ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2015-26

September 16, 2015

Calgary Police Service

Case File Number F6017

Office URL: www.oipc.ab.ca

Summary: The Complainant believed that her personal information and that of her children was collected by the Public Body in contravention of the *Freedom of Information and Privacy Act* (the Act). The Adjudicator found that the personal information was collected for the purposes of law enforcement and was therefore permitted under the Act.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 33, 34m 72, 84. *Child, Youth and Family Enhancement Act,* R.S.A. 2000, ss.1,19, 130, *Criminal Code of Canada*, R.S.C. 1985, c. C-46, s. 219, *Police Act*, R.S.A. 2000, 38

Authorities Cited: AB: Orders 96-019, 2000-027, F2006-002,

Cases Cited: *Park v. A.G., Minister & Paladin Security*, 2012 BCPC 109 (CanLII), *R. v. J.J. [2013] A.J. No. 723*

BACKGROUND

[para 1] On June 1, 2011, Calgary Police Service (the Public Body) received a call advising that a young child and an infant were alone in a motor vehicle in a shopping centre parking lot. The caller indicated that the children had been alone for 10 minutes at the time of the call. Police were dispatched to the parking lot. When the police arrived,

the vehicle, driver and children were no longer at the scene. The caller had noted the license number of the vehicle.

[para 2] Police phoned the registered owner of the vehicle. This was the Complainant. She acknowledged that she was at the parking lot and that she had left her two children in the motor vehicle. She was advised that the Public Body's Child at Risk Response Team (CARRT) would be attending at her residence for further investigation.

[para 3] The CARRT team (a police officer and a social worker) did attend later that evening and spoke to the Complainant and her children. Information about the Complainant and her children was gathered at that time.

[para 4] The police officer who spoke to the Complainant over the phone and the police officer that attended at her residence submitted police reports detailing information about the Complainant and her children and their investigative findings. The reports also included the officers' notes.

[para 5] The Complainant believes that the Public Body should not have collected her and her children's personal information, and that it violated the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) in the course of doing so.

[para 6] The Complainant has made an application for this inquiry regarding her own personal information and her children's personal information. Section 84(1)(e) of the Act allows the Complainant to exercise rights conferred by the Act on behalf of her minor children.

ISSUES

[para 7] The Notice of Inquiry set out the following issue for the inquiry:

> Did the Public Body collect the Complainant's personal information, and that of her children, in contravention of Part 2 of the Act?

DISCUSSION OF ISSUES

[para 8] There is no dispute between the parties that the Public Body collected personal information of the Complainant and her children.

[para 9] The Complainant argues that the Public Body had no authority to collect this information.

[para 10] The Public Body asserts that its authority to collect this information is section 33(b) of the Act.

[para 11] Section 33(b) states:

> *33 No personal information may be collected by or for a public body unless*

...

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

[para 12] "Law enforcement" is defined in section 1(h) of the Act as follows:

1 In this Act,

...

(h) "law enforcement" means

(i) policing, including criminal intelligence operations,

(ii) a police, security or administrative investigation, including the complaint giving rise to the investigation, that lead or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the investigation or by another body to which the results of the investigation are referred

[para 13] In Order 2000-027, Commissioner Clark discussed the term "policing" in paragraphs 15 and 16:

> The Act does not define the term "policing". Similarly, none of the secondary sources I accessed defined this term. However, many secondary sources define the word "police". For example, the *Canadian Law Dictionary* defines the term "police" as "*a force of people charged with the maintenance of public order, detection and prevention of crime*". Similarly, the Canadian Oxford Dictionary defines "police" as "*a civil force responsible for enforcing the law, maintaining public order".*
>
> After taking these definitions into account, it is my opinion that the term "policing" should be defined as those activities carried out, under the authority of a statute, regarding the maintenance of public order, detection and prevention of crime, or the enforcement of law.

