PRIVACY COMMISSIONER**

**Report on the Investigation into a Complaint about the  
Release of Personal Information under Section 31  
of the *Freedom of Information and Protection of Privacy Act***

**March 1, 1999**

**Lethbridge Police Service  
and Edmonton Police Service  
under Authority Delegated by Alberta Justice**

**Case Number 1475**

**I. The Complaint**

[para 1.] The Complainant wrote a letter to the Office of the Information and Privacy Commissioner, dated August 19, 1998, in which he outlined the details of his past, including his criminal record for assault and sexual assault, incarceration and subsequent release from jail. He also outlined his decision to move to Lethbridge and the media release about his past that was subsequently made by police. The Complainant made the following complaints about the Lethbridge and Edmonton Police Services:

...

*My arrival in Lethbridge led Police to do a media release two days later, after my appeal to disclose information had been denied, and this was done within 75 minutes of the denial. Television, newspaper, radio reporters, and an upset neighbor visited my residence. The public at large honked car horns at night, some shouted obscenities, an egg was thrown at the house. Police had 14 direct contacts with me in my first 3 weeks in Lethbridge. The University of Lethbridge cancelled my application at the end of those 3 weeks... My family was affected by the media release in that when my father went for his interview for ...[employment]... the newspaper articles about me were introduced in the interview, and my father had to answer all questions concerning this. Although his qualifications are top-of-the-line, his application was rejected, and created loss of work opportunities, which had brought him to Lethbridge in the first place.*

*I then sought to attend the University of Alberta in Edmonton, and reside with my brother; however, the Edmonton Police refuse to allow me to live with relatives, even rejecting my parents if they choose to move to Edmonton. The Edmonton Police require that I reside at a halfway house with 26 other men, 5 of whom would be in my assigned area, and my bed would be a couch. The halfway house restrictions, which are more restrictive than the Edmonton Police ... restrictions, are not conducive to university study*

*and movement to classes on the Edmonton campus. The Edmonton Police will publicize unless I accept a Day Parole position in a halfway house. This seems to be very regressive. The halfway house restrictions interfere with class attendance. Reporting to the Edmonton Police, where their office is in a known prostitute district, would result in a breach of conditions, as I am not allowed to set foot or drive through the area, but would be required to report to police once a week.*

...

*... There seems to be inconsistency in Section 31 of the Alberta Freedom of Information and Protection of Privacy Act, as one police department will publicize, while another does not. Although it was indicated that the media release was about my 1994 convictions more emphasis was placed on my non-convictions, resulting in fearfulness in the community of Lethbridge. It is my understanding that what was a one-time media release by the police, was still ongoing on Police Internet three weeks later.*

*I wish to appeal the notification, both in Lethbridge and proposed in Edmonton. ...*

## **II. Background**

[para 2.] The Complainant was released from prison in December of 1997 after serving a three-year term for sexual assault. He served his sentence until full warrant expiry. Most offenders are released after serving a portion of their sentence, either on parole or mandatory supervision. The conviction related to the confinement and sexual assault of a prostitute. Prior to that conviction, the Complainant was convicted of common assault on a female stranger. He received a nine-month term of incarceration and two years probation for that incident.

[para 3.] During the course of two treatment programs that were completed during his three-year term, the Complainant admitted to the sexual assault of more than 10 prostitutes between 1991 and 1993 and that several of these incidents involved the use of a knife. The Complainant also admitted this information during my interview with him. These incidents were investigated by police in the city in which they occurred. While there was similarity to some reported cases, there was insufficient evidence to lay further charges. The Complainant also admitted that his intent during the commission of the common assault for which he had been convicted was sexual. All of the admitted information about the other assaults was considered by the National Parole Board in their decision not to allow the Complainant early release. The information was also provided in information packages to the Lethbridge and Edmonton Police Services from the Correction Service of Canada.

## **III. Jurisdiction**

Section 31 of the *Freedom of Information and Protection of Privacy Act*

[para 4.] Section 31 of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) states:

*31(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people, to any person or to an applicant*

*(a) information about a risk of significant harm to the environment or to the health or safety of the public, of the affected group of people, of the person or of the applicant, or*

*(b) information the disclosure of which is, for any other reason, clearly in the public interest.*

*(2) Subsection (1) applies despite any other provision of this Act.*

*(3) Before disclosing information under subsection (1), the head of a public body must, where practicable,*

*(a) notify any third party to whom the information relates,*

*(b) give the third party an opportunity to make representations relating to the disclosure, and*

*(c) notify the Commissioner.*

*(4) If it is not practicable to comply with subsection (3), the head of the public body must mail a notice of disclosure in the prescribed form*

*(a) to the last known address of the third party, and*

*(b) to the Commissioner.*

Issue A: Does the Information and Privacy Commissioner have jurisdiction to review a decision by the head of a public body made pursuant to section 31?

[para 5.] The Commissioner first dealt with section 31 of the FOIP Act in Order #96-011, which was released publicly September 13, 1996. The inquiry arose as a result of an applicant requesting that the Commissioner review a decision by the Minister of Environmental Protection to withhold a report entitled, "Impact of the Petroleum Industry on Cattle Production: Critical Review of Scientific and Other Information", dated April 21, 1995. One of the issues in the inquiry was whether Environmental Protection should disclose the record under section 31 of the FOIP Act. Before interpreting section 31, the Commissioner addressed his jurisdiction under that section .

[para 6.] With respect to the his ability to review a decision by the head of a public body made pursuant to section 31, the Commissioner stated the following:

*The Act specifies two circumstances in which I have unquestioned authority (and responsibility) to review a section 31 decision by the head of a public body.*

1. *The first circumstance is when the decision to release information under section 31 necessitates release of personal information, and where the person whose information is released makes an application to me for a review of that release. My jurisdiction arises under the specific review powers I am given in Part 4, Division 1, specifically section 62.*

*Section 62(3) specifically allows me to review a decision to release personal information which has been “disclosed in violation of Part 2”. Section 38(1)(a) in Part 2 permits the release of personal information, when that release of information has been done in accordance with Part 1 (which includes section 31).*

*In Order No. 96-007, Review No. 1013, I reviewed a decision to release personal information which included a discussion of this aspect of the Act.*

2. *The other circumstance in which I clearly have jurisdiction to review a section 31 decision by the head of a public body occurs when “section 31 information” is disclosed to me by an employee of the Department, pursuant to section 77. This is sometimes referred to as a “whistleblower” provision.*

*In both of these circumstances, I not only have jurisdiction to review the decision by the head of a public body; I have an obligation to do so.*

[para 7.] The current investigation clearly falls into the first circumstance listed above. Therefore, the Commissioner does have the jurisdiction to investigate a complaint relating to a breach of privacy regarding the disclosure of personal information by the head of a public body pursuant to section 31 of the FOIP Act.

[para 8.] The Commissioner went on in Order 96-011 to discuss the process and standard of review when carrying out a review of a section 31 decision:

*Section 31 deals with disclosure of information about a risk of significant harm to the environment or to the health or safety of the public; or release of information which is clearly in the public interest to be disclosed. The obligation of the head of a public body to release section 31 information arises when the head of the public body becomes aware of information about the risk of significant harm as defined in the section.*

*Section 31 imposes a statutory obligation for the head of a public body to release information of certain risks under “emergency-like” circumstances (i.e. “without delay”). It also defines the circumstances where the obligation arises for the head of the*

*public body. The section also provides for an overriding of other provisions in the Act, with respect to release of third party information (if necessary). The significant override of privacy rights provided by section 31 suggests that the definition of what information is “caught” by the provision, and with respect to which a statutory duty of disclosure applies, must be defined narrowly. I think my power to investigate decisions made pursuant to section 31 of the Act must be exercised carefully.*

...

*... My function under the general powers contained in the Act is not to second-guess each and every decision made by the head of a public body. It is clear that the Legislature has placed the duty to assess risk and determine public interest on the head of a public body. The head will often, but not always, be a Minister, an elected official. This person will likely have the advantage of information and support staff to assist and advise in carrying out this duty. Accordingly, I will be concerned with whether the head’s decision is rationally defensible, as opposed to whether I think he decided correctly.*

[para 9.] In keeping with the findings of the Commissioner in Order #96-011, the investigation into this complaint examined whether the head’s decision was rationally defensible, rather than whether the head decided correctly.

Issue B: Does the Information and Privacy Commissioner have jurisdiction to investigate a complaint about a decision of a Chief of Police?

[para 10.] Municipal police services in the Province of Alberta are not subject to the FOIP Act until October 1, 1999. The Royal Canadian Mounted Police (RCMP) fall under the *Access to Information Act* and the *Privacy Act*, which are both federal legislation. First Nations Police do not currently fall under the FOIP Act.

