



Office of the
Police Complaint Commissioner

British Columbia, Canada

OPCC File: 2017-14249
March 14, 2019

NOTICE OF REVIEW ON THE RECORD
Pursuant to section 138(1) *Police Act*, R.S.B.C. 1996, c.267

**In the matter of the Review on the Record into the Ordered Investigation against [REDACTED]
[REDACTED] of the Vancouver Police Department**

To: [REDACTED] ([REDACTED]) (Member)
c/o Vancouver Police Department
Professional Standards Section

And to: Superintendent Michelle Davey (Discipline Authority)
c/o Vancouver Police Department
Professional Standards Section

And to: Chief Constable Adam Palmer
c/o Vancouver Police Department
Professional Standards Section

WHEREAS:

Investigation

1. On January 15, 2018, the Office of the Police Complaint Commissioner (OPCC) received information from the Vancouver Police Department (VPD) in relation to [REDACTED]

[REDACTED]

Clayton Pecknold
Police Complaint Commissioner

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2. [REDACTED]
3. The VPD's Professional Standard Section conducted an offline CPIC search and determined that on November 29, 2017, [REDACTED] conducted three queries in relation to the [REDACTED] one for the [REDACTED] wherein specific records were reviewed, one for the home address of the [REDACTED] and one in relation to the [REDACTED]
4. On January 17, 2018, after reviewing the information forwarded by the Vancouver Police Department, former Police Complaint Commissioner Lowe ordered an investigation into the conduct of [REDACTED], pursuant to section 93(1) of the *Police Act*. Vancouver Police Professional Standards investigator, Sergeant Scott Brown conducted an investigation into this matter and on July 17, 2018, submitted the Final Investigation Report (FIR) to the Discipline Authority.
5. On July 31, 2018, following his review of the FIR pursuant to section 112 of the *Police Act*, Inspector Trevor Burmachuk, as the Discipline Authority, recommended substantiation for the following allegations:
 - i. *Corrupt Practice – Unauthorized Use of Police Facilities/Resources*, pursuant to section 77(3)(c)(iv) of the *Police Act*;
 - ii. *Improper Disclosure of Information* pursuant to section (77)(3)(i)(i) of the *Police Act*; and
 - iii. *Corrupt Practice – Unauthorized Use of Police Facilities/Resources*, pursuant to section 77(3)(c)(iv) of the *Police Act*.

Discipline Authority Burmachuk offered [REDACTED] a prehearing conference and proposed range of discipline of advice to future conduct, verbal reprimand or written reprimand.

6. A prehearing conference was held on August 29, 2018, before Inspector Burmachuk, as the Prehearing Conference Authority. An agreement was reached in which [REDACTED] admitted to the allegations of misconduct. Inspector Burmachuk and [REDACTED] agreed to the following disciplinary/corrective measures:
 - i. *Corrupt Practice – Unauthorized Use of Police Facilities/Resources*: verbal reprimand and an order to participate in a review of departmental policy and relevant manuals in relation to accessing CPIC and/or PRIME under the direction of a supervisor.
 - ii. *Improper Disclosure of Information*: verbal reprimand.
 - iii. *Corrupt Practice – Unauthorized Use of Police Facilities/Resources*: verbal reprimand and an order to participate in a review of departmental policy and relevant manuals in relation to accessing CPIC and/or PRIME under the direction of a supervisor.

7. On September 7, 2018, former Police Complaint Commissioner Lowe notified the Discipline Authority and [REDACTED] that he did not approve the disciplinary and/or corrective measures proposed. Former Police Complaint Commissioner Lowe cited his view that the measures imposed did not adequately address the seriousness of [REDACTED]' conduct, including that [REDACTED] conducted the queries in question despite his awareness that those queries were prohibited by law and policy and that the improper disclosure was in relation to a "young person," whose personal information is further protected by the *Youth Criminal Justice Act*. Therefore, pursuant to section 123 of the *Police Act* the matter was set for a discipline proceeding.
8. Pursuant to section 123(4) of the *Police Act*, the Discipline Authority presiding over the discipline proceeding must not have acted as the Prehearing Conference Authority. Therefore, pursuant to section 134 of the *Police Act*, Chief Constable Adam Palmer of the Vancouver Police Department delegated Superintendent Michelle Davey of the Vancouver Police Department for the purposes of presiding over the discipline proceeding.