[para 14] According to this decision, 'policing' requires the authority of a statute. As well, by reference to the FOIP Act section 1(h), for a police investigation to be "law enforcement", there must be the possibility the investigation will lead to a penalty or sanction.

[para 15] The *Child Youth and Family Enhancement Act* (CYFEA) section 130 (at the time of these events) provides:

130 Any person who

(a) wilfully causes a child to be in need of intervention, or

(b) obstructs or interferes with, or attempts to obstruct or interfere with, a director, a director's delegate, a peace officer or any other duly authorized person exercising any power or performing any duty under this Act

is guilty of an offence and liable to a fine of not more than $25 000 or to imprisonment for a period of not more than 24 months or to both a fine and imprisonment.

[para 16] Section 1(2) of the CYFEA provides, in part:

> *1(2) For the purposes of this Act, a child is in need of intervention if there are reasonable and probable grounds to believe that the survival, security or development of the child is endangered because of any of the following:*
>
> > *…*
> > *(c) the child is neglected by the guardian;*
> > *…*
> > *(e) the guardian of the child is unable or unwilling to protect the child from physical injury or sexual abuse; … .*

[para 17] Section 1(2.1) of the CYFEA provides:

> *1(2.1) For the purposes of subsection (2)(c), a child is neglected if the guardian*
>
> > *…*
> > *(c) is unable or unwilling to provide the child with adequate care or supervision.*

[para 18] Section 38 of the *Police Act* reads:

> *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 the police officer's 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.*

Evidence required for an investigation / law enforcement matter

[para 19] The Complainant asserts that the evidence does not support that any of the Public Body's actors:

a. have conducted an investigation
b. have conducted any law enforcement activity.

[para 20] The Complainant, in her submissions, provided an affidavit containing her version of the events of June 1, 2011. She also provided transcripts and digital files of

recorded telephone communication and face-to-face conversations between herself, a police officer and a social worker.

[para 21] The Complainant asserts that the Public Body must present the following evidence:

a. [Two named constables] conducted an activity which is authorized by statute
b. That activity is law enforcement activity within meaning of FOIPP
c. The authority to conduct the activity is granted by statute to the Public Body's employees/agents/Police Officers who actually conducted it
d. The agents/employees/Police acted lawfully in the circumstance of this particular case, and not simply according to the powers Police Officers possess "generally", and
e. Personal Information recorded is relevant to the activity conducted"

[para 22] Placing a child in an unsafe situation, or placing them "at risk", potentially involves placing them in need of intervention within the terms of section 130 of the CYFEA, quoted above .

[para 23] In this case, a caller raised concerns to the Public Body about an infant and a young child that were alone in a motor vehicle. The caller indicated that they had been alone for about 10 minutes at the time of the call.

[para 24] The Complainant, in her affidavit, indicates that upon her return to her vehicle, she had a conversation with a woman in a vehicle beside her. This conversation was brief. Upon being told by the woman, "You can't leave your children like this", the Complainant responded "Yes, I can. Thank you for telling me how to raise my kids."

[para 25] The Complainant posits (for example at her paras 53.b, and 71 in her rebuttal submissions) that since the police did not have any reason why they needed to investigate after they had learned from the caller in the mall that she had returned to her vehicle and left with her children, they did not have the authority to continue the investigation and collect her personal information and that of her children. She asserts that at that point they were merely speculating that there was some concern for the children's safety, and that the Public Body must have some evidence that there was a safety concern before embarking upon an investigation.

[para 26] I believe the Complainant's point is that once the police understood that she had returned to the car and left with her children, there was no further possibility of a threat to her children in the sense that they could be taken by a stranger. Therefore, there was no need or authority for a further investigation.