[para 11.] Under normal circumstances, the Commissioner would not have jurisdiction to investigate an alleged breach of privacy by the RCMP, Municipal or First Nations police service, because they are not public bodies under the FOIP Act. However, there is a protocol in place that delegates the authority of the Minister of Justice and Attorney General of Alberta under section 31 of the FOIP Act to the Commanding Officer of RCMP “K” Division (Alberta), and Chiefs of Police for Municipal and First Nations Police Services in Alberta. On April 18, 1996, the Protocol was signed. The signing of the Protocol represented the acceptance of the delegation set out in Ministerial Order 19/96, signed May 2, 1996 by the Honourable Brian Evans, Minister of Justice and Attorney General of Alberta. The Ministerial Order stipulates that the delegation expires at 12:01 a.m. five years from the date of Order in Council number 128/96. Order in Council number 128/96 was issued March 27, 1996. Therefore, the delegation set out in the Protocol is in effect from April 18, 1996 until March 27, 2001.

[para 12.] Ministerial Order 19/96 delegated authority pursuant to section 80(1) of the FOIP Act, which states:

*80(1) The head of a public body may delegate to any person any duty, power or function of the head under this Act, except the power to delegate under this section.*

*(2) A delegation under subsection (1) must be in writing and may contain any conditions or restrictions the head of the public body considers appropriate.*

### Conclusion

[para 13.] The Minister of Justice and Attorney General of Alberta is the head of Alberta Justice, a public body under the FOIP Act. Section 80 allows the Minister to make the delegation contained in the Protocol to any person, including a Chief of Police. This delegation has been done. Therefore, the Commissioner does have jurisdiction to investigate a complaint relating to a decision of a Chief of Police while exercising his/her delegated authority. The Protocol relates only to section 31 of the FOIP Act. Therefore, the Commissioner's jurisdiction is very narrow and relates only to a decision of the Chief of Police made under the Protocol.

## **IV. The Protocol**

Issue: Does the Protocol conform to section 31 of the FOIP Act?

[para 14.] While it is not my intention to reproduce the Protocol in its entirety, it is important to quote portions in order to demonstrate its scope and intention, and the process outlined therein. The entire text of the Protocol appears as Appendix "A" to this report.

[para 15.] This is the first complaint to the Information and Privacy Commissioner which involves this Protocol. Therefore, it is important to critically examine the Protocol to determine whether it is an appropriate tool for making decisions under section 31 of the FOIP Act.

[para 16.] The title of the Protocol is as follows:

**Protocol Regarding the Release of Information in Respect of Individuals Who are Believed to Present a Risk of Significant Harm to the Health or Safety of any Person, Group of Persons or the General Public**

[para 17.] The third paragraph outlines the purpose of the Protocol. It states:

*This Protocol has been drafted to facilitate the formulation, of a measured response by a Chief of Police or the Commanding Officer of the RCMP "K" Division (hereinafter referred to as a Chief of Police) to information which indicates that an individual is believed to present a risk of significant harm to the health or safety of any individual(s) and to delineate the information sharing responsibilities of the Correctional Services Division of Alberta Justice and the Correctional Service of Canada – Prairie Region.*

[para 18.] The following section sets out the general principles of the Protocol:

## 1. General Principles:

*This Protocol:*

- *has been developed in consultation and partnership with and is supported by the Alberta Department of Justice; Chiefs of Police for Alberta Municipal and First Nation Police Services; the Commanding Officer of the Royal Canadian Mounted Police “K” Division; and the Correctional Service of Canada – Prairie Region;*
- *has the primary objective of enhancing public protection through the lawful and appropriate release of information regarding a risk of significant harm to the public, or to a group or groups of people or to an individual;*
- *recognizes that where young offenders in the criminal justice system are involved, the Young Offenders Act exclusively controls the release of related information;*
- *supports the principle that the disclosure of information should take the form of disclosing only that information reasonably necessary to accomplish the required effect, recognizing both individual privacy interests, public safety concerns and the risks associated with public alarm; and*
- *is intended to supplement and support existing practices by which information is shared between police services and other criminal justice agencies.*

[para 19.] The second last point of the principles indicates that *only that information reasonably necessary to accomplish the required effect* should be disclosed. This appears to be consistent with the wording in section 31 of the FOIP Act. Section 31(1)(a) states:

- (a) information about a risk of significant harm to the environment or to the health or safety of the public, of the affected group of people, of the person or of the applicant, or*

[para 20.] It is reasonable to conclude *information about a risk of significant harm*, would indicate that not all information would be released, but rather only that information that relates to the risk. Additionally, the listing of potential groups or persons contemplates that the disclosure will be made only to those affected by the risk.

[para 21.] The Protocol then goes on to discuss decision criteria:

### Decision Criteria

*While each case will have its own set of circumstances, this Protocol provides a guide once a determination has been made by the Correctional Services Division of Alberta Justice, the Correctional Service of Canada, or any police service in Alberta that an individual or situation or set of circumstances presents a risk of significant harm to any individual(s). That determination, along with supporting documentation, will activate the process in this Protocol including a review of federal and provincial legislation governing privacy and the release of information, the possible existence of publication bans or status as young offenders and any other issues germane to the potential disclosure of any information regarding the perceived risk.*

[para 22.] The Protocol then lists the specific information that will be considered by the Correctional Services Division of Alberta Justice in determining the risk posed by an individual. In this case, the Complainant was released after serving time in a correctional facility under the control of Correctional Service of Canada. The following section of the Protocol outlines the condition that will result in the Correctional Service of Canada making a determination that will activate the Protocol:

*With respect to the Correctional Service of Canada, a determination that an individual under the jurisdiction of the Service appears to present a risk of significant harm to any individual(s) will apply to all individuals who have been lawfully detained in custody until expiration of sentence by order of the National Parole Board pursuant to Section 130 of the Corrections and Conditional Release Act.*

[para 23.] The rationale for this criteria is that an individual would only be held until full warrant expiry if a decision was made by the Parole Board that the individual presented a significant risk to society. An individual is then kept in custody as long as legally possible as a public protection measure. It is reasonable to conclude that an individual would likely present the same level of risk on release as they did at the time that parole was considered. This is a reasonable criterion to be used to “trigger” the Protocol. In this case, the Complainant was held until full warrant expiry. The Parole Board denied parole, “due to likelihood of committing an offence causing serious harm before warrant expiry.”

[para 24.] There is a safeguard built into the Protocol for the individual in that a decision to disclose must be considered by the Chief of Police. A disclosure does not automatically result from the existence of this condition. Detention until full warrant expiry is used merely as a method to activate the Protocol.

[para 25.] The following section of the Protocol ensures that the discretion to disclose by the Chief of Police is not limited to situations specifically contemplated in the Protocol. If this were not the case, the Chief of Police could potentially be in conflict with section 31 of the FOIP Act by virtue of the fact that he or she followed the Protocol. This section of the Protocol requires a Chief of Police to consider information about a risk of significant harm from all sources. The referral section of the Protocol states:

## 2. Referrals

*This protocol applies directly to situations in which information about a risk of significant harm to any individual(s) is discovered by police by any source, including but not limited to the Correctional Services Division of Alberta Justice, the Correctional Service of Canada [pursuant to Section 25 of the Corrections and Conditional Release Act (Canada)], a member of the public, an agency or organization.*

[para 26.] The responsibilities of the Correctional Service of Canada under the Protocol are as follows:

*The Correctional Service of Canada – Prairie Region agrees to provide training to its staff in relation to this Protocol, pursuant to Section 25(3) of the Corrections and Conditional Release Act, to notify the appropriate police service of the release by reason of expiration of sentence of any individual deemed on release to pose a threat to any person.*

*The Correctional Service of Canada – Prairie Region further agrees, pursuant to Section 25(3) of the Corrections and Conditional Release Act, that “where the Service has reasonable and probable grounds to believe that an inmate who is about to be released by reason of expiration of the sentence will, on release, pose a threat to any person, the Service shall, prior to release and on a timely basis, take all reasonable steps to give police all information under its control that is relevant to the perceived threat.” The information will be forwarded by the Warden of the institution in which the inmate is held, or his designate, to the Chief(s) of Police in the jurisdiction(s) the threat is perceived. At minimum, the information provided to the Chief of Police will include:*

- *a current photograph;*
- *criminal history;*
- *details of current offence(s)*
- *the risk assessment report prepared for the original detention review;*
- *a copy of the National Parole Board decision and reasons from the original detention hearing;*
- *the risk assessment report from the most recent review;*
- *copies of available psychiatric and/or psychological reports relating to detention and assessment risk;*
- *any information with respect to potential victims and any contact that may have been made with actual victims;*

- *details as to the offender's address, or proposed address, upon release, including the names and addresses of individuals with whom the offender might reside, if the offender's address upon release is unknown;*
- *any other relevant documentation that the Case Management Team believes will assist the police in developing their plan for the case.*

[para 27.] This portion of the Protocol is similar to the responsibilities set out in the Protocol for the Correctional Services Division of Alberta Justice. The two sections ensure that there is sufficient information supplied to the Chief of Police from which to make an assessment regarding risk.

