

**ALBERTA**  
**OFFICE OF THE INFORMATION AND PRIVACY**  
**COMMISSIONER**

**ORDER F2025-19**

May 9, 2025

**CALGARY POLICE SERVICE**

Case File Number 007053

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** The Applicant made a request to the Calgary Police Service (CPS) (the Public Body) under the *Freedom of Information and Protection of Privacy Act* for records relating to a particular aspect of a police investigation in which she had been involved. The records were a subset of records in a request to which the CPS had responded earlier.

The Adjudicator held that the CPS was not required to provide the particular subset of records, or to again withhold records within the subset (with reasons) a second time. It was sufficient to refer the Applicant to previous responses in which such records had been either provided, or withheld with reasons.

The Adjudicator considered whether the CPS had met its duty to assist the Applicant under section 10 of the Act, having regard to a number of issues the Applicant had raised. She concluded the CPS had met its duty to assist, including with respect to the search it had conducted for the specific subset of records.

The Adjudicator ordered the CPS to provide the Applicant with a record of an audio call she had made to CPS, if such a record had been located at Calgary 911, subject to any applicable exceptions.

The Adjudicator found that any responsive records from Professional Standards file 16-1002 had not, as the CPS conceded, been properly excluded from the application of the Act by reference to section 4(1)(k). She ordered the CPS to disclose such responsive records subject to any mandatory exceptions.

**Statutes Cited: AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 4, 6, 10, 12, 20, 21, and 72.

**Orders Cited: AB:** P2007-002, F2020-13, F2021-19, P2023-09, F2023-31, and F2023-46.

**Court Cases Cited:** *Edmonton Police Service v Alberta (Information and Privacy Commissioner)* 2022 ABCA 397 (CanLII).

## I. BACKGROUND

[para 1] The Calgary Police Service (CPS) (the Public Body) received a request for access from the Applicant under the *Freedom of Information and Protection of Privacy Act* (the Act or the FOIP Act) on August 9, 2017. The Applicant summarized the request in the "Detailed Request for Review" attached to the request to review form dated October 1, 2017 as follows:

" ... I actually filed, which was, basically a Request for Access to my personal information, from, specifically, December 2010 onwards related to, firstly, the reporting of and/or the investigations of any and all allegations of contact of any sort, and by any means, by me, either directly or indirectly with, specifically, [individual's name (KG)] and of any and allegations of contact of any sort by me with, specifically, the place of employment, business or professional associations of, specifically, KG and, secondly, that relate to any actions, notes, and/or communications of any sort arising as a result of, or related to, specifically, such allegations .... "

[para 2] The access request in this file was made on the same date the CPS issued a response to an earlier request for access to all of the Applicant's personal information located in the CPS FOIP Administration files related to any and all CPS FOIP requests the Applicant had made at any time to the CPS since the beginning of 2003. In its response the CPS provided the Applicant with all correspondence with the Applicant about the access requests and re-release of all records that had previously been provided to the Applicant for every access request processed since 2010.

[para 3] On September 11, 2017, the CPS responded to the August 9 access request. The response included the following statement:

All records with the exception of the attached have been disclosed to you in previous requests. These disclosures included all records received by, processed by, sent by or created by Calgary Police Service personnel, non-law enforcement personnel associated to the Calgary Police Service file and all RCMP personnel that the Calgary Police Service may have contacted or contacted us in regards to you.

[para 4] CPS also stated it had located one record responsive to the request that had not been previously provided, which it attached. It also stated that records relating to a professional standards matter that had been initiated by the Applicant (CPS File 16-1002) and had not yet been concluded were being withheld under section 4(1)(k) of the FOIP Act. As well, it said that "any records of RCMP personnel or other law enforcement bodies [were] not in the custody or control of the CPS". The CPS response did not clearly indicate whether it was in possession of

any records in the last of these categories, nor whether, if so, they had been withheld in its responses to the earlier access requests.

