

Subject Officer: *CSI. GRUS*

Exhibit Number: *1 #9*

Date: *JAN 28, 2023*

IN THE MATTER OF A HEARING UNDER THE *POLICE SERVICES ACT*, R.S.O. 1990, C.  
P. 15 as amended

Signature: 

Case No. 22-0063

B E T W E E N

**OTTAWA POLICE SERVICE**

*Respondent/Prosecutor*

- and -

**CONSTABLE HELEN GRUS (# 1631)**

*Applicant/Subject Officer*


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**RESPONDENT'S FACTUM**  
**Response to Applicant's Motion for Disclosure**

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Dated: January 12, 2023

**Angela Stewart**  
Legal Counsel  
Ottawa Police Service

  
Counsel for the Respondent Ottawa  
Police Service

## **PART I – STATEMENT OF FACTS**

1. The Respondent Ottawa Police Service (“OPS”) accepts as substantially correct, for the purposes of this application, the facts as set out by the Applicant in her factum.

## **PART II – ISSUES**

2. What is the applicable legal test to order production in the circumstances?
3. Has the Applicant met her burden as required by the test outlined in *West Park*?

## **PART III – THE LAW**

### **A. Procedural fairness rules govern the Prosecution’s general disclosure obligation:**

4. Disclosure is governed by the administrative law principle of procedural fairness and statutory disclosure obligations. The applicable standard of disclosure is found in section 83(5) of the *Police Services Act* (PSA), which reads:

“Before the hearing, the police officer and the complainant, if any, shall each be given an opportunity to examine any physical or documentary evidence that will be produced or any report whose contents will be given in evidence.”

*Police Services Act*, R.S.O. 1990, c. P.15.

5. *Police Service Act* hearings are also governed by the *Statutory Powers Procedure Act* (SPPA):

#### Disclosure

5.4 (1) If the tribunal’s rules made under section 25.1 deal with disclosure, the tribunal may, at any stage of the proceeding before all hearings are complete, make orders for

- (a) the exchange of documents;
- (b) the oral or written examination of a party;
- (c) the exchange of witness statements and reports of expert witnesses;
- (d) the provision of particulars;
- (e) any other form of disclosure.

*Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22.

6. Section 12(1) of the SPPA provides that a tribunal may require any person, including a party, by summons

- (a) to give evidence on oath or affirmation at an oral or electronic hearing; and
- (b) to produce in evidence at an oral or electronic hearing documents and things specified by the tribunal, relevant to the subject-matter of the proceeding and admissible at a hearing.

*Statutory Powers Procedure Act, R.S.O. 1990, c. S.22.*

7. The SPPA also provides for “liberal construction of Act and rules”:

- (2) This Act, and any rule made by a tribunal under subsection 17.1 (4) or section 25.1, shall be liberally construed to secure the just, most expeditious and cost-effective determination of every proceeding on its merits.

*Statutory Powers Procedure Act, R.S.O. 1990, c. S.22.*

8. In *Police Service Act* hearings, a police officer is only entitled to be given an opportunity to know the case to be met, to have an opportunity to test the evidence against him or her, and to provide evidence on his or her own behalf.

9. Fairness requires that a party who will be negatively affected by a decision must first be informed of the case to be met. Disclosure enables a party to review the alleged facts and the supporting evidence, to prepare to respond with evidence that rebuts or provides context, and to prepare submissions explaining how the evidence should be analyzed and weighed.

Blake, Sara, *Administrative Law in Canada*, 6th edition, Lexis Nexis  
Canada Inc., 2017, at page 39.

10. Criminal disclosure rules do not apply to hearings under the *Police Services Act*. These hearings are administrative disciplinary hearings concerning conduct in the workplace as between an employer and an employee. Disclosure is governed by the administrative law principles of procedural fairness and statutory and common law disclosure obligations.

*Cardi v. Peel Regional Police Service*, 2013 OCPC 10 at paras. 80-81.

11. Disciplinary actions pursuant to the *Police Services Act* are focused on controlling conduct in the workplace as between the employer and employee. It is a private and internal matter, essentially of labor relations, that happens to be mandated by public statute:

“In the traditional labour relations context, matters or issues of employee discipline are essentially of a private nature between the parties, employer and employee, and the prerogative of management, subject to review in accordance with any agreement, collective or otherwise, that may be in force between the parties or their representatives. Although there is a



public aspect to policing which mandates a disciplinary procedure somewhat different than that found in the traditional private employment context, disciplinary proceedings remain, nonetheless, essentially a matter of labour relations within the police force, an internal disciplinary procedure between the officer (employee) and his or her superior (employer). See, for example, *Colledge v. Niagara (Region) Commissioners of Police* (1983), 1983 CanLII 1914 (ON CA), 40 O.R. (2d) 340, 142 D.L.R. (3d) 655 (Div. Ct.) [affd (1983), 44 O.R. (2d) 289, 4 D.L.R. (4th) 423 (C.A.)]; leave to appeal to S.C.C. refused (1984), 55 N.R. 319n, 3 O.A.C. 319n], per Eberle J. at p. 342 O.R., p. 658 D.L.R., and *Trumbley v. Fleming* (1986), 1986 CanLII 146 (ON CA), 55 O.R. (2d) 570, 29 D.L.R. (4th) 557 (C.A.), per Morden J.A. at p. 589 O.R., pp. 576-77 D.L.R., affirmed sub nom. *Trumbley and Pugh v. Metropolitan Toronto Police*, 1987 CanLII 43 (SCC), [1987] 2 S.C.R. 577, 45 D.L.R. (4th) 318. That the disciplinary procedure is mandated by regulations passed pursuant to a public statute does not alter the fundamentally private and internal nature of the disciplinary process. The difference is procedural, not substantive.”