[para 28.] The responsibilities of the police under the Protocol are as follows:

*The Chief of Police of each Alberta police service agrees to provide training to its staff in relation to this Protocol and to develop and implement policies guided by the criteria outlined in this Protocol to assess the risk of significant harm presented by any individual who comes to its attention, other than by Section 31 notification from the Correctional Service Division of Alberta Justice or the Correctional Service of Canada.*

*The Chief of Police of each Alberta police service agrees to review each case where an individual or situation has been determined to present a risk of significant harm to any individual(s) and in so doing to consider:*

- *the extent to which any federal or provincial legislation or publication ban is germane to the potential release of information;*
- *the risk of prejudice to a fair trial in relation to any outstanding charges;*
- *the recommendations made in referrals received from the Correctional Services Division of Alberta Justice or the Correctional Service of Canada; and*
- *the need to balance the individual privacy interests with public safety concerns, keeping in mind the risks associated with public alarm.*

[para 29.] The above section sets out the responsibility of a Chief of Police to review each case received by a police service. It also sets out issues to be considered by the Chief of Police in reaching a decision about a risk of significant harm. The Protocol does not set out which issues must be present or to what level before there is a decision to release. In other words, the Protocol does not take away from the discretion of the Chief of Police. This is an important point. The head of a public body, or in this case the Chief of Police, through delegated authority, must be free to exercise discretion and make their own decision.

[para 30.] The following sections offer additional information for the Chief of Police to consider:

5. Release Decisions; Court Ordered Community Dispositions; Review Board Dispositions; Judicial Interim Release; Parole; Statutory Release; Temporary Absence

*Each stage in the justice system involving arrest, pre-trial detention or release while serving a sentence, features the exercise of statutory discretion by judicial or other officials. Common to each of these decision points is a consideration, among others, of whether the individual poses a risk to the community.*

*For example, when a person has been granted judicial interim release, the presiding official authorized by law to grant such a release will have applied criteria specified in the Criminal Code of Canada, which includes the question whether the individual is deemed to pose a threat to society and ought to be held in custody on that basis. The Criminal Code also requires that protection of the public be considered by Review Boards in making dispositions. Similarly, the public safety interest is assessed prior to any court ordered community disposition being made and prior to the release from custody of any individual on parole, temporary absence or statutory release. In each case, the conclusion made by the appropriate authority is that public protection will not be jeopardized by the disposition or release.*

*Because the question of public safety is expressly considered in each of the above noted decisions it is unlikely that information relating to these decisions or to the individuals about whom such decisions have been made could be reasonably disclosed pursuant to Section 31. This is not, however, to say that such information cannot and should not be lawfully disclosed nor is it to negate the possible disclosure of such information, pursuant to Section 31, if the Chief of Police believes criteria for disclosure, as outlined in the Protocol, has been met.*

6. Concerns of the Community

*Community residents may possess information about a person which suggests the individual may present a risk of significant harm to another individual(s). Citizens should immediately report such information of concern to the nearest police service.*

[para 31.] The following section of the Protocol outlines the options available to the Chief of Police in making a notification under the Protocol:

7. Notification Options

*Having reviewed each case in accordance with its own set of circumstances and the principles delineated in the Freedom of Information and Protection of Privacy Act and this Protocol, the Chief of the police service can choose any of the following notification options:*

- *no notification, where the Chief is satisfied that the individual does not present a risk of significant harm to any other individual(s);*
- *notify one specific individual (eg. an applicant, victim, witness, etc.);*
- *notify an identified group or groups of individuals (eg. community groups, ethnic groups, interest groups, etc.); and*
- *notify the public.*

*Any notification should contain an appropriate warning that the intent of the process is to enable members of the public to take suitable precautionary measures and not to embark on any form of vigilante action.*

*Information disclosed should also be measured proportionate to perceived risk. While every situation must be assessed on an individual basis, information being disclosed should be limited to only that which is necessary to achieve the required result.*

[para 32.] This section appropriately points out the section 31 of the FOIP Act contemplates that a disclosure under that section will only be made to the group or person who is at risk. It also states that each situation should be assessed on its own merit and only that information which is required to accomplish the required result is to be released. This section acknowledges that a disclosure of personal information may be made without releasing all known information about an individual, thereby reserving some level of personal privacy for the individual.

[para 33.] The Protocol also contains a requirement that a disclosure under the Protocol include a statement about vigilante action. This is a positive statement, which is not specifically required by section 31.

[para 34.] Communication strategies are outlined in the following section of the Protocol:

#### *11. Communication Strategies*

*The means by which information will be disclosed pursuant to this Protocol will be determined by the Chief of Police on a case by case basis and in light of information/recommendations received from the Correctional Services Division of Alberta Justice or the Correctional Service of Canada. The chosen option must be consistent with the extent of disclosure required to meet the intent of this Protocol.*

*Full public disclosure should only be used after all other alternatives have been carefully reviewed and considered.*

[para 35.] This section of the Protocol reinforces the need to proceed only with the level of disclosure, which is required to achieve the required results.

## Conclusion

[para 36.] The Protocol Regarding the Release of Information in Respect of Individuals Who are Believed to Present a Risk of Significant Harm to the Health or Safety of any Person, Group of Persons or the General Public conforms to section 31 of the FOIP Act. It delegates authority to a Chief of Police to make decisions under section 31 without limiting the discretion of the Chief of Police.

## **V. The Lethbridge Police Service**

### **A. Timeline of Involvement by the Lethbridge Police Service (LPS):**

- |               |  |
|---------------|--|
| June 15, 1998 | Hamilton-Wentworth Police advise LPS of Complainant's intent to move from Hamilton to Lethbridge in July 1998.   |
| June 25, 1998 | Information package about Complainant received by LPS from Hamilton-Wentworth Police.  |
| June 29, 1998 | Complainant and Detective from Hamilton-Wentworth Police attend in court in Hamilton to amend the conditions of the Peace Bond held on the Complainant. The amendments allow the Complainant to move to Lethbridge, drive while accompanied by a parent and require him to report to LPS on July 10, 1998 (expected arrival date in Lethbridge). |
| July 7, 1998  | Complainant arrives in Lethbridge with his parents and takes up residence.   |
| July 8, 1998  | Complainant served with Notice of Intention to Disclose Information under section 31 of the <i>Freedom of Information and Protection of Privacy Act</i> by the LPS. Complainant is given an opportunity to make written representations as to why the information should not be disclosed.   |
|               | Complainant responds in writing, appealing the decision to disclose information.   |
|               | Surveillance commenced on the Complainant by the LPS.  |
| July 9, 1998  | 2:00 p.m. – Complainant and parents meet with Chief of Police and Senior Officers at LPS Headquarters. After a discussion, the Chief advises the Complainant that his appeal is denied.  |
|               | 2:46 p.m. - Notification received by the Office of the Information and Privacy Commissioner from the LPS about the disclosure of the Complainant's information.  |

- 3:30 p.m. – LPS hold press conference and disclose information about the Complainant, his record and that he poses a threat of significant harm.
- July 17, 1998 Package of information about the Complainant arrives at LPS from Alberta Justice.
- July 20, 1998 Complainant and Detective from LPS meet with psychologist (counseling is a requirement of the Peace Bond).
- July 29, 1998 Complainant requested to attend at LPS Headquarters. In presence of LPS Detective, Complainant is served with a letter from the University of Lethbridge. The letter indicated that his registration at the University of Lethbridge had been cancelled. It was accompanied by a refund cheque for the full amount of his tuition.
- July 29, 1998 Arrangements made for Complainant to attend at LPS Headquarters every Friday.
- Sep. 4, 1998 Chief of Police and members of LPS meet with Portfolio Officer from Office of the Information and Privacy Commissioner.

#### **B. Text of the Media Release by the Lethbridge Police Service**

*The Lethbridge Police Service is issuing the following public information and warning in regard to the release of a federal/provincial inmate, in the interest of public safety.*

*[The Complainant] was released from Matsqui Institution on warrant expiry in December 1997 having served a full 3 year sentence for Sexual Assault, Section 271 Criminal Code. He has resided in Ontario since that time. This offence involved One Adult Female. [The Complainant] has a criminal record of a previous conviction. This offence took place in the Province of British Columbia in 1994. Information contained in his file indicates that [the Complainant] has sexually assaulted adult females at knife point. These assaults have included both female prostitutes and Members of the female public at large, these assaults have consisted of abductions off the street where the victims have been removed to secluded locations. This information leads us to believe that this individual represents a risk for Violence against Adult Females. Correctional Service of Canada/the Correctional Services Division of Ontario Justice has designated [the Complainant] as a high risk offender.*

*[The Complainant] is described as: Male, Caucasian, 25 years old, Brown hair, 5'9" – 205 lbs., Blue eyes.*

[The Complainant] is presently residing in Lethbridge, Alberta at [full street address], Lethbridge, Alberta, and is presently enrolled at the University of Lethbridge.

