



Office of the
Police Complaint Commissioner

British Columbia, Canada

RR 2024-04
OPCC File: 2022-23004

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
Constable Ryan Buhrig of the Surrey Police Service**

To: Constable Ryan Buhrig (#62) (Member)
c/o Surrey Police Service
Professional Standards Section

And to: Inspector Steve Meaden (External Investigative Agency and
c/o Metro Vancouver Transit Police External Discipline Authority)
Professional Standards Section

And to: Chief Constable Norm Lipinski
c/o Surrey Police Service
Professional Standards Section

WHEREAS:

Investigation

1. On December 21, 2022, the Office of the Police Complaint Commissioner (OPCC) received information from the Surrey Police Service (SPS) in relation to an incident which occurred on November 22 and December 7, 2022.
2. According to the information authored by Assistant Commissioner Brian Edwards of the Surrey Royal Canadian Mounted Police (RCMP) to SPS Chief Constable Norm Lipinski, it was alleged that an unknown SPS member captured a screenshot of a police mobile data terminal (MDT). The information on the MDT reportedly contained information from the Surrey Operations Communications Centre sent to all Surrey members on November 22, 2022. Assistant Commissioner Edwards further reported that the Surrey Police Union tweeted a post that depicted the unvetted screen shot of the MDT on December 7, 2022. A vetted version of the screenshot had previously been released by a local media agency.

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Police Complaint Commissioner

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3. Assistant Commissioner Edwards reported that the release of the information contained on the MDT violated section 8(1) of the *Privacy Act* and RCMP security policies.
4. On January 31, 2023, after reviewing the information forwarded by the SPS, the former Police Complaint Commissioner (Commissioner) ordered an external investigation pursuant to section 93(1) of the *Police Act*, into the conduct of a member(s) whose identity was not known at the time.
5. The former Commissioner was of the opinion that it was necessary in the public interest that the matter be investigated by an external police department, pursuant to section 93(1)(a) and section 93(1)(b)(ii) of the *Police Act* and directed that the Metro Vancouver Transit Police (MVTP) conduct the external *Police Act* investigation. In addition, the former Commissioner considered it necessary in the public interest that a person other than the Chief Constable of the SPS or their delegate be the Discipline Authority in relation to this matter and designated Chief Officer Dave Jones (now retired) of the MVTP to exercise the powers and perform the duties of a Discipline Authority. MVTP Professional Standards investigator, Sergeant Rick Manning, conducted an investigation into this matter and on February 8, 2024, he submitted the Final Investigation Report (FIR) to the Discipline Authority.
6. During the course of the investigation, Constable Ryan Buhrig and two other members were identified as the respondent members.
7. On February 22, 2024, following the review of the FIR, Inspector Chris Mullin, as the designated Discipline Authority, issued his decision pursuant to section 112 of the *Police Act* in this matter. Specifically, the Discipline Authority determined that the allegation of *Improper Disclosure of Information*, pursuant to section 77(3)(i)(i) of the *Police Act*, appeared to be substantiated against Constable Buhrig (Member). The Discipline Authority determined that the allegation of *Improper Disclosure of Information* pertaining to the other two members did not appear to be substantiated.
8. The Discipline Authority offered the Member a confidential without prejudice Prehearing Conference. The Member did not accept the offer of a Prehearing Conference.
9. On March 12, 2024, Inspector Steve Meaden, as the new designated Discipline Authority, notified the Member that a Discipline Proceeding would be held in relation to the allegation, namely *Improper Disclosure of Information* pursuant to section 77(3)(i)(i) of the *Police Act*.

Discipline Proceeding

10. On July 18, 2024, following the Discipline Proceeding and after considering the available evidence and member submissions, the Discipline Authority determined that the Member did not commit *Improper Disclosure of Information* pursuant to section 77(3)(i)(i) of the *Police Act*.