[para 5] On October 1, 2017, the Applicant submitted a request for review of this response to this office. In a document entitled “Detailed Request for Review”, the Applicant objected that the Public Body had mischaracterized/broadened her request when it described it as having been for information relating to her from 2010 to the date of the request, and that it had failed to respond specifically in relation to the particular category of records she had specified in her request, for documents recording allegations and investigations regarding her contacts with KG. In her request for review she explained her view that a search targeted in this way would possibly have yielded more results related to this question than had been derived from the broader searches conducted earlier. She said that reliance on earlier searches was also inappropriate because records may have been created in the period between earlier searches and the request here at issue (i.e., between July 12, 2015, and August 9, 2017).

[para 6] As well, the Applicant indicated that the response that she had received to a request to another body, relative to RCMP records, suggested that the CPS intended to open a file relative to the same matter, and accordingly, there should be related records. She also questioned whether section 4(1)(k) was applicable to any responsive information insofar as that section exempts records relating to an incomplete prosecution. Finally, she questioned whether records originating from other law enforcement bodies that were in the CPS’s possession could be withheld on the basis that they were not in the CPS’s “custody or control”.

[para 7] In an Addendum to the Request for Review, dated January 18, 2018, the Applicant raised further concerns based on new information she had received. These included that incorrect statements about her were being further disseminated and that confidentiality of information about complaints she had made was not being maintained.

[para 8] The Applicant also referred in the Addendum to information that led her to believe that an answer to a question she had asked of Detective K about the FOIP Unit’s call-out for PSS (Professional Standards Section) records for the purposes of responding to her request was, in her words, “less than forthright” and misleading. She expressed her concern that this may be indicative of a culture in CPS of not properly responding to access requests.

[para 9] The Applicant also raised concerns in the Addendum about the completeness of a response she had received to a different request (for the administration file in Request 17-P-1174), asserting that information received or redacted from that file is relevant to the search in the present inquiry. The adequacy of that search and response is not part of the present inquiry; the adequacy of the search in the present inquiry is among the issues listed below.

[para 10] Finally with respect to the Addendum, the Applicant raised a concern about a request that had been made by someone else but attributed to her at one stage in the proceedings.

[para 11] As well, the Applicant provided a second Addendum dated February 19, 2018, referencing four emails which she had sent to other employees of the Office of the Information and Privacy Commissioner.

[para 12] Mediation was authorized after which the Applicant requested an inquiry, on January 31, 2020. The Request for Inquiry referred to the concerns set out in the Request for Review and Addendums, as are discussed above.

## II. ISSUES

[para 13] The issues set out in the Notice of Inquiry are as follows:

1. Did the Public Body comply with section 12 of the Act (contents of response)?

This issue relates to the fact that the CPS did not provide the Applicant with any records nor with an index of records responsive to her request, nor did it indicate the provisions it was relying on to withhold records; rather it stated that it had disclosed all records in its possession relating to the Applicant in response to previous access requests (as quoted above). [This was not entirely accurate since the CPS had both disclosed and withheld records in response to the Applicant's earlier requests.]

Given the Applicant's access request was for only a subset of records previously addressed, was the Applicant entitled to receive a new response identifying only records responsive to the narrowed request, and indicating whether such particular records were being disclosed or withheld, (and in the case of the latter, the reasons why and the provisions of the Act being relied on for the refusal)?

2. Did the Public Body meet its obligations required by section 10(1) of the Act (duty to assist applicants)?

In this case, the Adjudicator will consider whether the Public Body conducted an adequate search for records related to the specified allegations and investigations of the Applicant's contact with KG, having regard to the Applicant's point that additional records may have been created in the time between the earlier responses and the date of the access request. The Adjudicator will also consider the Applicant's argument that a more targeted search may have yielded results additional to those derived from earlier, more general, searches.

The Adjudicator will also consider the significance of the Applicant's reference to a document the Applicant has in her possession indicating that the CPS intended to open an investigation in relation to a particular matter concerning the Applicant, and of the fact this issue was addressed in Order F2020-13 (at footnote 44). (Related concerns about the non-disclosure to the Applicant by the RCMP of materials she believed were in the latter's possession are not part of the present inquiry.)

The Adjudicator will also consider the Applicant's concern that the search performed relative to her August 9, 2017 request did not use both her married and maiden names,

and was conducted through the SENTRY rather than the PIMS system, which she contends was unreliable for searches for older data. As well, she suggests (at page 14-15 of her first Addendum) that there is evidence there may have been an audio call recording that was not located and provided to her.

