



Office of the
Police Complaint Commissioner

British Columbia, Canada

OPCC File: 2023-23476
August 9, 2024

NOTICE OF REVIEW ON THE RECORD
Pursuant to section 137(2) *Police Act*, R.S.B.C. 1996, c.267

**In the matter of the Review on the Record into the Ordered Investigation against
Sergeant Peter Gill (retired) of the Victoria Police Department**

To: Sergeant Peter Gill #136 (retired) (Former Member)
c/o Victoria Police Department
Professional Standards Section

And to: Inspector Colin Brown (Discipline Authority)
c/o Victoria Police Department
Professional Standards Section

And to: Chief Constable Del Manak
c/o Victoria Police Department
Professional Standards Section

WHEREAS:

Investigation

1. On March 7, 2023, the Office of the Police Complaint Commissioner (OPCC) received information from the Victoria Police Department (VicPD) in relation to an incident which occurred on February 17, 2023.
2. According to the VicPD, they received an email from a member of the news media indicating that they were in possession of an unredacted Final Investigation Report (FIR) from a historical *Police Act* investigation involving VicPD members. Subsequently, the VicPD confirmed that the news media member did possess a copy of the unredacted FIR.
3. The VicPD reported that the information contained in the FIR included private, non-disclosable information including the identities of four members, third parties, and a vulnerable affected person. The FIR also reportedly contained serious allegations against the members, some of which were not substantiated by the Discipline Authority.

Prabhu Rajan
Police Complaint Commissioner

2nd Floor, 947 Fort Street
PO Box 9895 Stn Prov Govt
Victoria, British Columbia V8W 9T8
Tel: (250) 356-7458 Fax: (250) 356-6503

Toll Free 1 877-999-8707 # Website: www.opcc.bc.ca

4. On March 22, 2023, after reviewing the information provided by the VicPD, the former Police Complaint Commissioner (Commissioner) ordered an investigation into the conduct of an unknown member(s) pursuant to section 93(1) of the *Police Act* (Act). The potential allegation identified was *Neglect of Duty*, pursuant to section 77(3)(m)(ii) of the Act, which is neglecting, without good or sufficient cause, to promptly and diligently do anything that it is one's duty as a member to do, in relation to releasing confidential information.
5. VicPD Professional Standards investigator, Sergeant Brendon LeBlanc, investigated this matter.
6. On September 19, 2023, the OPCC received a request from the Investigator to amend the *Order for Investigation*. The Investigator reported that evidence obtained supported that then Sergeant Peter Gill (Member) be identified as a respondent to the alleged misconduct. The Investigator also noted that there was evidence to suggest the Member may have also disclosed a related Notice of Decision after a Discipline Proceeding ("Notice of Decision") to the media.
7. On October 5, 2023, the former Commissioner amended his *Order for Investigation* to name the Member.
8. On November 6, 2023, the Member retired from the VicPD.
9. On February 20, 2024, the Investigator submitted his FIR to the Discipline Authority.
10. On March 5, 2024, pursuant to section 112 of the Act, Inspector Colin Brown as the Discipline Authority identified that the following allegation of misconduct appeared to be substantiated against the Member:

Allegation #1: *Neglect of Duty*, pursuant to section 77(3)(m)(ii) of the Act for providing unredacted copies of an FIR and Notice of Decision to the media.

Discipline Proceeding and Proposed Discipline

11. On May 13, 2024, following the Discipline Proceeding, the Discipline Authority made the following determination in relation to the allegation against the Member:
 - (i) That the Member committed *Neglect of Duty*, pursuant to section 77(3)(m)(ii) of the Act, for providing an unredacted copy of the FIR and "Notice of Decision" from a prior *Police Act* investigation to the media.

Finding: Substantiated

Proposed Disciplinary Measure: Reduction in rank from sergeant to first class constable

12. The Member was provided copies of the Discipline Authority's findings in relation to the allegation of misconduct and determination on appropriate disciplinary and/or corrective

measures at the Discipline Proceeding. The Member was informed that if he was aggrieved by either the findings or determinations, he could file a written request with the Commissioner to arrange a public hearing or review on the record.

Request for a Public Hearing or Review on the Record

13. On June 13, 2024, the Commissioner received a request for a public hearing or review on the record from the Member pursuant to section 137(1) of the Act.
14. In his request, the Member asserted that this matter ought to have been referred to an external party and that the Discipline Authority had exhibited bias and discrimination. The Member further opined that the investigation and discipline proceeding should have been delayed or postponed due to his health issues, which he notes he provided information on at various points during the investigation. Additionally, the Member asserted that the discipline imposed is inconsistent with discipline imposed in similar matters. The Member concluded by advising that he would be “seeking to supplement the evidentiary record...assuming [he is] healthy enough to participate in this process.”
15. Pursuant to section 137(1) of the Act, where a Discipline Authority proposes a disciplinary measure of dismissal or reduction in rank, upon written request from the member, the Commissioner must promptly arrange a public hearing or review on the record.