[para 27] I agree with the Complainant that in the circumstances there was no apparent threat to the Complainant's children in the sense of a potential abduction. However, the threat of abduction is by no means the only potential safety concern relating to the children arising in the circumstances. For instance, it is not inconceivable that a child the age of the older child would leave the vehicle in search of the parent, which would place him entirely without supervision and unattended in a busy parking lot or in a large store

full of strangers. The Complainant herself stated the older child was able to unlock the car doors, and exit the car, and that he was even able to take the younger child with him. Small children are generally not entirely predictable or capable of invariably making good decisions. Though some children might be instructed to, and can be trusted to, refuse to unlock the car at the behest of a stranger, others might be willing to do so. The circumstance of being left alone creates the potential for any young child to make decisions and take actions that he or she is not old or mature enough to make or deal with, and that could put them (and in this case also a sibling) in harm's way.

[para 28] When the police spoke to the caller, they were informed that the children left unattended were an infant and a two year old. Given this information, as well as the fact they had discovered the Complainant had taken similar actions earlier, they had every reason to determine whether the children had been placed at risk and in need of intervention. They would also have reason to determine whether it would be appropriate to charge the parent with an offence for placing the children at risk. Further, they would have reason to determine whether it was important to try to ensure compliance with the law by taking steps to discourage the parent from acting in the same manner in the future. Following receipt of the call, it was, in my view, an entirely reasonable exercise of their discretion to continue with the investigation by questioning the parent about these matters.

[para 29] While the Complainant suggests otherwise, it is obvious, from the contents of the transcripts, that the officer who came to her home felt that he was obliged to determine if the children had been placed at risk.

Constable	:	I'm a police officer. She's a social worker—
Complainant:		Yeah.
Constable	:	--okay? We have totally different – well, we have the same law but different laws, I guess. I obviously have criminal offences—
Complainant:		Yeah.
Constable	:	--while my partner has Social Services legislation and the Child and Youth and Family Enhancement Act legislation. If we have concerns that the child be at risk, and leaving a child in a car is classed as leaving a child at risk, because a child who is one cannot defend for itself, so therefore that child –
Complainant:		Yes
Constable	:	-- is classed as being at risk by leaving it alone, okay? And it's happened – I mean, we checked and there's at least three occurrences where your vehicle has been seen leaving the children alone in the car in car parks, okay? So that then heightens that risk. It's not a one-off. It's a regular occurrence. Okay?
Complainant:		Hm-hmm.
Constable	:	The legislation my partner has is that we have to make an investigation if we believe a child is at risk. If we don't make that investigation –
Complainant:		Hm-hmm.
Constable	:	--we're negligent by not doing that.
Complainant:		Yes, I understand that you have to do follow-up and all the work.
Constable	:	So at this stage what we're trying to do is we try and ascertain the safety of the children and I guess, not to insult you, but your ability as a parent.

(CARRT Transcript pp 3,4,5)

The questions asked by the officer were clearly related to this concern that he had raised.

[para 30] The Complainant submits that since the Public Body had prior similar complaints regarding her children and her motor vehicle, and did not pursue an investigation at that time, the police action in this case could not be characterized as a law enforcement investigation. I reject this argument. Police make decisions not to charge for many reasons, which do not always relate to whether a law creating an offence has technically been contravened. As the police officers in this matter explained to the Complainant, the fact there were prior similar incidents increased the likelihood the same thing would happen again. If the Complainant's actions indeed constituted a threat to the children's safety, this was all the more reason to exercise their discretion to investigate, and if necessary, to take steps to try to ensure it would not happen again. (Indeed, the Constable was advised by one lawyer that if the same situation were to occur again, charges under the CFYEA could be laid without further consultation.)

[para 31] I also accept the Public Body's submission that the reasoning of the Commissioner in Order F2006-002 applies in this case.