11. The Discipline Authority stated his conclusion as follows:

*“In considering the totality of the circumstances relevant to the alleged misconduct of Improper Disclosure of Information, I am satisfied, on a balance of probabilities there is insufficient clear, cogent, and convincing evidence to support substantiation. Therefore I find the allegations against Constable Buhrig to be: **unsubstantiated.**”*

12. The Member was provided a copy of the Discipline Authority’s findings in relation to the allegation of misconduct. The Member was informed that if he was aggrieved by the findings, he could file a written request with the Commissioner to arrange a public hearing or review on the record. No request was received from the member.

Section 138 of the Police Act

13. The *Police Amendment Act, 2024*, S.B.C. 2024, c. 16 (Bill 17) introduced changes to section 138 of the *Police Act*, which addresses the Commissioner’s discretion to arrange a public hearing or review on the record.

14. The Commissioner must arrange a public hearing or review on the record if, after considering the factors referred to in subsection 138(2), the Commissioner determines that a public hearing or review on the record is necessary in the public interest.

15. I have considered all of the factors set out in subsection 138(2). In particular, I have significant concerns regarding the Discipline Authority’s legal analysis in relation to the allegation of misconduct.

16. In my respectful view, the test the Discipline Authority applied for *Improper Disclosure of Information* under section 77(3)(i) appears to be incorrect. In applying the test for *Improper Disclosure*, the Discipline Authority imported several elements which do not appear in section 77(3)(i). Specifically, the decision indicates the Discipline Authority conducted his analysis on the presumption that *Improper Disclosure* requires proof of elements including that:

- a. the information in question was “police protected information”;
- b. the information in question was not accessible to the public through other means;
and
- c. the respondent member lacked “good and sufficient cause” for disclosing the information in question.

17. These elements do not appear in the definition of *Improper Disclosure* in section 77(3)(i) and the Discipline Authority’s decision does not explain why they formed part of his analysis.

18. The Discipline Authority’s decision also raises a number of other important legal issues requiring review, including:

- a. the application of professional responsibilities under the *Police Act* to members who act in union roles and any immunity for members who act in those roles;
 - b. the relevance of legal advice sought by a member in determining whether the member's conduct is misconduct under the *Police Act*; and
 - c. the proper use of opinion evidence from the Chief Constable of the subject member's police department in determining whether a member's conduct is misconduct under the *Police Act*.
19. The nature of the alleged misconduct is also an important factor. If substantiated, it involves the intentional disclosure to the media by an SPS member of information pertaining to the operations of the Surrey Operations Communications Centre. That disclosure has potentially harmful implications for trust and cooperation between the Surrey RCMP and the SPS, and in turn, public confidence in policing.

Decision

20. Pursuant to section 138(1) of the *Police Act*, I have considered the factors in section 138(2) of the *Police Act* and determined that it is necessary in the public interest for this matter to be reviewed.
21. In the circumstances, I am satisfied that a public hearing is neither necessary nor required. First, 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. In my view, the adjudicator is well placed to independently weigh the issues based on the available evidence.
22. 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.
23. Accordingly, pursuant to section 138(1) and 141 of the Act, I am arranging a review on the record.
24. 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.
25. 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.

26. It is therefore alleged that the Member committed the following disciplinary default, pursuant to section 77 of the Act:

- (i) *Improper Disclosure of Information*, pursuant to section 77(3)(i)(i) of the *Police Act*, which is intentionally or recklessly disclosing, or attempting to disclose, information that is acquired by the member in the performance of duties as a member.

THEREFORE:

27. A review on the record is arranged pursuant to section 138(1) and 141 of the *Police Act*.
28. 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.
29. 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).
30. 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.
31. In accordance with the Appointment Procedures, I have appointed Brian Neal, K.C., 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.

Retired Judge Neal 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:

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DATED at the City of Victoria, in the Province of British Columbia, this 1st day of October 2024.



Prabhu Rajan
Police Complaint Commissioner