*The Lethbridge Police Service is issuing this information and warning after careful deliberation of all related issues, including privacy concerns, in the belief that it is clearly in the public interest to inform the Members of the Community of the release of [the Complainant]. The Lethbridge Police Service believes that there is a risk of significant harm to the health or safety of the public, and in particular, Adult Women and/or Female Prostitutes. Members of the public are advised that the intent of the process is to enable Members of the public to take suitable precautionary measures and not to embark on any form of vigilante action. Photos are available at the Lethbridge Police Service Headquarters.*

NOTE: *This information is released under the Authority of the Freedom of Information and Protection of Privacy Act, S.A. 1994c.F-18.5.*

### **C. Consequences of Disclosure by the Lethbridge Police Service**

[para 37.] The stated purpose for the release of the information about the Complainant by the LPS was to enhance public safety, in keeping with the duty imposed by section 31 of the FOIP Act. To the extent that a disclosure of this kind can enhance public safety, we can assume that purpose was met. However, there were other events which happened as a result of the disclosure. What follows are some of the consequential events and my personal observations about them. This list is not exhaustive, because the investigation did not specifically look for this type of evidence. Most of this information was shared anecdotally by those interviewed. Some of the consequences of disclosure were:

- Complainant's registration at the University of Lethbridge was cancelled. - Interestingly, as of September 1, 1999, when universities come under the FOIP Act, the head of the U of L will have the same duties under section 31 as the Chief of Police or the head of any other public body. At that time, the head will have to make decisions where circumstances present a risk of significant harm.
- There was an adverse affect on the Complainant's parents. - As stated in the Complainant's letter to the Commissioner, it is alleged that the Complainant's father lost out on an employment opportunity as a result of the disclosure. It is impossible to say whether this was the deciding factor in the selection process or not. There can be no question however, that the Complainant's parents were adversely affected by the disclosure.

The parents both work for an international organization. The father was posted to Lethbridge as a result of an expectation that he would be successful in receiving a position at an area correctional facility. During his final interview, the newspaper articles about the Complainant were brought up and he was required to answer numerous questions about the Complainant. He did not get the job, even though

someone from his organization has held the post for 25 years. The selection committee told him information about the Complainant would not factor into the selection process. The father indicated that he wonders why so much time was spent on the issue if it was not a factor.

The father was told that the organization would consider moving him to another posting, but only if he agreed not to take the Complainant. The other alternative was to accept early retirement, which would result in a penalty on his pension benefits. The house they were living in belongs to the organization. The family was told not to unpack any of their belongings because they could be moved at any time. The father indicated that the perception at the organization was that the disclosure had brought disrepute on the organization because the Complainant was living in their house.

- The Complainant, his family, and the neighbors were subjected to honking horns, yelled obscenities and an egg was thrown at the house. - It is apparent that the target of this public display of anger and fear was the Complainant. However, this activity was just as disruptive to others in the neighborhood. This appears to be as a result of the LPS releasing the address of the residence.
- A neighbor lost an offer on the sale of his house. - During my visit to LPS Headquarters, I was told about a neighbor, living across from the house where the Complainant was residing, who had a prospective buyer withdraw an offer as a result of the disclosure. It resulted in the forfeiture of the buyer's deposit.

[para 38.] While it is recognized that many or all of these consequences may have been unavoidable once the decision for the need to disclose was made, they demonstrate that the subject of the disclosure may not be the only person adversely affected. It is necessary to consider the harm to others when a disclosure decision is contemplated. It is also important to ensure that the disclosure is done in the least intrusive manner that will accomplish the necessary results. This is contemplated both by the legislation and the Protocol.

#### **D. The Information Package Regarding the Complainant**

[para 39.] An information package about the Complainant was prepared by the Correctional Service of Canada and was sent initially to the Edmonton Police Service and the Hamilton-Wentworth Regional Police. Alberta Justice was also sent a copy of the package. The distribution of the package was determined by initial information that the complainant was moving to Hamilton after a two-week stay in Edmonton upon his release from incarceration. The package contained copies of police reports, Correctional Service assessments, psychological assessments, National Parole Board reports, as well as documents written by the Complainant.

[para 40.] In conducting this investigation, I had the opportunity to review the entire package of information that had been reviewed by the LPS. The information package gave a comprehensive view, not only of the offences for which the Complainant was convicted, but also the offences for which there was insufficient evidence to charge. The package contained police reports

containing the statements of some of the Complainant's victims and outlined the details of how the offences were committed. It also contained the assessment reports prepared as the Complainant moved through the criminal justice system. These provided subjective views of the Complainant's personality and opinions about his level of risk.

[para 41.] I have purposely not gone into a great deal of detail regarding the Complainant in this report. To do so would constitute a breach of his privacy. However, it is my opinion that the following information is necessary to demonstrate the pattern of risk assessment prepared about the Complainant. The following table illustrates that the results of risk assessments contained in the information package:

<b>Date</b>	<b>Type of Report</b>	<b>Author</b>	<b>Findings</b>
22 Feb 96	Progress Summary Report	Correctional Service of Canada (CSC)	"Needs further treatment not to be a risk to society in causing serious harm or death."
7 Mar 97	Report to Hamilton Parole	Community Agency & Hamilton-Wentworth Police	Concluded that he would be unmanageable in the community. Therefore, they would not accept him for parole supervision. Recommended incarceration to full warrant expiration.
10 Mar 97	Progress Summary Report	CSC	Moderate risk for re-offending.
4 Apr 97	Progress Summary Report	CSC	Recommend statutory release <u>only</u> with residency.
27 May 97	Psychological /Psychiatric Report	CSC	"Generally, inmates who score in this range are considered a moderate risk for re-offending. However, some research seems to indicate that offenders in this range have been found to be a significantly higher risk. Overall, risk is rated high."
18 Jun 97	Parole Board Decision	Parole Board of Canada	"Parole denied – Detention Ordered due to likelihood of committing an offence causing serious harm before warrant expiry."
16 Oct 97	Warrant Expiry Offender Release Package	CSC	Moderate to High Risk.
16 Dec 97	Threat Assessment	OPP Behavioral Sciences Section	High Risk

[para 42.] The contents of the table illustrate that the risk assessments of the Lethbridge and Edmonton Police Services were consistent with previous assessments contained in the information package.

### **E. Discussion of the Disclosure by the Lethbridge Police Service**

Issue A: Was the decision by the Chief of Police to disclose information about the Complainant "rationally defensible"?

[para 43.] Based on all of the information contained in the information package, including a series of risk assessments, it would be difficult for the Chief of Police not to support the position that the Complainant presented a risk of significant harm to the health or safety of the public. It is my opinion that it is unlikely that anyone objectively reviewing the information package would come to a different conclusion. Therefore, the Chief of Police was required to take whatever measures were available to reduce the risk to an acceptable level or disclose the information.

Issue B: Was it necessary to make the disclosure through the media?

[para 44.] Section 31 contemplates that the disclosure should be made only to those at risk. It provides that a disclosure be made *to the public, to an affected group of people, a person or an applicant*. This restriction is also contemplated in the Protocol. Therefore, a full media release would not be justified if only one person or a group of persons were at risk.

[para 45.] In this case, information available to the Chief of Police indicated that the Complainant's victims were adult female strangers, usually prostitutes. Evidence from the LPS was that a notification was made directly to known prostitutes. However, because of the transient nature of this group, it would be impossible to reach every person who may fall into this category and therefore be at risk. This process would also exclude the majority of adult females in the community. Considering all of the information available regarding the population at risk, the investigation finds that a disclosure to the public through a media release was in accordance with section 31 of the FOIP ACT.

Issue C: Should all information about the Complainant be taken into account, or only information about convictions?

[para 46.] The Complainant argues that the information supplied by him during treatment programs should not have been used in determining his risk to the community. He felt that it was unfair that, by cooperating with the treatment program in an attempt to change his behaviour, he had actually hurt himself.

[para 47.] I questioned the Complainant regarding any warning that might have been given to him by correctional staff. He indicated that he had been warned that any information that he may disclose could be used against him. In fact, he admitted that he was warned to give only enough information to assist in his treatment programs and not to give too many details. There was evidence that his admissions resulted in further police investigations. Although no further charges were laid, this was certainly a possibility known to the Complainant. Guarantees of confidentiality in the treatment program were never given.

[para 48.] The information supplied by the Complainant during the treatment program was used by the Parole Board in reaching its decision to deny early parole to the Complainant. It is unlikely that their decision would have been the same if there were only evidence of a single, first-time sexual assault in conjunction with a single previous conviction for common assault.