> It seems to me that if a member of the EPS (or anyone else) "fears for their safety" and expresses that to a peace/police officer, section 33(b) of the Act is engaged, as the matter involves "policing" and therefore law enforcement. Regardless of whether the officer refers the matter to a more appropriate authority, that officer is allowed to collect personal information because "fears for safety" and threats are generally law enforcement matters. It must be assumed so.
>
> For example, if someone is chasing me and I run up to a police officer and tell that person, the police officer can ask "Who?", "Why?, etc., and collect the personal information. The officer does not have to do anything more to trigger the investigation. Even if the officer decides my fear is groundless or there is no breach of any law, the officer can collect personal information in order to make that determination.
> …
>
> There is a point when there is no longer justification under section 33(b) to collect personal information. That point is reached when the officer knows or should know that there is no longer a law enforcement issue: no threat, no crime, no law broken. I cannot think of any prescriptive test to decide when that point is reached. This will not be very satisfying to some people. Peace/police officers must be free to act quickly, often instantaneously, to assess threats. At the particular moment, the public can only rely on the officer's training, judgment and professionalism to tell the officer when to stop. The officer is still accountable, but only after the fact. Internal discipline processes, peer review, civilian complaint review boards, this Office, the courts, and the Charter remedies, all provide mechanisms to hold peace/police officers accountable for the misuse of their ability to collect personal information for the purposes of law enforcement. These mechanisms must be applied vigorously.

> In this case, an individual advised the Superintendent that an EPS member feared for his or her personal safety. From that moment there was a law enforcement matter, and the Superintendent was enabled to collect the personal information necessary to assess the threat or to have another officer assess it. That is what happened in this case. Only when the threat is assessed and dealt with is the officer no longer able to collect.

[para 32] I have discussed above the Complainant's idea that once the police understood that she had returned to the car and left with her children, there was no concern that her children had been taken by a stranger, and no need for a further investigation. I agree that at the time of the interview there was not an immediate threat (such as someone being chased). However, I reject the Complainant's assertion (para 63 of her rebuttal submissions) that there was no similarity to the circumstances in Order F2006-002. As discussed in para 28 above, leaving young children in a car can give rise to a variety of potential harms to them, some of them potentially triggered by their own actions. The possibility the Complainant would continue to do this existed. Thus the circumstances called for the determination of the facts and of whether these facts meant the children had been, and could in future be, placed at risk. There was, in other words, a need for a "threat assessment" which, as the former Commissioner stated, is a "law enforcement" matter.

Whether there is law enforcement in the absence of a charge

[para 33] The Complainant also seems to suggest that because the matter was closed without a charge being laid or any report being made to the CYFEA director about a need for intervention, the officers themselves could not have regarded the matter as law enforcement, and it could not be characterized as such.

[para 34] This suggestion overlooks that to do their jobs properly, police must be able to determine whether *or not* a violation of law has occurred, may be occurring or may occur in future. The hands of police clearly cannot be tied to matters which necessarily result in charges being laid. This point was made by former Commissioner Clark in Order 96-019, as follows:

> [16.] Based on the foregoing definition of "investigation", I do not think that whether a charge is laid or not makes any difference as to whether there is an investigation. In Order 96-006, I stated that the definition of "law enforcement" is limited by the phrase "penalty or sanction". To fall within the definition, an investigation must have the *potential* [my emphasis] to result in a penalty or sanction being imposed under the particular statute or regulation under consideration. It is not possible to determine in advance of an investigation whether a penalty or sanction will be imposed. Therefore, I do not see how it can be said that because a penalty or sanction wasn't imposed at the conclusion of an investigation, that there was no investigation. The outcome of an investigation does not determine whether an investigation is an "investigation" for the purposes of the definition of "law enforcement".

[para 35] There may be reasons not to lay charges in some circumstances despite the fact that the elements of an offence are clearly present. I do not know how a decision was made in this case, but a decision not to charge does not necessarily reflect a determination

by the officer that the children had not in fact been placed at risk and in need of intervention.

Conclusion of a matter: making and retaining notes

[para 36] The Complainant also makes the related suggestion that notes taken after the fact cannot be for the purposes of law enforcement because by the time a matter is concluded in the manner this one was, the police know there was no law enforcement issue.