As well, the Adjudicator will consider whether the CPS contravened its duty to assist when it provided a record that was outside the scope of her specific request.

3. Were the records in the Professional Standards file [16-1002] properly excluded from the application of the Act by reference to section 4(1)(k)?
4. If there are any responsive records in the possession of the CPS that are “of RCMP personnel or other law enforcement bodies”, are these records exempt from access because they are not in the CPS’s “custody and control”?<sup>1</sup>

With respect to concerns raised in Addendum 1:

- the concerns that incorrect statements about the Applicant were being further disseminated and that confidentiality of information about complaints she had made was not being maintained are outside the scope of the present access request
- the ideas that Detective K’s answer to her email query was deliberately misleading, or that there is a culture in CPS that supports or encourages such action, is speculative; even if were a fair assessment, its relationship to the issues arising in the present inquiry is insufficiently clear; hence it will not be included as an issue in the present inquiry unless the Applicant provides a clearer explanation of its significance, as part of a submission meeting the directions provided in the Cover Letter for this Notice of Inquiry
- there is a lack of clarity about the significance of the Applicant’s concern about a request that had been made by someone else but attributed to her at one stage in the proceedings; this will not become an issue in the present inquiry unless the Applicant provides a clearer explanation of its significance, as part of a submission meeting the directions provided in the Cover Letter for this Notice of Inquiry.

With respect to the second Addendum, the four emails reference particular documents that the Applicant provided. Without more it is not possible to discern their significance, except to the extent they appear to be provided in support of the Applicant’s concerns set out above. In view of this the Applicant may wish to provide further information about this Addendum, as part of a submission meeting the directions provided in the Cover Letter for this Notice of Inquiry.

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<sup>1</sup> Because section 6 of the Act gives a right to access to records “in the custody *or* under the control of a public body”, this issue should have been framed as referring to the CPS’s “custody or control” rather than to its “custody and control”.

### III. DISCUSSION OF ISSUES

#### **Issue 1: Did the Public Body comply with section 12 of the Act (contents of response)?**

This issue relates to the fact that the CPS did not provide the Applicant with any records nor with an index of records responsive to her request, nor did it indicate the provisions it was relying on to withhold records; rather it stated that it had disclosed all records in its possession relating to the Applicant in response to previous access requests.

Given the Applicant's access request was for only a subset of records previously addressed, was the Applicant entitled to receive a new response identifying only records responsive to the narrowed request, and indicating whether such particular records were being disclosed or withheld, (and in the case of the latter, the reasons why and the provisions of the Act being relied on for the refusal)?

[para 14] Previous orders of this office involving the present Applicant have held that when a public body has already responded to an access request for the same records that are the subject of the access request at issue, it does not need to provide (or withhold, with reasons) the same records a second time. Rather, the public body fulfills its duty to respond by referring the Applicant to the records that have already been provided or withheld in earlier responses (Orders F2020-13 and F2023-31).

[para 15] In Order F2023-46, the Adjudicator held that this reasoning does not apply where a new access request is made under different circumstances which support a different decision as to which records may be withheld. I am unaware of any change in circumstances which might give rise to a different decision from the ones already made by the CPS, or that would give rise to different decisions by an adjudicator reviewing the public body's decisions about these records.

[para 16] I note that while the CPS in its submissions in this inquiry indicated which of the sets of records it had processed earlier contained records responsive to the most recent request, it did not do this in its response to the Applicant. While I believe the Applicant would have known which of the sets of records she had received earlier could contain responsive information by reference to the dates of her requests and the dates on the records themselves, it would have been helpful for the CPS to have provided this information in its response to her. However, as this information is contained in the CPS's submissions in this inquiry, there is nothing further for me to order in this regard.

[para 17] For the foregoing reasons, and taking into account the information in the CPS's submission in this inquiry, I find the CPS has now complied with its duty under section 12.

#### **Issue 2: Did the Public Body meet its obligations required by section 10(1) of the Act (duty to assist applicants)?**

In this case, the Adjudicator will consider whether the Public Body conducted an adequate search for records related to the specified allegations and investigations of the Applicant's contact with KG, having regard to the Applicant's point that additional

records may have been created in the time between the earlier responses and the date of the access request. The Adjudicator will also consider the Applicant's argument that a more targeted search may have yielded results additional to those derived from earlier, more general, searches.