Decision

16. Pursuant to section 137(2) of the Act, the Commissioner may arrange a review on the record under section 141 instead of a public hearing if the Commissioner is satisfied, in the circumstances, that it is unnecessary to do any of the following: examine or cross-examine witnesses; receive evidence that is not part of the record of the disciplinary decision described in section 141(3) of the Act or the service record of the member or former member, and; a public hearing is not required to preserve or restore public confidence in the investigation of misconduct and the administration of police discipline.
17. Having considered the request submitted by the Member, and the record of proceedings in this matter, I have determined that a review on the record is appropriate in the circumstances instead of a public hearing.
18. Specifically, the investigative record in this matter is thorough and complete, notwithstanding the fact that the Member has not provided evidence responding to his alleged misconduct. In this regard, it appears that multiple attempts were made to accommodate the Member and facilitate his participation. This included inviting the Member to provide evidence in writing, issuing multiple extensions to the statutory investigative timeline, and the Discipline Authority issuing a direction for further investigative steps to allow the Member an additional opportunity to provide a statement.
19. I note that the Member, who was assisted by a union agent, did not request any further investigation following the submission of the Final Investigation Report, nor did he request the attendance of any witnesses at the discipline proceeding. The Member participated in the proceeding by authorizing a union agent to attend the discipline proceeding on his

behalf and by submitting a statement detailing his professional career and accomplishments. As of the date of this order, he has not denied the alleged misconduct.

20. I further note that, while the Member has expressed an intention to “supplement the evidentiary record,” he indicated in his request that this is contingent on his health but has not indicated when he would be in position to do this or provided any indication as to the nature of the evidence he wishes to provide.
21. In the circumstances, I am satisfied that a public hearing is neither necessary nor required. Taking the above-noted factors into account, the evidentiary record is sufficient for the purposes of an effective review on the record, and it is not necessary to examine or cross examine witnesses. I am also of the view that a public hearing is not required to preserve or restore public confidence in the investigation of misconduct and the administration of police discipline.
22. Accordingly, pursuant to section 137(2) and 141 of the Act, I am arranging a review on the record.
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 and will include all records related to the investigation and discipline proceeding, unless the adjudicator determines that there are special circumstances pursuant to section 141(4) of the Act, and it is necessary and appropriate to receive evidence that is not part of the disciplinary decision or service record of the member.
24. In arriving at this determination, I have considered that the adjudicator can receive submissions in a review on the record from the Member and others:
 - (a) Pursuant to section 141(5) of the Act, the member, or his agent or legal counsel, may make submissions concerning the matters under review.
 - (b) Pursuant to section 141(6) of the Act, the Commissioner or his commission counsel may make submissions concerning the matters under review.
 - (c) Pursuant to section 141(7)(b) of the Act, the Adjudicator may permit the Discipline Authority to make oral or written submissions concerning the matters.
25. It is therefore alleged that the Member committed the following disciplinary default, pursuant to section 77 of the Act:
 - (i) *Neglect of Duty*, pursuant to section 77(3)(m)(ii) of the Act, which is neglecting, without good or sufficient cause, to promptly and diligently do anything that it is one’s duty as a member to do. Specifically, by providing unredacted copies of an FIR and “Notice of Decision” to the media.

THEREFORE:

26. A review on the record is arranged pursuant to section 137(2) and 141 of the Act.

27. Section 142(1) of the Act requires the Commissioner to appoint an adjudicator for a review on the record. An appointment under section 142(1) of the Act must be made pursuant to section 177.2 of the Act.
28. Section 177.2 of the Act, in turn, requires the Commissioner to request the Associate Chief Justice of the Supreme Court of British Columbia to consult with retired judges of the Provincial Court, Supreme Court, and Court of Appeal and recommend retired judges who the Commissioner may include on a list of potential adjudicators. Appointments under the Act are to be made in accordance with published procedures established under section 177.2(3).
29. On June 13, 2024, I published the OPCC's appointment procedures under section 177.2(3) of the Act (the "Appointment Procedures") and the list of retired judges who may be appointed for the purposes of sections 117, 135, and 142.
30. In accordance with the Appointment Procedures, I have appointed the Honourable James Threlfall, retired Provincial Court Judge, to preside as Adjudicator in these proceedings pursuant to sections 142(1) and (2) of the Act. I have considered the factors as set out in the Appointment Procedures, namely:
 - (a) the provision under which the appointment is being made;
 - (b) the current workloads of the various retired judges;
 - (c) the complexity of the matter and any prior experience with the *Police Act*; and
 - (d) any specific expertise or experience of a retired judge with respect to a particular issue or sensitivity associated with the matter.
31. Retired Judge James Threlfall has confirmed his availability to preside over this matter and reported no conflicts.

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

501 - 947 Fort Street, PO Box 9895 Stn Prov Govt, Victoria, BC V8W 9T8
Telephone: 250-356-7458 • Toll Free: 1-877-999-8707 • Facsimile: 250-356-6503

DATED at the City of Victoria, in the Province of British Columbia, this 9th day of August 2024.



Prabhu Rajan
Police Complaint Commissioner

Office of the
Police Complaint Commissioner