[para 37] I must emphatically reject the idea that after a potential law enforcement matter is concluded, records of what transpired should not be made. Interactions between police and citizens have a highly significant impact on the rights and freedoms of citizens. Transparency in such interactions is critical for upholding these rights. It is therefore vital that police record and retain such interactions to the fullest extent that is practicable, for possible scrutiny, should issues, including such as the present one, arise. This is so as much for matters being investigated that do not result in a charge as for those which do. Since recording after the fact of an encounter will often be the only practicable option, it should not be discouraged.

[para 38] To put this another way, recording information *for a law enforcement purpose* is not limited, as the Complainant suggests it is (for example, at paras 30, 36 and 40 to 48 of her rebuttal submissions), to recording it only to deal with it in ongoing way with the matter at hand. This would have the result that only information about matters that lead to prosecution or other further law enforcement action could be recorded. Since law enforcement must be transparent, recording information about encounters between police and citizens for the purpose of transparency entails recording this information for the purposes of law enforcement. To illustrate, if police have a physical altercation with a citizen but choose not to lay a charge or otherwise pursue the matter because they know the citizen was not at fault, that is hardly a reason why information about this incident should not be recorded or retained.

[para 39] The Complainant's submissions in this regard also relate to her interpretation of sections 33 and 34 of the FOIP Act. As I understand her argument about this, because she believes that it is not possible to accumulate recorded information directly from the individual, she concludes that section 34 is applicable to the circumstance of obtaining information that had not been previously recorded, and section 33 is applicable to obtaining (and then retaining) recorded information. Her view appears to be that when unrecorded information is collected directly, as happened in her case, it is covered by section 34, and that this provision does not permit the retention of such unrecorded personal information in a recorded form.

[para 40] I reject this interpretation of these provisions. Contrary to what the Complainant seems to be asserting, collection from an individual under either section 33 and 34 can be done by recording the information which the individual provides orally. It can also be done by receiving information that has already been recorded directly from the individual, or by having the individual record it (for example, by filling out a form).

Neither section 33 nor section 34 speak to whether information collected in any of these ways can or cannot be retained. The FOIP Act requires the retention of information for at least one year if it is used to make a decision. It does not limit for how long or in what form collected information can be kept. (Both section 33(b), and section 34(1)(g) of the Act permit collection for law enforcement purposes. I will explain below how the collection and recording of the Complainant's and her children's personal information was for law enforcement purposes. Therefore, both these provisions were met.)

[para 41] The Complainant also argues that because the notes were not taken for law enforcement purposes, they should not be retained in the PIMS system and be accessible to other police force members for their use. Retention and use of the information were not issues originally stated for this inquiry, and I have been given no information as to the purpose of the PIMS system, how it is accessed and used, and by whom. However, for the reasons just discussed, it would be important in my view for the information to remain accessible by using the Complainant's name.

Identification of an offence provision

[para 42] The Complainant also raises the objection that when the officer (together with the social worker) attended at her home, he was uncertain as to what offence or offences he was dealing with.

[para 43] The transcripts of recordings of conversations the Complainant made, which she provided in her submissions, show that, when he and the social worker came to her home, the officer said the provisions relevant to the investigation were s.219 of the *Criminal Code of Canada* (Transcript CARRT p.6, lines 8-20), provisions in the *Child, Youth and Family Enhancement Act* (CYFE Act) (p. 7, lines 1-4) and, if the investigation were to be obstructed, charges of obstruction of investigation under the *Criminal Code of Canada* (p. 7, line 3-5).

[para 44] The Complainant points out that the language chosen by the officer in much of the interview suggests he was not actually concerned about these offences, but rather, was acting on the basis of what he thought was "a good idea", assessing her ability as a parent, and ensuring that what had happened would not happen again. She also asserts that the Criminal Code provision that was cited (section 219) was not applicable, nor was she being obstructive or disturbing the public peace (the latter of which could also trigger powers under the *Police Act*). As well, she rejects the Public Body's suggestion that the officer's presence was to assist the social worker.