The Adjudicator will also consider the significance of the Applicant's reference to a document the Applicant has in her possession indicating that the CPS intended to open an investigation in relation to a particular matter concerning the Applicant, and of the fact this issue was addressed in Order F2020-13 (at footnote 44). (Related concerns about the non-disclosure to the Applicant by the RCMP of materials she believed were in the latter's possession are not part of the present inquiry.)

The Adjudicator will also consider the Applicant's concern that the search performed relative to her August 9, 2017 request did not use both her married and maiden names, and was conducted through the SENTRY rather than the PIMS system, which she contends was unreliable for searches for older data. As well, she suggests (at page 14-15 of her first Addendum) that there is evidence there may have been an audio call recording that was not located and provided to her.

As well, the Adjudicator will consider whether the CPS contravened its duty to assist when it provided a record that was outside the scope of her specific request.

[para 18] I have noted the Applicant's suggestion that a new search should have been conducted because additional records falling within this specific category might have been created in the period between July 2015 (when the response in Case File 001826 was provided) and August 2017 (the date of the present access request). Given the records were disclosed because a prosecution had come to a close, there seems no reason to believe additional records would have been created after the prosecution came to an end.

[para 19] In any event, the CPS's initial submission in this inquiry, dated May 29, 2024, stated the following:

The Analyst ... reviewed each of the case files to determine if any updates had been made to the file since the previous requests. None of the previously provided files had any updates.

[para 20] I turn to the fact the Applicant's present request involves only a subset of the records she has previously requested and regarding which she has received responses, and her argument that a response made specifically in relation to the particular category of records she had specified in her request – for documents recording allegations and investigations regarding her contacts with KG – might have yielded more results than had been derived from the broader searches conducted earlier.

[para 21] I am aware, from my review of the records in Case File 001826 (which culminated in Order F2021-19) that a considerable number of records containing information about the Applicant's alleged contact with particular individuals, and about ensuing investigations, communications and actions, were located during the search for records that related to RCMP File 2011-691476. (Personal information of third parties contained in these records was redacted

on the basis that disclosing it would be an unreasonable invasion of privacy.) Given such records were located in the earlier searches even though more specific search terms were not used, I see no reason to think it likely that additional such records would have been located had a new search for just this particular category of records been conducted.

[para 22] In its submission for this inquiry the CPS has pointed to the sets of records which it has already located and either disclosed or withheld further to the Applicant's series of access requests. As the CPS noted, the adequacy of its searches for records and decisions about disclosure of records dating to June, 2017 have already been reviewed in this office's processes. I do not believe it is necessary or feasible to revisit these decisions relative to the particular subset of records that are the subject of the present inquiry.

[para 23] Further, as already quoted above in part, the CPS's initial submission in this inquiry, dated May 29, 2024, stated that it had, indeed, conducted additional searches. It said:

The [CPS] file indicated that the Analyst reviewed the request in comparison to previous records provided under previous access requests, to see if any of the information that was previously provided was contained in this request. After a review of the previous requests, it was determined that most of the information had been provided.

The Analyst then reviewed each of the case files to determine if any updates had been made to the file since the previous requests. None of the previously provided files had any updates. A new search for records was conducted by searching the Applicant's name and address in SENTRY, which is the main report database for all CPS reports. SENTRY replaced the PIMS system in 2016 and all records were transferred to SENTRY. No new reports were located. Another search of the Applicant, their phone number and address was conducted on the INET system, which is the database for all Computer Aided Dispatch Reports where are the notes made from any calls to the 911 or non-emergency line. One record was located. This record was downloaded and provided to the Applicant. A subsequent request was made for the involved officer's notes. As noted above the involved Officer [PC], did not have any notes.

A review of all the officer's requested was done to determine who was with the Service and who was not. As no new records had been located nor any updates to the previously provided files had been made none of those involved officers were asked for records. Any officers who were not requested in previous files or the Officer that was involved in the one located record were asked for records. Please see above for the requests made for records to each officer.<sup>2</sup> Regarding non cps employees, all records had been provided in previous requests and as they are not employed with the Service, we could not ask them for records specifically.