The fact that the Complainant admitted to a series of sexual assaults was the very information that made him a poor risk for early parole.

[para 49.] Section 31 does not contemplate the manner in which the information was first collected. Sections 32 and 33 of the FOIP Act govern collection by public bodies. Section 32 states:

*32 No personal information may be collected by or for a public body unless*

*(a) the collection of that information is expressly authorized by or under an Act of Alberta or Canada,*

*(b) that information is collected for the purposes of law enforcement, or*

*(c) that information relates directly to and is necessary for an operating program or activity of the public body.*

[para 50.] Section 33 states, in part:

*33(1) A public body must collect personal information directly from the individual the information is about unless*

*(d) the information is collected for the purpose of law enforcement*

*(e) the information concerns the history, release or supervision of an individual under the control or supervision of a correctional authority*

[para 51.] Neither the Lethbridge Police Service (LPS) nor the Correctional Service of Canada (CSC) are public bodies under the FOIP Act. Arguably, the LPS should be following the collection requirements of the Act because the duty to disclose under section 31 results from a delegated authority, also under the Act. Clearly, section 32 would allow them to collect the information and section 33(1)(d) and (e) would allow the collection to be indirect.

[para 52.] In this case, the information that the Complainant questions was collected directly from him by correctional staff with CSC, only after he was warned that the information would be used against him. The Complainant was not compelled to give the information. Arguably, he could be seen as uncooperative in the treatment program if he refused any information. It is reasonable to conclude that the Complainant freely consented to the collection of the information.

[para 53.] The LPS collected the information in accordance with the FOIP Act. The Chief of Police could not ignore the information in making his decision under section 31.

Issue D: Was it necessary to release the Complainant's address?

[para 54.] The Complainant and his father first raised this issue. They felt that giving the exact address was unnecessary to accomplish the desired results of a community notification. They also felt that it adversely affected the Complainant's parents, as well as the neighbors. There is certainly evidence that supports the position that releasing the exact address affected more than the Complainant alone.

[para 55.] When this issue was raised with the LPS, their position was that the immediate neighbors had a right to know that a dangerous offender was living in the neighborhood. The Chief was not concerned about a vigilante response because they were providing a police presence in the neighborhood. This issue resulted in a lengthy discussion during my meeting with the police and, like many other aspects of a disclosure of this type, there is no easy answer to this issue.

[para 56.] As discussed previously, Section 31 and the Protocol both contemplate that a disclosure be made only to those who face a risk. It is possible therefore, that disclosure could take on different levels for different persons or groups that are at risk. In this case, it may have been rationally defensible to disclose the exact address to those in the immediate neighborhood. However, the public did not need the exact address. Disclosure to the immediate neighborhood could have been accomplished by going door to door or by delivery of a written notice to neighbors. This would also afford the police the opportunity to speak personally to those in the neighborhood to discuss proposed police action to deal with perceived risk. It may also help to reduce the level of fear for those living close by.

[para 57.] When this possibility was discussed with the LPS, they expressed the concern that someone in the neighborhood would likely go to the media and the exact address would still get out. From a practical perspective, this may well be true, but the resulting adverse activity would then be as a result of a decision of a member of the community, rather than the police. It is every bit as possible that the neighbors would recognize that they do not want all of the negative attention to their neighborhood and remain silent. This may be a very subtle point, but releasing the exact address can have an adverse effect on the privacy of everyone in the neighborhood. By releasing the exact address, the police violated the privacy of the entire neighborhood and gain the added responsibility of ensuring the safety of the Complainant, his parents, and everyone in the neighborhood. It is my opinion that the exact address should be made public only when absolutely necessary and that it was not necessary in this instance.

#### Issue E: Did the Chief of Police Meet the Requirements of Section 31(3) of the FOIP Act?

[para 58.] Section 31(3) places a duty on the head of a public body to notify the third party to whom the information relates, give the third party an opportunity to make representations relating to the disclosure, and notify the Commissioner. The Complainant was served with a written notice about the intention of the LPS to disclose information on July 8, 1998. The Complainant responded in writing on the same date. The Chief of Police met personally with the Complainant and his parents on July 9, 1998, prior to the release to the media. Notification was received at the Office of the Information and Privacy Commissioner on July 9, 1998. Therefore, all of the requirements of section 31(3) were met.

## VI. The Edmonton Police Service

[para 59.] The Edmonton Police Service (EPS) was first notified in October of 1997 of the Complainant's release from custody in December of 1997. The Complainant was planning to spend two weeks in Edmonton before continuing on to Hamilton to live with parents. Due to length of stay, no disclosure was made by the EPS.

[para 60.] The EPS again became involved in late July or early August when a Detective in the Dangerous Offenders Section was contacted by a community organization to discuss the possibility of the Complainant coming to Edmonton to reside and to attend classes at the University of Alberta. A meeting was set up with the Complainant on August 11, 1998, to discuss a possible move to Edmonton. On the same date, a letter was sent from an Edmonton church agency to the EPS indicating that they would support the Complainant if he chose to move to Edmonton. The information package was again reviewed by the EPS.

[para 61.] At the meeting, the EPS officials outlined the conditions under which they would accept him in the city without making a media disclosure. Possible conditions were outlined in the following proposed Recognizance (peace bond):

*[Complainant] should be required to enter into a recognizance in the form 810.2 CC, for a period of one year, with the following conditions:*

1. *Do not engage or attempt to engage in any communication or activity with any person who appears to be a prostitute.*
2. *Do not enter, either on foot or in a vehicle, any areas frequented by prostitutes.*
3. *Do not utilize escort services or attend massage parlours.*
4. *Do not view or have in your possession any form of pornographic material.*
5. *Refrain absolutely from possession or consumption of any alcoholic beverages and provide upon demand a sample of your breath suitable for alcohol analysis by a peace officer.*
6. *Obtain and maintain counseling, therapy or treatment as directed or arranged by [Detective], of the Edmonton Police Service, or his designate.*
7. *Report to [Detective], of the Edmonton Police Service or his designate at [phone #], 24 hours prior to any change of name or address and report the new name or address.*
8. *Immediately report any employment or place of schooling, or, change of employment or place of schooling, and the nature of such employment or schooling to [Detective] of the Edmonton Police Service or his designate at [phone #].*

9. *Immediately report any vehicle that you may have access to, including full description and licence number to [Detective], of the Edmonton Police Service or his designate at [phone #].*
10. *Do not leave your place of residence between the hours of 10:00 P.M. and 6:00 A.M. except as directed by [Detective], of the Edmonton Police Service or his designate.*
11. *Report once per week to the Edmonton Police Service, or as directed by [Detective], of the Edmonton Police Service or his designate at [phone #].*
12. *Do not leave the jurisdiction of the court, that being the Province of Alberta, without the permission of [Detective] or his designate.*

[para 62.] In order for these or any other conditions to be enforceable, they would have to be contained in a recognizance issued as a result of a hearing pursuant to section 810.2 or the Criminal Code of Canada, held in the Provincial Court of Alberta. The Complainant would have the opportunity to be represented by legal counsel and to challenge any of the conditions proposed by the police. This action never occurred because the Complainant ultimately decided not to re-locate to Edmonton.

[para 63.] In addition to the conditions contained in the proposed recognizance, the EPS made arrangements for the Complainant to be placed in a halfway house. In order to reside there, the Complainant would have to abide by the rules of the halfway house. Residence in the halfway house would be voluntary on the part of the Complainant. The Complainant declined the offer. He complained about the accommodations and the rules, indicating that this would be a regressive step for him. He argued that, because he had fully served his sentence, he should not be forced to submit to this level of supervision.

Issue A: Does the Edmonton Police Service have the right to subject the Complainant to restrictions in exchange for an agreement not to disclose his information to the public?

[para 64.] As previously discussed, section 31 of the FOIP Act places a duty on the head of a public body to disclose information about a risk of significant harm. After reviewing the information package on the Complainant, the EPS determined that the presence of Complainant in the community constituted such a risk. Consequently, the Chief of Police would be required to disclose information pursuant to section 31, unless some method of reducing the risk could be employed.