[para 45] The Complainant also notes that the other officer who made notes of the matter and submitted a report, characterized her actions as an offence under the Criminal Code, but that this was in error.

[para 46] The Complainant also challenges the idea that the Public Body can rely after the fact on an authority for investigating which its members did not realize they had at the time. She states the following:

> The public body can not succeed by relying on authority that may have existed in the circumstances, while its Police Officers did not think themselves to act pursuant that same authority.

[para 47] I am not sure which authority the Complainant thinks "may have existed in the circumstances". Some parts of her submissions seem to admit of the possibility that the CYFEA might apply, but she also discounts this on the basis that the director under that Act must make the key determination. Her view is that the police officer must be able to identify the provision pursuant to which they are acting, and since that did not happen in this case, the officer cannot be said to have been enforcing the law, nor recording personal information for that purpose.

[para 48] The Complainant relies on *Park v. A.G., Minister & Paladin Security*, 2012 BCPC 109 (CanLII) in support of her idea that the Public Body "must invoke the power which is proper in the circumstances, not just a power generally possessed by Police Officers, but not applicable in the circumstance at the time the power is exercised".

[para 49] I agree that the *Park* case is relevant, but not in the way the Complainant suggests. The case deals in large part with the authority to arrest, which is not relevant to the present circumstances. However, it also addresses when the police have the authority not only to investigate, but to detain for the purposes of questioning. The court stated:

> [109] … Detention for investigation requires that the officer have both an objective and a subjective belief in a set of circumstances that give rise to reasonable cause to believe an offence has or may have been committed. I find that existed here. The fact that the subjective belief in a disturbance and the objective fact of a trespass did not coincide is in my view immaterial.

[para 50] The *Park* case decides that police have authority to detain for investigation if they have both an objective and a subjective belief in a set of circumstances that give rise to reasonable cause to believe an offence has or may have been committed. In my view, this test does not require that the police officer be able to cite an actual offence provision. If, given the facts with which police are presented, it is reasonable for them to think that on further investigation facts could be discovered or confirmed which would amount to an offence, it doesn't matter whether they can point to the specific offence. This idea is supported by an earlier decision of this office. In Order 96-019, former Commissioner Clark said:

> [17.] I also question the Applicant's contention that for it to be an investigation, an offence has to be sufficiently identified. In Order 96-006, I stated that to meet the definition of "law enforcement", the relevant legislation must grant the authority to investigate and must also set out penalties or sanctions. If those requirements are met, it would seem to me that the connection between the investigative authority and the penalties or sanctions would sufficiently identify the potential offence. In any event, the public body's submission, which was also provided to the Applicant, identified section 8 and section 15 of the *Public Contributions Act* as matters and, thereby, potential offences that may be investigated.

[para 51] In the present case, the Public Body attached section 130 of the CFYEA in its submissions. This section of the Act creates an offence. The Public Body did not expressly argue that this was the particular provision which the officer was enforcing, but in my view, this provision was potentially applicable. The statements of the police officer during the interview at the Complainant's home about putting the children "at risk" seem to suggest his primary concern was that leaving them unattended in the car potentially placed them at risk. This constitutes an offence in that placing children at risk places them in need of intervention. The investigation was, at least in part, whether she had put the children at risk to a sufficient degree to charge her (a matter which the police pursued with Crown prosecutors and on which the two different Crowns seemed to disagree). Whether she had done this would depend on facts about the circumstances and about the children. The police were, in my view, authorized to investigate these things. (The Complainant herself says that she explained to the officers why her child in particular could manage the situation. This suggests that she accepts that her input was relevant to the issue with which the officer was dealing).

[para 52] For the reasons discussed, I think there was both a subjective and objective belief in a set of circumstances that gave the police who answered the call reasonable cause to believe that the Complainant may have placed the children at risk, such that an offence may have been committed. Thus I believe they were empowered not only talk to her, but to detain her to talk to her, and that they were engaged in "policing" and "law enforcement" in doing so.