I find the additional searches described by the CPS met the duty to conduct an adequate search under section 10 of the Act.

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<sup>2</sup> As indicated in CPS's response to the additional questions I recently asked it, no additional responsive records were located as a result of the requests to the individual officers (as referenced in this quote from the initial submission).

[para 24] I turn to the Applicant's reference to a document the Applicant received from a different access request indicating that the CPS intended to open an investigation in relation to a particular matter concerning the Applicant. As noted above, this issue was addressed in Order F2020-13 (at footnote 44), wherein I concluded that the Applicant has not presented sufficient evidence to establish that this investigation file was opened in fact; therefore, it could not be said there would be associated records. This conclusion holds in the present inquiry.

[para 25] With respect to the Applicant's concern that the search performed relative to her August 9, 2017 request did not use both her married and maiden names, I asked the CPS whether the search it conducted relative to the access request in the present inquiry used both the Applicant's married and maiden names, and if not, why not. The CPS replied as follows:

In review of the original access request, the Applicant provided both names and it is standard practice to search all names provided by the Applicant when they are requesting a large volume of records.

I can confirm that both names were searched for this and previous access requests.

[para 26] I am not aware of why the Applicant thought otherwise, and she has not explained this or contradicted what the CPS said in her most recent response to CPS's answers to my questions. Therefore, I cannot conclude that the use of only one possible surname was an issue in either the earlier or most recent searches.

[para 27] The Applicant also presented a concern that searches conducted through the SENTRY rather than the PIMS system were inadequate, as in her view, SENTRY is unreliable for searches for older data. In its initial submission the CPS stated the following:

SENTRY replaced the PIMS system in 2016 and all records were transferred to SENTRY.

[para 28] Beyond the Applicant's assertion, I have no way to compare the merits of the two systems, and in any event, I have no reason to believe there was an alternative in 2017 to using the system (SENTRY) that was in place at that time.

[para 29] As well, the Applicant suggests (at page 14-15 of her first Addendum) that there is evidence there may have been an audio call recording that was not located and provided to her. In this regard I asked the CPS the following question on April 2, 2025:

At page 14-15 of her first Addendum [the Applicant] mentions an audio call placed by her to the CPS on May 5, 2017. Records [the Applicant] has received from CPS indicate that this call was documented, and that the document indicates that the REMARKS section, which recounts what was stated by her in the call, was reviewed by someone. [The Applicant] states that this suggests that the "review" was of the audio record of the call.

Please indicate whether a review of the sort mentioned would typically involve a review of the audio recording of a call, and if so, whether it would be possible to conduct a search for the audio recording.

[para 30] The CPS replied:

In review of the record, it indicates that the call was reviewed by reg 9873. This is a Calgary 911 employee who has a responsibility to review the quality of the call on the dispatch system as it has been classified as an advised event. This would have happened by Calgary 911 as part of their processes and not the Calgary Police Service. As we do not conduct these reviews, we are unaware of what Calgary 911's processes were at that time in 2017. We have placed a request with Calgary 911 to see if they have a recording of file 17181624. Retention of audio of non-emergency calls is 13 months, but we are confirming if they have the recording available.

At the time of the request, all requests for 911 audio would have been processed through our Correspondence Unit as a routine disclosure. This is no longer the practice and all requests for audio are now processed through the Access & Privacy section.

[para 31] I am unaware of what response the CPS received from Calgary 911. In the event the record was located, I will order the CPS to consider whether any other exceptions apply, and if none (which seems likely as the call originated from the Applicant), I will order it to disclose the record of the call to the Applicant.

[para 32] Finally, I have undertaken to consider whether the CPS contravened its duty to assist when it provided a record that was outside the scope of the Applicant's specific request. While providing records that were not requested is an error, I do not regard it as having prejudiced the Applicant in this case, since it was only a single record. In other circumstances, for instance where the provision of numerous extra records could make it difficult for an applicant to comprehend the nature of the records, or to know where the boundary lies between what they were and were not seeking, a finding could conceivably be made that a public body had failed in its duty to assist. However, this is not such a case.

[para 33] For the foregoing reasons, I find the CPS met its duty to assist under section 10 of the Act.