[para 65.] The police have a responsibility to ensure the safety of citizens within their community. The duties and responsibilities of a police officer are contained in section 38 of the Police Act, which states, in part:

*38(1) Every police officer is a peace officer and has the authority, responsibility and duty*

- (a) *to perform all duties that are necessary*
- (i) *to carry out his functions as a peace officer,*
  - (ii) *to encourage and assist the community in preventing crime,*
  - (iii) *to encourage and foster a co-operative relationship between the police service and the members of the community, and*
  - (iv) *to apprehend persons who may lawfully be taken into custody, and*
- (b) *to execute all warrants and perform all related duties and services.*

[para 66.] Under the circumstances of the Complainant's release, he was not subject to any form of parole or mandatory supervision. This is due to the fact that he completed his sentence to full warrant expiry. Section 810.2 of the Criminal Code may be used as a means to have court imposed restrictions placed on someone for whom parole or mandatory supervision does not apply. Section 810.2 states:

*810.2(1) Any person who fears on reasonable grounds that another person may commit a serious personal injury offence, as that expression is defined in section 752, may, with the consent of the Attorney General, lay information before a provincial court judge, whether or not the person or persons in respect of whom it is feared that the offence will be committed are named.*

*(2) A provincial court judge who receives an information under subsection (1) may cause parties to appear before the court judge.*

*(3) The provincial court judge before whom the parties appear may, if satisfied by the evidence adduced that the informant has reasonable grounds for the fear, order that the defendant enter into a recognizance to keep the peace and be of good behaviour for any period that does not exceed twelve months and to comply with any other reasonable conditions prescribed in the recognizance, including the conditions set out in subsection (5) and (6), that the provincial court judge considers desirable for securing the good conduct of the defendant.*

*(4) The provincial court judge may commit the defendant to prison for a term not exceeding twelve months if the defendant fails or refuses to enter into a recognizance.*

*(5) Before making an order under subsection (3), the provincial court judge shall consider whether it is desirable, in the interests of the safety of the defendant or any other person, to include a condition of the recognizance that the defendant be prohibited from possessing firearms or any ammunition or explosive substance for any period of time specified in the recognizance and that the defendant surrender any firearms acquisition certificate that the defendant possesses, and where the provincial court judge decides that it is not desirable, in the interests of safety to the defendant or any other*

*person, for the defendant to possess any of those things, the provincial court judge may add the appropriate condition on the recognizance.*

*(6) Before making an order under subsection (3), the provincial court judge shall consider whether it is desirable to include as a condition of the recognizance that the defendant report to the correctional authority of the province or to an appropriate police authority, and where the provincial court judge decides that it is desirable for the defendant to so report, the provincial judge may add the appropriate condition to the recognizance.*

[para 67.] Action was not commenced against the Complainant under section 810.2 of the Criminal Code, because he made the decision not to move to Edmonton.

[para 68.] The EPS have had numerous experiences involving the release of dangerous offenders. They indicated that their experience has shown them that a full media release is not their preferable method of handling the re-entry of a dangerous offender into the community. While a full media release may be warranted, it often results in the subject going “underground” or moving out of the community. Losing contact with an offender may seriously affect the ability of police to take measures to protect the community from future offences. Arguably, causing an offender to be “run out of town” may protect the citizens of one community, but it may put others at risk, particularly because the offender has no legal obligation to tell authorities where he or she is going. Moving the problem is not seen as an effective crime prevention measure.

[para 69.] The Complainant expressed concern that residence at the halfway house would seriously affect his ability to attend school. The EPS indicated that both they and the halfway house would work with the Complainant to accommodate attendance at university. The Complainant also pointed out that the requirement to report to police would effectively force him to violate the terms of the proposed recognizance because the EPS Headquarters is in an area known to be frequented by prostitutes. The EPS indicated that there are four divisional stations and numerous community and foot patrol offices in the City of Edmonton. Reporting could be done to any of these. They also indicated that if the Complainant voluntarily resided at the halfway house, regular reporting to the police might not be necessary because of the level of supervision offered by the halfway house.

[para 70.] The EPS indicated that they were willing to negotiate with the Complainant and that any conditions were voluntary. They indicated that one part of their position was not negotiable. If the Complainant would not assist them in reducing the risk to the community, they would be bound by section 31 of the FOIP Act and be required to make a disclosure through the media.

[para 71.] It is my opinion that reducing the risk to the community is the preferable to public disclosure and should be considered by police wherever possible. Disclosing the information complies with section 31 and allows those at risk to “take the appropriate measures to adequately protect themselves.” I asked numerous police officers what the “appropriate measures” are. I have not yet received an answer to this question. Disclosure can also hamper the ability of the police to monitor the activities of a person who may present a serious risk to the community. It

also places the offender in the position where he or she has no choice but to leave a community. This may remove them from personal and community support systems and rob them of the ability to attend school or continue employment.

[para 72.] On the other hand, working with an offender allows them to stay in a community and avail themselves of support systems and treatment, as well as educational and employment opportunities. It also allows the police to closely monitor the activities of the offender, thereby reducing the risk to the community. This type of approach can be a win-win situation for the offender and the police. It can allow for a greater opportunity for the offender to re-integrate into the community. In the end, this approach has the greatest possible positive effect for the offender and the community.

[para 73.] The Edmonton Police Service indicated that it believes strongly in the use of voluntary restrictions to reduce risk. To that end, when appropriate, they will travel to correctional facilities prior to an offender's release date in an attempt to develop a rapport with the offender and gain the cooperation that is necessary to put this option in place.

[para 74.] In my interview of the Complainant, I asked him whether he preferred the Lethbridge or Edmonton response. He indicated that he preferred the Lethbridge response, because he felt it was more honest. His response was, "they said that they would do it and they did it." I expressed my views that the Edmonton response gave him the ability to negotiate and make choices. He disagreed, indicating that the Edmonton police wanted to impose far too many restrictions, considering that he had fully served his time.

[para 75.] The Complainant decided not to voluntarily agree to the conditions set by the EPS or move to Edmonton and risk another media release. Consequently, the Edmonton Police Service took no further action. No disclosure was made.

## **VII. Reducing the Risk of Significant Harm**

[para 76.] Chiefs of Police are in a position which is not shared by other heads of public bodies. Because of their role in the protection of the community through law enforcement, they may be in a position to introduce measures that would significantly reduce the risk that an offender may present to the community. This may be done through court orders, such as the peace bond set out in section 810.2 of the *Criminal Code of Canada*, direct supervision, community supervision, and the involvement of community agencies. To this end, Chiefs of Police across the province are presented with vastly different circumstances.

[para 77.] It is not surprising that in larger communities there are more community agencies and resources available to assist the police. The Edmonton Police Service has the ability to arrange for an offender to voluntarily reside in a halfway house. This option is not available in Lethbridge. The resources available in a community greatly affect the ability of the police to reduce the risk presented by an individual.

[para 78.] Police Services are also affected by their own resources and by the volume of dangerous offenders that enter a community. The Edmonton Police Service is made up of approximately 1400 police and civilian members. Lethbridge has approximately 145. Edmonton has personnel dedicated to deal with dangerous offenders. Lethbridge does not. It should also be noted that in terms of size, most communities in Alberta have more limited police and community resources than Lethbridge. It is reasonable to conclude that disclosure of personal information about dangerous offenders is more likely to occur in smaller communities.

[para 79.] A key factor in the reduction of risk is the cooperation of the offender. If the offender will agree to voluntarily work with the police and involve the support of community agencies, it may be possible to reduce the risk to an acceptable level. If the subject will not cooperate, disclosure may be the Chief's only option.

[para 80.] Reducing the risk to the point that public notification is not necessary may only be an option for Chiefs of Police in larger centres or in areas with specific community resources. However, this option should be seriously considered. Reducing the risk is good for the community. It also allows the offender to re-integrate into society without the need to go underground or simply keep moving on to other communities.

## VIII. Investigative Findings

1. The Information and Privacy Commissioner has jurisdiction to review the decision of a Chief of Police pursuant to section 31 of the *Freedom of Information and Protection of Privacy Act* while exercising the authority delegated by the Minister of Justice and Attorney General for the Province of Alberta. The Commissioner also has the jurisdiction to investigate an alleged breach of privacy as a result of a decision of a Chief of Police pursuant to section 31.
2. The Protocol Regarding the Release of Information in Respect of Individuals Who are Believed to Present a Risk of Significant Harm to the Health or Safety of any Person, Group of Persons or the General Public conforms to section 31 of the FOIP Act. It delegates authority to a Chief of Police to make decisions under section 31 without limiting the discretion of the Chief of Police.
3. The decision of the Chief of Police for the Lethbridge Police Service to make a full public disclosure through the media of personal information about the Complainant is rationally defensible.
4. The Chief of Police for the Lethbridge Police Service should not have released the Complainant's address in the public release.
5. The Chief of Police for the Lethbridge Police Service was correct to consider all information before him in determining the need to disclose the Complainant's personal

information pursuant to section 31 of the *Freedom of Information and protection of Privacy Act*.

