

IN THE MATTER OF THE *POLICE ACT*, R.S.B.C. 1996, c. 367

AND

**IN THE MATTER OF THE REVIEW ON THE RECORD INTO THE REGISTERED
COMPLAINT AGAINST SERGEANT AJMER SANDHU OF THE VANCOUVER
POLICE DEPARTMENT**

ADJUDICATOR'S RULING

BAN ON PUBLICATION

- To: Complainant (Ban on Publication)
- And to: Mr. Eric Gottardi (Counsel for the Complainant)
- And to: Sergeant Ajmer Sandhu, #1730 (Member)
c/o Vancouver Police Department
Professional Standards Section
- And to: Chief Constable Les Sylven (retired) (Discipline Authority)
c/o Central Saanich Police Services
Professional Standards Section
- And to: Chief Constable Adam Palmer
c/o Vancouver Police Department
Professional Standards Section
- And to: Mr. Clayton Pecknold (Police Complaint Commissioner)
- And to: Mr. Mark Underhill (Commission Counsel)
- And to: Mr. Mike Shirreff (Counsel for Sgt. Sandhu)

There is a Ban on Publication of the Identity of the Complainant in this Proceeding

[1] I made an oral ban on publication of the identity of the Complainant in this Review on the Record at a teleconference on the record on [date]. The order was not opposed by any of the participants in the proceeding. Since that order was made, several documents filed and some of

the email correspondence in the matter has contained references to the Complainant by name or information that could lead to identification of the Complainant.

[2] In reasons filed November 5, 2020 relating to an adjournment of the proceedings, I observed as follows:

The matter of the record on an OPCC Review on the Record is a tricky thing, in these electronic times. There are now in the emails on this matter a number of materials containing the complainant's name, or information which could identify the complainant, that could conceivably be subject to a public request for access of one kind or another at some point. I will accordingly ask counsel to be prepared to address the issue of rectifying the state of the record at the next teleconference, on November 10, 2020.

[3] Prior to the November 10, 2020 teleconference, Counsel for the Complainant filed written submissions requesting an order under these (highlighted) portions of Section 150(1)(b) of the *Police Act*:

Power to prohibit or limit attendance or access

150 (1)An adjudicator may, by order, prohibit or restrict a person or a class of persons, or the public, from attending all or part of a public hearing or review on the record, **or from accessing all or part of any information provided to or held by the adjudicator of a public hearing or review on the record,**

(a)if there is an assertion of privilege or immunity over the information,

(b)for any reason for which information must or may be excepted from disclosure by the head of a public body under Division 2 of Part 2 of the *Freedom of Information and Protection of Privacy Act*, or

(c)if the adjudicator has reason to believe that the order is necessary for the effective and efficient fulfillment of the adjudicator's duties under section 141

(10) [*review on the record*] or 143 (9) [*public hearing*].

(2)In making an order under subsection (1), an adjudicator must not unduly prejudice the rights and interests of any person against whom a finding of misconduct, or a report alleging misconduct, may be made.

[4] Counsel for the Complainant relies on Section 22 of the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. [] c. 165 (“FOIPPA”):

Disclosure harmful to personal privacy

22 (1)The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

...

(3)A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

...

(b)the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation...

[5] Again, the order is not opposed by any of the participants in the proceeding.

[6] I do not propose to specify the basis for the order on the record beyond reference to the above sections, other than to say that in my view the Complainant's privacy interests are engaged by the context of the allegations, within the meaning of Section 22(3)(b) of *FOIPPA*. It is important however to also point out that while the allegations arose in the context of an investigation into a possible a violation of law, neither the Complainant nor the respondent Member were the subject of the investigation.

[7] Turning to the scope of the order under Section 150(1)(b) that I perceive to be required at this stage, it must ensure that none of the content of the record of the OPCC file in this matter, including correspondence by email, be disclosed publicly or to an applicant under *FOIPPA* without measures to prevent disclosure of the identity of the Complainant. In addition, to the extent that correspondence between the OPCC and participants in the proceeding that is in the possession of the participants might be engaged by the provisions of *FOIPPA*, or publicized, persons in possession of that correspondence must also be subject to an order not to provide or publicize that information without it first being sufficiently redacted.

[8] Accordingly I consider it appropriate to make the following order pursuant to Section 150(1)(b) of the *Police Act*:

No person who is not a participant or a representative of a participant in these proceedings may access any information or records which are on the record in the matter or in the possession of a participant, in electronic or printed form, and no person may publish any such information, where that information would identify or might tend to identify the complainant in these proceedings, without such information having first been redacted to the satisfaction of the adjudicator or a person appointed by the adjudicator for that purpose.

Delivered at Sechelt, British Columbia, this 20th day of November, 2020.

A handwritten signature in black ink, appearing to read 'C Baird Ellan', followed by a period.

Carol Baird Ellan
Retired Judge, Adjudicator