**Issue 3: Were the records in the Professional Standards file [16-1002] properly excluded from the application of the Act by reference to section 4(1)(k)?**

[para 34] With respect to this issue, it was not clear to me from its initial submission whether the CPS had actually withheld professional standards records by reference to section 4(1)(k). Given this, as well as its explanation that its current practice is to withhold professional standards records under section 20(1)(f) rather than section 4(1)(k), my recent questions to the CPS included the following:

Is the CPS in possession of records from Professional Standards file 16-1002? If so, were these records properly withheld on the basis that at the time of the access request, disclosure would have interfered with or harmed an ongoing law enforcement investigation, within the terms of section 20(1)(f) of the FOIP Act?

In asking this question, I must also consider whether to allow the late raising of a discretionary exception. Therefore, I ask the CPS to also comment as to whether the present circumstances fall

within the reasoning of earlier orders of this office relating to late raising of discretionary exceptions, for example, P2007-002, P2023-09.

[para 35] The CPS replied:

The Calgary Police Service is not requesting to change the exception used at the time to 20(1)(f). We acknowledge that 4(1)(k) was not the appropriate section to deny these records. As mentioned within the initial submission, this file is now closed, and the Applicant was provided the Disposition letter on July 15, 2020. If the same situation occurred today, we would not apply 4(1)(k) to the records, we would apply 20(1)(f).

A search of our database does not indicate that we received a request from the Applicant for the PSS file 16-1002 since the file was closed. As a result, these records have not been provided to the Applicant.

[para 36] The Applicant made a reply submission to this response, in which she argued that it would not be proper to permit reliance on a different exception if the exception that had initially been claimed did not apply.

[para 37] Earlier orders of this office, including those cited in para 34 above, have held that a public body may be permitted to raise a discretionary exception after a review is requested if the principle or policy reason underlying the initial and the more-recently claimed exception is essentially the same. It is for this reason that I gave the CPS an opportunity to make a submission as to whether this principle, or something like it, applied to its application of section 4(1)(k). However, the CPS chose not to do so, but instead just conceded that the exception it had applied to the records was inapplicable.

[para 38] By implication from its response that “these records have not been provided to the Applicant”, the CPS appears to be, or at least to have been, in possession of records from the Professional Standards file that are responsive to the Applicant’s request but were not provided to the Applicant. (I am not sure of the significance of the “Disposition letter”, but I presume since it was provided that it does not satisfy this aspect of the Applicant’s request.)

[para 39] I agree with the Applicant that if a public body has applied an inappropriate exception, it cannot continue to withhold the records in reliance upon it even though circumstances may change such that its reason for withholding under the original claimed exception no longer applies. Neither can it require the Applicant to make a second request for records that it improperly withheld initially, on the basis that circumstances have changed and it may now be willing to disclose rather than withhold them. Rather, if records were withheld on the basis of an exception that did not apply, and no other discretionary exception is claimed, I must order them to be disclosed, unless a mandatory exception applies.

[para 40] I will therefore order the CPS to consider whether the records to which it referred in its submissions, that it has not provided to the Applicant, are subject to any mandatory exceptions (which could include any personal information of involved individuals), and to disclose to the Applicant any such records that are not.

**Issue 4: If there are any responsive records in the possession of the CPS that are “of RCMP personnel or other law enforcement bodies”, are these records exempt from access because they are not in the CPS’s “custody and control”?**<sup>3</sup>

[para 41] Earlier submissions of the CPS likewise left me unclear as to whether the CPS was or was not in possession of records in its files, that were responsive to the request, that originated with the RCMP, and if it was, then whether its position was that records in its files were not in its custody. My questions to the CPS included the following:

To clarify, is it the position of the CPS, as set out in its submission in this inquiry under Heading 4, that any records that were in its possession that may have originated with the RCMP have already been provided to the Applicant?

[para 42] The CPS replied:

It is our standard practice that if any RCMP records are contained within CPS records, they are denied as per section 21(1)(b) and not disclosed to the Applicant. They are then instructed to make a request to the RCMP to obtain their records.

If RCMP information was contained within any of the Calgary Police Service records on previous disclosures, they would have been denied as per 21(1)(b). We would not have denied them again in subsequent requests if previously denied and the requests overlaps.