6. The Chief of Police for the Lethbridge Police Service met the notification requirements set out in section 31(3) of the *Freedom of Information and Protection of Privacy Act*.
7. The Chief of Police for the Lethbridge Police Service is commended for meeting personally with the Complainant and his parents.
8. The Chief of Police for the Edmonton Police Service did not exercise his delegated authority under section 31 of the *Freedom of Information and Protection of Privacy Act*. Therefore, the Edmonton Police Service did not disclose the Complainant's personal information.
9. The Edmonton Police Service did not contravene any provisions of the *Freedom of Information and Protection of Privacy Act* by attempting to reduce the level of risk presented by the Complainant by seeking the Complainant's voluntary compliance with proposed restrictions on the Complainant.
10. Whenever possible, Police Services should attempt to avoid disclosure of personal information by taking whatever action is available to reduce the risk to the community.

## **IX. Concluding Comments**

[para 81.] A decision to disclose personal information about an individual as a public safety tool constitutes the ultimate conflict between personal privacy and the public's right to know. There can be no doubt that the Complainant's personal privacy was breached by the actions of the Lethbridge Police Service. In reaching a decision regarding a public disclosure, the Chief of Police was faced with some very difficult choices. The Complainant had completed his sentence and therefore "paid his dues" to society. He deserves a chance to re-integrate into society. However, section 31 of the *Freedom of Information and Protection of Privacy Act* places a duty on the Chief to disclose information about a risk of significant harm. Strong public support for disclosures of this type and a trend for victims to take civil action against the police when notification is not made are also compelling factors. A great deal of care must be taken to analyze the details of each case in reaching a decision.

[para 82.] The *Freedom of Information and Protection of Privacy Act* places the responsibility for a decision under section 31 on the head of a public body. The Protocol Regarding the Release of Information in Respect of Individuals Who are Believed to Present a Risk of Significant Harm to the Health or Safety of any Person, Group of Persons or the General Public delegates these decisions to the Chief of Police. The Protocol does a good job of setting out responsibilities, ensuring appropriate information is available, and giving guidance without limiting the discretion of the Chief.

[para 83.] Both the FOIP Act and the Protocol contemplate that only the information required be released and only to those persons who are actually at risk. This contemplation is aimed at striking a balance between an individual's right to privacy and the public's right to know. It also makes the decision making process more complex. Careful consideration must also be given to the potential to adversely affect those around the subject of a disclosure. The subject's privacy should only be breached to the minimal extent necessary. Those around the subject are entitled to a much higher level of privacy protection.

[para 84.] Under the circumstances relating to the subject of this investigation, the decision to disclose the Complainant's personal information is rationally defensible. However, by not releasing the exact address of the Complainant's residence, it may have been possible to limit the negative impact on the Complainant's immediate family and to the immediate neighborhood. It is impossible to say that no damage to those surrounding the Complainant would have occurred if the address had been withheld. It is also impossible to say that a residence address should never be released. However, care should be taken in future disclosures by police to minimize the potential harm.

[para 85.] This investigation afforded the opportunity to look at two very different options available to police services in Alberta. It was very evident that police services in larger communities are at an advantage in employing measures to minimize the risk to the community that is presented by an offender. Police services in smaller centres should not be criticized for their lack of community supports that make alternatives possible. However, police services in all communities should be aware of community resources that may be available and use them to the greatest extent possible. Reducing the risk presented by an offender allows for a retention of personal privacy, allows the offender an opportunity to re-integrate and provides safer communities.

[para 86.] The Edmonton Police Service did not breach the Complainant's privacy because they did not make a disclosure of personal information. The Edmonton Police Service attempted to institute measures to reduce the perceived risk presented by the Complainant. They entered into discussion with the Complainant and offered to work with him. All of the contemplated action was based on the Complainant's right to decide. In the end, the Complainant made a decision not to move to Edmonton.

[para 87.] The decisions around public disclosure will never be easy. They should never be made lightly. The FOIP Act makes the decision mandatory. The Protocol delegates and facilitates. In the end, the Chief of Police must make a decision which is rationally defensible. When the decision results in disclosure, someone loses his or her privacy.

## **X. Recommendations**

[para 88.] As a result of this investigation, it is recommended:

1. That the Chief of Police only release the personal information which is absolutely necessary. Addresses should be released only where there is a demonstrated need, and then only to those who absolutely need the information.
2. That the Chief of Police carefully consider the possible adverse affects of a disclosure of personal information to all persons, including the subjects family and members of the immediate community. Careful consideration should be given to reducing the adverse affects on those other than the person who presents the risk.
3. That the Chief of Police carefully consider any and all means available to him or her to reduce the risk of significant harm presented by an individual prior to making a disclosure of personal information pursuant to section 31 of the *Freedom of Information and Protection of Privacy Act*.

Dave Bell  
Portfolio Officer

(NOTE: The following version of “APPENDIX “A” contains the text of the Protocol only. It is not an exact replica of the document and does not contain signatures or supplemental attachments. For a copy of the original document, please contact the Office of the Information and Privacy Commissioner.)

## **Appendix “A”**

### **Protocol Regarding the Release of Information in Respect of Individuals Who are Believed to Present a Risk of Significant Harm to the Health or Safety of any Person, Group of Persons or the General Public**

**Whereas** Section 31 of the Alberta Freedom of Information and Protection of Privacy Act provides that “whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people, to any person or to an applicant

- a) information about a risk of significant harm to the environment or to the health or safety of the public, of the affected group of people, of the person or of the applicant, or
- b) information the disclosure of which is, for any other reason, clearly in the public interest.”

and

**Whereas** pursuant to section 80 of the Alberta Freedom of Information and Protection of Privacy Act the Minister of Justice and Attorney General of Alberta has delegated the responsibility for disclosure, under Section 31 of the Act, of information about the risk of significant harm presented by an individual to the health or safety of any person, group of people or the public to the Chiefs of Police for Municipal and First Nations Police Services in Alberta and to the Commanding Officer of the Royal Canadian Mounted Police “K” Division.

**This Protocol** has been drafted to facilitate the formulation, of a measured response by a Chief of Police or the Commanding Officer of the RCMP “K” Division (hereinafter referred to as a Chief of Police) to information which indicates that an individual is believed to present a risk of significant harm to the health or safety of and individual(s) and to delineate the information sharing responsibilities of the Correctional Services Division of Alberta Justice and the Correctional Service of Canada – Prairie Region.

## 1. General Principles:

This Protocol:

- has been developed in consultation and partnership with and is supported by the Alberta Department of Justice; Chiefs of Police for Alberta Municipal and First Nation Police Services; the Commanding Officer of the Royal Canadian Mounted Police “K” Division; and the Correctional Service of Canada – Prairie Region;
- has the primary objective of enhancing public protection through the lawful and appropriate release of information regarding a risk of significant harm to the public, or to a group or groups of people or to an individual;
- recognizes that where young offenders in the criminal justice system are involved, the Young Offenders Act exclusively controls the release of related information;
- supports the principle that the disclosure of information should take the form of disclosing only that information reasonably necessary to accomplish the required effect, recognizing both individual privacy interests, public safety concerns and the risks associated with public alarm; and
- is intended to supplement and support existing practices by which information is shared between police services and other criminal justice agencies.

## 2. Decision Criteria

While each case will have its own set of circumstances, this Protocol provided a guide once a determination has been made by the Correctional Services Division of Alberta Justice, the Correctional Service of Canada, or any police service in Alberta that an individual or situation or set of circumstances presents a risk of significant harm to any individual(s). That determination, along with supporting documentation, will activate the process in this Protocol including a review of federal and provincial legislation governing privacy and the release of information, the possible existence of publication bans or status as young offenders and any other issues germane to the potential disclosure of any information regarding the perceived risk.

With respect to the Correctional Services Division of Alberta Justice, a determination of whether an individual under the jurisdiction of the Division appears to present a risk of significant harm to any individual(s) will be based on an assessment made by applying criteria which include but are not limited to the following:

- the age and health of the individual;
- circumstances surrounding the offence(s) which resulted in the individual being placed under Correction Services Division jurisdiction;
- offence history and patterns;
- the degree of violence involved in the commission of offences;
- premeditation or planning involved in the commission of offences;
- the number of offence victims;
- the impact of most recent and past offences on victims;
- access to potential victims;
- prior responses to community supervision;
- participation and response to current or past treatment programs;
- psychiatric, psychological or social assessments;
- employment history and prospects;
- interpersonal relationships and community support systems;
- Serious Habitual Offender Comprehensive Action Program (SHOCAP) history, and;
- any extenuating, mitigating and aggravating circumstances.

With respect to the Correctional Service of Canada, a determination that an individual under the jurisdiction of the Service appears to present a risk of significant harm to any individual(s) will apply to all individuals who have been lawfully detained in custody until expiration of sentence by order of the National Parole Board pursuant to Section 130 of the Corrections and Conditional Release Act.

### 3. Referrals

This protocol applies directly to situations in which information about a risk of significant harm to any individual(s) is discovered by police by any source, including but not limited to the Correctional Services Division of Alberta Justice, the Correctional

Service of Canada [pursuant to Section 25 of the Corrections and Conditional Release Act (Canada)], a member of the public, an agency or organization.