Who is to determine the need for intervention?

[para 53] The Complainant also submits that the offence of causing children to be in need of intervention cannot be applicable because it requires a prior determination by the director under the CYFEA. Since this did not happen, in her view the police did not have any authority to investigate under the CYFE Act. She believes only the director under the CYFEA is empowered to investigate concerns under the Act, and to make a determination that someone has committed an offence.

[para 54] The Public Body submitted that the CARRT team is a partnership between the Calgary Police Service and the local Child and Family Services Authority. The Public Body submitted that the team jointly investigates immediate safety concerns involving children at risk, pursuant to the authority granted under several Alberta statutes, including the CYFEA.

[para 55] There is nothing in the CYFEA that suggests that only a director may investigate offences under the Act. As noted earlier, section 130 of the CYFEA makes it an offence to cause a child to be in need of intervention. This section, coupled with the duties of police officers to enforce the law, allows the police to embark upon an investigation as to whether the offence had been committed, and whether there was a need to try to prevent future occurrences of such an offence. As decisions of the Alberta courts show (see, e.g., *R. v. J.J. [2013] A.J. No. 723*), the charge for this offence can be laid by the police, and the decision as to whether the offence is made out is made by the court, not by the CFYEA director.

[para 56] Upon review of the provisions of the CYFE Act, the duty of police to enforce the law, and the circumstances of the case, I find that the investigation to determine whether to lay a charge for an offence, and to determine whether the possible future commission of such offences needed to be addressed, was "policing" and "a police investigation" within the terms of section 1(h) of the FOIP Act, and constituted law enforcement within the terms of section 33(b) of the Act. Therefore, the collection of the Complainant's personal information and the personal information of her children for the purpose of this investigation was authorized by section 33(b).

Officer's demeanor and choice of language, and the threat the children would be apprehended

[para 57] The Complainant objects to what she describes as the aggressive or bullying approach of the officer, the characterization of herself as a 'suspect' and as 'belligerent' and of the children as 'victims', as well as to other inaccuracies in the reports. These points have no significant bearing on the issue in this inquiry.

[para 58] She also argues that threat of possible apprehension of the children made by the officer who attended at her home was unlawful. The determination of whether a recommendation for apprehension might be called for could not be made until a considerable part of the investigation had been done. Whether the statement that the children could be apprehended was appropriate is irrelevant for deciding whether there was authority to undertake an investigation for law enforcement purposes within the terms of section 33(b).

[para 59] The Complainant also says (para 10 of her Summary, page 3 of her rebuttal submissions) that the police officers acted in bad faith, and that on this account their investigative actions were a nullity and cannot support their collection of information. I have reviewed the submissions the Complainant puts forward in support of this idea, including the one that they cannot be acting in good faith if they cannot accurately specify the authority for their actions. I have already found that it is not necessary for police to specify a provision as long as they have reasonable cause for a subjective belief that unlawful activities have happened or could happen. I find there is insufficient evidence that the police were acting other than further to an appropriate exercise of their discretion to investigate.

The relevance of the collected information to the investigation that was conducted

[para 60] The Complainant objects that some of the personal information in the reports was irrelevant to the matter giving rise to their involvement. She submits that the officers were insufficiently selective in what they wrote down. I do not think it reasonable for a police officer recording the details of a matter to regard themselves as constrained in terms of what information strikes them as related or important to record. This could impede the creation and preservation of important information. As long as the information is reasonably connected to the matter at hand, I think it would be better to

have as full an account as practicable of what the officer observed and his or her impressions.

ORDER

[para 61] I make this Order under section 72 of the Act.

[para 62] I find that the Public Body had the authority under section 33(b) of the Act to collect the Complainant's and her children's personal information.

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Neena Ahluwalia Q.C.
Adjudicator