As stated in our initial submission, we directed the Applicant to make her request for RCMP or other law enforcement agency records, directly to those law enforcement agencies in the final response for 17-P-1174. We did not utilize section 21(1)(b) on this request, as we did not locate any additional RCMP records, that were not previously addressed in previous access requests.

[para 43] The Applicant responded by noting that the very fact the CPS has a “standard” practice does not mean that withholding the records is in compliance with the Act; in support of this contention she pointed to the fact CPS had acknowledged in the present inquiry that it had been routinely misapplying the section 4(1)(k) exclusion relative to professional standards records.

[para 44] I agree with the Applicant where the CPS has records in its possession, the practice of asking Applicants to seek records in other locations in which they might also exist (in this case, in RCMP files) must be based on consideration of whether an exception to withholding set out in the FOIP Act applies to responsive records in the CPS’s possession.

[para 45] Contrary to earlier decisions of this office, a recent decision of the Alberta Court of Appeal has held that records provided to a municipal police service by the RCMP may be withheld under section 21(1)(b) if all the criteria for the application of that provision have been met. (See *Edmonton Police Service v Alberta (Information and Privacy Commissioner)* 2022 ABCA 397 (CanLII).) The Court of Appeal approved the criteria for application of the provision that had been set out in earlier decisions of this office, which are as follows:

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<sup>3</sup> See note 1 regarding the correct framing of this issue.

- (a) The information must be supplied by a government, local government body or an organization listed in clause (a) or its agencies;
- (b) The information must be supplied explicitly or implicitly in confidence;
- (c) The disclosure of the information must reasonably be expected to reveal the information; and
- (d) The information must have been in existence in a record for less than 15 years.

[para 46] The very fact that records have been provided to the CPS by the RCMP is not a sufficient condition for withholding them; all the criteria must be shown to be met.

[para 47] Therefore, had records (provided to the CPS by the RCMP) that had not been addressed in previous access requests been located in the recent searches, then before their withholding could be upheld, it would have been necessary for the CPS to demonstrate that each of the criteria just listed applied. However, the CPS has indicated that no such new records were located.

[para 48] The CPS did not state affirmatively whether any records provided to it by the RCMP were located and withheld in previous access requests in reliance on section 21(1)(b). However, as already noted earlier in this decision, any records responsive to the present (narrowed) access request did not need to be withheld again, in the sense of providing a specific reference to them and a reason for withholding them. Thus, any responsive records that were supplied to the CPS by the RCMP but withheld in earlier access requests by reference to section 21(1)(b), did not need to be withheld again.

[para 49] Similarly, if section 21(1)(b) was applied in responding to those requests, whether it was properly applied is a question that might have been addressed at the time the records were initially withheld. However, this is not a question that I can revisit relative to the present access request.<sup>4</sup>

#### **IV. ORDER**

[para 50] I make this order under section 72 of the Act.

[para 51] I find that taking account information it provided in its submissions for this inquiry, the CPS has now complied with its duties under section 12 of the Act.

[para 52] I find the CPS complied with its duty to assist under section 10 of the Act.

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<sup>4</sup> I note that in an earlier order involving the Applicant (Order F2020-13), the potential application of section 21(1)(b) to any records/information obtained from the CPIC database, which is in the custody and control of the RCMP, were discussed; however, the CPS indicated that while information sourced from the database might have been incorporated into CPS records, the CPS did not locate any records identifiable as such in the search I directed it to conduct for any such records. It was therefore not necessary to consider the application of section 21(1)(b).

[para 53] In the event the record the CPS requested from Calgary 911 was located, I order the CPS to consider whether any other exceptions apply, and if none, it is to disclose the record of the call to the Applicant.

[para 54] I order the CPS to consider whether records from Professional Standards file 16-1002 that it withheld in reliance on section 4(1)(k), that it has not provided to the Applicant, are subject to any mandatory exceptions, and to disclose to the Applicant any such records that are not.

[para 55] I further order the CPS to notify me and the Applicant, in writing, within 50 days of receiving a copy of this Order, that it has complied with it.

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Christina Gauk, Ph.D.  
Adjudicator and Director of Adjudication  
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