#### 4. Responsibilities

##### a) Correctional Services Division of Alberta Justice:

The Correctional Services Division of Alberta Justice agrees to provide training to its staff in relation to this Protocol and to develop and implement policies which will cause the review, against criteria outlined in Section 2 of this Protocol, of all individuals:

- a) who are released from custody other than by means of a conditional release or court order;
- b) who abscond from custody; or
- c) who abscond from community supervision and against whom further legal action is being considered,

to determine whether the individual appears to present a risk of significant harm to any individual(s). The Correctional Services Division of Alberta Justice further agrees that when it determines that an individual under its jurisdiction appears to present a risk of significant harm to another individual(s) it will give police all information in its control relevant to the perceived risk. This information will be forwarded by the Deputy Minister of Justice, or his designate, to the Chief(s) of the police service(s) responsible for the jurisdiction(s) in which the risk is perceived.

At a minimum, information provided to the Chief of Police should include:

- individual's name, age, date of birth and F.P.S. number, if known, and photograph, if available;
- circumstances surrounding the offence(s) for which the individual has been placed in the jurisdiction of the Correction Services Division;
- the synopsis of the individual's criminal history, noting any patterns and/or history of violence;
- a rationale as to why the individual is assessed as presenting a risk of significant harm;
- information regarding the applicability of any publication ban; the risk of prejudice to a fair trial in relation to any outstanding charges; or any federal or

- provincial legislation in relation to the potential release of information;
- details as to the offender's address, or proposed address, upon release, including names and addresses of individuals with whom the offender might reside, if the offender's address upon release is unknown;
  - the name of the supervising Correctional Services Division employee, if applicable, and
  - information suggested for disclosure, the means of disclosure and the extent of disclosure, should a decision to disclose be made by the Chief of Police. (If the information suggested for disclosure contains third party information for which third party notice would be required pursuant to Section 9 of this Protocol, the third party information should clearly be identified as such and the name and address of the third party should be provided, if known).

b) Correctional Service of Canada – Prairie Region:

The Correctional Service of Canada – Prairie Region agrees to provide training to its staff in relation to this Protocol, pursuant to Section 25(3) of the Corrections and Conditional Release Act, to notify the appropriate police service of the release by reason of expiration of sentence of any individual deemed on release to pose a threat to any person.

The Correctional Service of Canada – Prairie Region further agrees, pursuant to Section 25(3) of the Corrections and Conditional Release Act, that “where the Service has reasonable and probable grounds to believe that an inmate who is about to be released by reason of expiration of the sentence will, on release, pose a threat to any person, the Service shall, prior to release and on a timely basis, take all reasonable steps to give police all information under its control that is relevant to the perceived threat.” The information will be forwarded by the Warden of the institution in which the inmate is held, or his designate, to the Chief(s) of Police in the jurisdiction(s) the threat is perceived. At minimum, the information provided to the Chief of Police will include:

- a current photograph;
- criminal history;
- details of current offence(s)
- the risk assessment report prepared for the original detention review;

- a copy of the National Parole Board decision and reasons from the original detention hearing;
- the risk assessment report from the most recent review;
- copies of available psychiatric and/or psychological reports relating to detention and assessment risk;
- any information with respect to potential victims and any contract that may have been made with actual victims;
- details as to the offender's address, or proposed address, upon release, including the names and addresses of individuals with whom the offender might reside, if the offender's address upon release is unknown;
- any other relevant documentation that the Case Management Team believes will assist the police in developing their plan for the case

c) Police Services in Alberta

The Chief of Police of each Alberta police service agrees cause the service to provide training to its staff in relation to this Protocol and to develop and implement policies guided by the criteria outlined in this Protocol to assess the risk of significant harm presented by any individual who comes to its attention, other than by Section 31 notification from the Correctional Service Division of Alberta Justice or the Correctional Service of Canada.

The Chief of Police of each Alberta police service agrees to review each case where an individual or situation has been determined to present a risk of significant harm to any individual(s) and in so doing to consider:

- the extent to which any federal or provincial legislation or publication ban is germane to the potential release of information;
- the risk of prejudice to a fair trial in relation to any outstanding charges;
- the recommendations made in referrals received from the Correctional Services Division of Alberta Justice or the Correctional Service of Canada; and
- the need to balance the individual privacy interests with public safety concerns, keeping in mind the risks associated with public alarm.

#### 5. Release Decisions; Court Ordered Community Dispositions; Review Board Dispositions; Judicial Interim Release; Parole; Statutory Release; Temporary Absence

Each stage in the justice system involving arrest, pre-trial detention or release while serving a sentence, features the exercise of statutory discretion by judicial or other officials. Common to each of these decision points is a consideration, among others, of whether the individual poses a risk to the community.

For example, when a person has been granted judicial interim release, the presiding official authorized by law to grant such a release will have applied criteria specified in the Criminal Code of Canada, which includes the question whether the individual is deemed to pose a threat to society and ought to be held in custody on that basis. The Criminal Code also requires that protection of the public be considered by Review Boards in making dispositions. Similarly, the public safety interest is assessed prior to any court ordered community disposition being made and prior to the release from custody of any individual on parole, temporary absence or statutory release. In each case, the conclusion made by the appropriate authority is that public protection will not be jeopardized by the disposition or release.

Because the question of public safety is expressly considered in each of the above noted decisions it is unlikely that information relating to these decisions or to the individuals about whom such decisions have been made could be reasonably disclosed pursuant to Section 31. This not, however, to say that such information cannot and should not be lawfully disclosed nor is it to negate the possible disclosure of such information, pursuant to Section 31, if the Chief of Police believes criteria for disclosure, as outlined in the Protocol, has been met.

#### 6. Concerns of the Community

Community residents may possess information about a person which suggests the individual may present a risk of significant harm to another individual(s). Citizens should immediately report such information of concern to the nearest police service.

#### 7. Notification Options

Having reviewed each case in accordance with its own set of circumstances and the principles delineated in the Freedom of Information and Protection of Privacy Act and

this Protocol, the Chief of the police service can choose any of the following notification options:

- no notification, where the Chief is satisfied that the individual does not present a risk of significant harm to any other individual(s);
- notify one specific individual (eg. an applicant, victim, witness, etc);
- notify an identified group or groups of individuals (eg. community groups, ethnic groups, interest groups, etc.); and
- notify the public.

Any notification should contain an appropriate warning that the intent of the process is to enable members of the public to take suitable precautionary measures and not to embark on any form of vigilante action.

Information disclosed should also be measured proportionate to perceived risk. While every situation must be assessed on an individual basis, information being disclosed should be limited to only that which is necessary to achieve the required result.

#### 8. Indemnification

Notwithstanding Section 85 of the Freedom of Information and Protection of Privacy Act, the Province of Alberta agrees to indemnify each Chief of Police in the form annexed hereto and “Schedule A.”

#### 9. Notices

Should a Chief of Police determine in accordance with Section 4 of this Protocol that disclosure of information is appropriate under the circumstances, the Chief shall, where practicable, before disclosing the information, provide statutory notice to:

- the Freedom of Information and Privacy Commissioner; and
- any third party (i.e. any person, group of persons or organization) to whom the information relates,

and give the third party and opportunity to make representations relating to the disclosure. The Chief of Police shall additionally notify:

- the Minister of Justice and Attorney General; and

- the Provincial SHOCAP and Dangerous Offender Program Coordinators.

Where it is not practicable to provide such notification before the information is disclosed, notices should be provided to these parties after the information has been disclosed.

#### 10. Appeal

Section 62(3) of the Freedom of Information and Protection of Privacy Act provides that a person who believes that their personal information has been disclosed in violation of Part 2 of the Act may ask the Commissioner to review the matter.

#### 11. Communication Strategies

The means by which information will be disclosed pursuant to this Protocol will be determined by the Chief of Police on a case by case basis and in light of information/recommendations received from the Correctional Services Division of Alberta Justice or the Correctional Service of Canada. The chosen option must be consistent with the extent of disclosure required to meet the intent of this Protocol.

Full public disclosure should only be used after all other alternatives have been carefully reviewed and considered.

#### 12. Counterpart Execution

This agreement may be executed in several counterparts of which when so executed shall be deemed to be an original, and each such counterpart (whether original or facsimile) shall constitute the one and same instrument and notwithstanding their date of execution shall be deemed to bear date as of the effective date of this agreement.

#### 13. Acceptance of Delegation

Execution of this Protocol by a Chief of Police shall constitute acceptance of the delegation contemplated by that Ministerial Order dated the 3<sup>rd</sup> of April, 1996, a copy which is annexed hereto as Schedule "B."

#### 14. Effective Date of Agreement

This Protocol has been signed to be effective the 18<sup>th</sup> day of April, 1996.