Discipline Proceeding and Proposed Discipline

9. On January 4, 2019, following the discipline proceeding, and after considering the available evidence and submissions, the Discipline Authority made the following determinations in relation to the allegations:

- i. That on November 29, 2017, [REDACTED], committed *Corrupt Practice - Unauthorized Use of Police Facilities/Resources* pursuant to section 77(3)(c)(iv) of the *Police Act* when on duty, used police equipment or facilities of a municipal police department for purposes unrelated to the performance of duties as a member, to wit: conducted a CPIC and/or PRIME search of a member of the public for a purpose unrelated to his duties as a police officer.

Proposed Disciplinary Measure - Written Reprimand

- ii. That on November 29, 2017, [REDACTED], committed *Improper Disclosure of Information* pursuant to section 77(3)(i)(i) of the *Police Act* by intentionally or recklessly disclosing, or attempting to disclose, information that is acquired by the member in the performance of duties as a member, to wit: improperly disclosed confidential information to a member of the public that he acquired from a CPIC and/or PRIME search.

Proposed Disciplinary Measure - Written Reprimand

- iii. That on November 24, 2017, [REDACTED] committed *Corrupt Practice - Unauthorized Use of Police Facilities/Resources* pursuant to section 77(3)(c)(iv) of the *Police Act* when on duty, used police equipment or facilities of a municipal police department for purposes unrelated to the performance of duties as a member, to wit: conducted a CPIC and/or PRIME search of a family member for a purpose unrelated to his duties as a police officer.

Proposed Disciplinary Measure - Written Reprimand

10. In arriving at a written reprimand, Superintendent Davey stated that the imposition of discipline must be to correct and educate [REDACTED]. Regarding aggravating circumstances, Superintendent Davey, in part, determined that a use of police databases is unacceptable in policy and law, and can erode public trust in police. Superintendent Davey also noted the seriousness of improperly disclosing personal information regarding a youth and that [REDACTED] ought to have known that further disclosure of that personal information could occur.
11. With respect to mitigating factors, Superintendent Davey, in part, determined there was no service record of discipline and that [REDACTED] is deeply apologetic and has taken responsibility for his actions throughout the process. Superintendent Davey also found the following:

"[REDACTED], as well as a police officer. In this case, [REDACTED] was reacting based on learning that [REDACTED] was a person of interest in a police investigation. His reaction included an unauthorized query on a police database that he had access to, while on-duty. His motivation was to [REDACTED], which superseded following policy and law governing this conduct. He was concerned with [REDACTED], wanted to find out more to [REDACTED] and gave him [REDACTED] based on what he learned in his unauthorized search. I find this to be extremely mitigating in this case."
12. [REDACTED] was provided a copy of Superintendent Davey's findings in relation to the allegations of misconduct and determinations on appropriate disciplinary and/or corrective measures at the discipline proceeding. [REDACTED] was informed that if he was aggrieved by either the findings or determinations, he could file a written request with the Police Complaint Commissioner ("the Commissioner") to arrange a Public Hearing or Review on the Record.
13. To date, the OPCC has not received a request for Public Hearing or Review on the Record from [REDACTED].
14. Pursuant to section 138(1) of the *Police Act*, the Commissioner must arrange a Public Hearing or Review on the Record if the Commissioner considers that there is a reasonable basis to believe: that the Disciplinary Authority's findings under section 125(1) are incorrect; the Discipline Authority has incorrectly applied section 126 in proposing disciplinary or corrective measures under section 128(1); or, otherwise considers that a Public Hearing or Review on the Record is necessary in the public interest.

Decision

15. I have reviewed the record of the disciplinary decision, and the associated determinations, pursuant to section 138 of the *Police Act*, I have determined that there is not a reasonable basis to believe that the Discipline Authority's determination as to whether misconduct has been proven are incorrect pursuant to section 125(1) of the *Police Act*.
16. I am of the view, however, that the Discipline Authority's application of section 126 of the *Police Act* was incorrect. In particular, Superintendent Davey took an approach that aimed to correct and educate [REDACTED]. I am of the respectful view that an approach that seeks

to educate [REDACTED] is unworkable and would bring the administration of police discipline into disrepute, pursuant to section 126(3) of the *Police Act* because the evidence was clear that [REDACTED] committed the misconduct in question despite his awareness that his actions would contravene the law and VPD policy.

17. Furthermore, I am of the view that Superintendent Davey erred in her application of section 126 of the *Police Act* in affording undue mitigation to [REDACTED] [REDACTED] [REDACTED] [REDACTED]
18. With respect to the public interest factors outlined in section 138(2) of the *Police Act*, I am of the view that a Public Hearing or Review on the Record is required in the public interest based on the following factors:
 - i. the nature and seriousness of the alleged misconduct;
 - ii. that the conduct has violated, or would be likely to violate a person's dignity; privacy or other rights recognized by law;
 - iii. the conduct has undermined, or would be likely to undermine, the public confidence in the police, the handling of complaints or the disciplinary process; and
 - iv. the disciplinary or corrective measures proposed are inappropriate or inadequate.
19. The conduct in question is serious and involves a significant breach of the privacy rights of a young person as defined by the *Youth Criminal Justice Act*. The conduct undermines public confidence in the police and the disciplinary process due to the fact that the respondent was aware that he would be contravening law and policy, yet used sensitive databases for personal reasons on two occasions. In my view, a written reprimand in this case not only falls short of capturing the seriousness of each individual allegation, but also the totality of the conduct in question. I am also of the view that a written reprimand would bring the administration of police discipline into disrepute.
20. I have determined that at this time, a Public Hearing is not necessary in this particular matter. I am satisfied that it will not be necessary to examine witnesses or receive evidence that is not currently part of the record of disciplinary decision. Further, I'm satisfied that a Public Hearing is not required to preserve or restore public confidence in the investigation of misconduct and the administration of police discipline. I have determined that a Review on the Record is an appropriate means of adjudicative review in these circumstances.
21. I have further determined there is a public interest in receiving guidance from a retired judge regarding the appropriate range of discipline with respect to matters involving the use of police databases for personal reasons and the improper disclosure of personal information. In reviewing the range of discipline/corrective measures from previous *Police Act* matters cited during the discipline proceeding in this matter, I am of the view that the current range established by those cases is not commensurate with the seriousness of breaches of privacy and the use of sensitive information for personal purposes and is out of

step with the public's expectations and the standards expected by professions entrusted with protecting private and sensitive personal information.

22. Accordingly, pursuant to section 137(2) and 141 of the *Police Act*, I am arranging a Review on the Record. The scope of this Review on the Record will be limited to a determination of the appropriate disciplinary or corrective measures with respect to the proven allegations.
23. Pursuant to section 141(2) of the Act, the Review on the Record will consist of a review of the disciplinary decision as defined by section 141(3) of the Act, unless pursuant to section 141(4) of the Act, the Adjudicator considers that there are special circumstances and it is necessary and appropriate to receive evidence that is not part of the record of disciplinary decision or the service record of the member.
24. Pursuant to section 141(5) of the *Police Act*, [REDACTED], or his agent, or legal counsel may make submissions concerning the matter under review.
25. Pursuant to section 141(6) of the *Police Act*, the Police Complaint Commissioner or his commission counsel may make submissions concerning the matter under review.
26. Pursuant to section 141(7) (b) of the *Police Act*, the Adjudicator may permit the Discipline Authority to make submissions concerning the matter under review.
27. Pursuant to section 140(1) of the *Police Act*, I am exercising my discretion not to make this matter public at this juncture. I have made this determination having considered the potential that the identity of young persons related to this matter may be revealed by the publication of the respondent's identity.
28. Pursuant to section 150(1) of the *Police Act*, the Adjudicator may restrict access to information provided to or held by the adjudicator.
29. It is therefore alleged that [REDACTED] committed the following disciplinary default, pursuant to section 77 of the *Police Act*:
 - i. That on November 29, 2017, [REDACTED], committed *Corrupt Practice - Unauthorized Use of Police Facilities/Resources* pursuant to section 77(3)(c)(iv) of the *Police Act* when on duty, used police equipment or facilities of a municipal police department for purposes unrelated to the performance of duties as a member.
 - ii. That on November 29, 2017, [REDACTED], committed *Improper Disclosure of Information* pursuant to section 77(3)(i)(i) of the *Police Act* by intentionally or recklessly disclosing, or attempting to disclose, information that is acquired by the member in the performance of duties as a member.
 - iii. That on November 24, 2017, [REDACTED] committed *Corrupt Practice - Unauthorized Use of Police Facilities/Resources* pursuant to section 77(3)(c)(iv) of the *Police Act* when on duty, used police equipment or facilities of a municipal police department for purposes unrelated to the performance of duties as a member.

THEREFORE:

30. A Review on the Record is arranged pursuant to section 137(2) and 141 of the *Police Act*.
31. Pursuant to the recommendation of the Associate Chief Justice of the Supreme Court of British Columbia, the Honorable Brian Neal, Q.C., Retired Provincial Court Judge, is appointed to preside as Adjudicator in these proceedings, pursuant to section 142(2) of the *Police Act*.

TAKE NOTICE that all inquiries with respect to this matter shall be directed to the Office of the Police Complaint Commissioner:

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DATED at the City of Victoria, in the Province of British Columbia, this 14th day of March, 2019.



Clayton Pecknold
Police Complaint Commissioner