*Godfrey v. Ontario (Police Commission)*, 1991 CanLII 7115 (ONSC Div. Ct.).

#### **B. *Stinchcombe* does not apply:**

12. Respectfully, the Applicant incorrectly relies on the criminal law disclosure regime established in *R v. Stinchcombe* in support of her argument for disclosure. *Stinchcombe* does not govern production in the administrative context. Indeed, the Commission has repeatedly refused to import the criminal disclosure principles articulated in *Stinchcombe* into the police complaint and discipline process.

Paul Ceysens, *Legal Aspects of Policing*, (Toronto: Earls court, 1994) (loose-leaf updated June 2019, Update 35) vol. 1, c.5 at 227.

13. The Applicant refers to decisions involving the Law Society, the Racing Commission and the Board of Ophthalmic Dispensers to support her position as to the standard for disclosure (*Waxman*, *Markendy* and *Savone*, at paragraphs 47-50 of the Applicant’s factum). These cases are of little, if any, assistance to this tribunal. The facts of the cases are dissimilar, and they do not account for more recent and more persuasive Ontario Civilian Police Commission and Court decisions that speak directly to *Police Service Act* hearings.

14. Though the Commission and this Tribunal do, from time to time, adopt principles of law from other tribunals or areas of law, there is no novel standard or principle being suggested by the Applicant arising from this case, nor any argument being made that this Tribunal should adopt a different standard.

15. The Applicant also references the Supreme Court of Canada decision in *May and Ferndale* at paragraph 44 of her factum, which does in fact govern disclosure rules in administrative

proceedings. However, the relevant paragraph, which immediately precedes the one cited by the Applicant in her factum is omitted:

"It is important to bear in mind that the Stinchcombe principles were enunciated in the particular context of criminal proceedings where the innocence of the accused was at stake. Given the severity of the potential consequences the appropriate level of disclosure was quite high. In these cases, the impugned decisions are purely administrative. These cases do not involve a criminal trial and innocence is not at stake. The Stinchcombe principles do not apply in the administrative context."

*May v. Ferndale Institution*, 2005 SCC 82 (CanLII) at para. 91.

**C. The applicable legal test when disclosure is contested is set out in *West Park*:**

16. The SPPA is silent as to the issue of contested disclosure applications, but the legislation does allow for tribunals to make their own procedures and practices, and to make rules for those procedures and practices. The Ontario Civilian Police Commission has adopted the test in *West Park* for contested disclosure applications. The Applicant must satisfy a four-part test, summarized as follows in *West Park Hospital v. Ontario Nurses' Assn.*:

"First, the information requested must be arguably relevant. Second, the requested information must be particularized so there is no dispute as to what is desired. Third, the Board of Arbitration should be satisfied that the information is not being requested as a "fishing expedition." Fourth, there must be a clear nexus between the information being requested and the positions in dispute at the hearing. Further, the Board should be satisfied that disclosure will not cause undue prejudice. In this regard, the criteria set out in the Desmarais and Morrisette case are applicable in terms of weighing whether or not privileged information should be protected."

*West Park Hospital v Ontario Nurses' Assn.*, [1993] OLAA No 12 at para. 20.

*Ontario Civilian Police Commission v. Deputy Chief Uday Jaswal*, 2021 ONCPC 6 at para. 25.

*Gordenier v. The Ontario Provincial Police*, 2022 ONCPC 6 at paras. 14-15.

**IV - ANALYSIS & RESPONSE**

17. The Applicant has brought a motion for 31 pieces of disclosure. 10 items of disclosure have been provided to the Applicant in response to this Motion. Below the OPS will address in detail the remaining items sought by the Applicant. Some items are of sufficient similarity that they have been grouped together.



“All/any notes of S/Sgt ROSSETTI as she spoke with/was interviewed by Sgt ARBUTHNOT as per Sgt ARBUTHNOT's notes on 21 March 2022 at 1330hrs”. (Item i at paragraph 40 of the Applicant's factum).

18. As per the Prosecution's disclosure letter of December 17, 2022, S/Sgt. Rossetti made no notes; there is nothing to disclose.

“All/any notes of S/Sgt DIKAH and Insp O'TOOLE in relation to meeting with Sgt ARBUTHNOT on 7 June 2022 at 1005hrs”. (Item ii at paragraph 40 of the Applicant's factum).

19. S/Sgt Dikah's notes have been disclosed as of January 10, 2023. Inspector O'Toole made no notes of this meeting. There is nothing further to disclose.

“Audio recording or notes of interview with S/Sgt ROSSETTI and only handwritten notes from Sgt ARBUTHNOT form his interview with S/Sgt ROSSETTI on March 21, 2021 at 1330hrs”. (Item iv at paragraph 40 of the Applicant's factum).

20. No audio recording of this interview was made. As indicated in the response to item (i) at paragraph 18 of this factum, S/Sgt. Rossetti made no notes of this meeting. All of Sgt. Arbuthnot's notes have been disclosed as of August 29, 2022. There is nothing further to disclose.

“Entire email chain between Helen GRUS and S/Sgt ROSSETTI on 9th/10th September 2021; Subject line "With all due respect, Helen Grus #1631”. (Item v at paragraph 40 of the Applicant's factum).

21. This has been disclosed as of January 10, 2023.

“In relation to disclosed email attached (FW Infant deaths), copies of the preliminary and final autopsy reports for 2021 infant deaths”. (Item iii at paragraph 40 of the Applicant's factum).

“An anonymized report on OPS Personnel who have reported Vaccine Adverse Events since January 1, 2020 - showing details of the types of adverse events, types and doses of vaccines, dates of injections, reporting date, and time off work if any”. (Item 26 at paragraph 42 of the Applicant's factum).

22. The Applicant has not established how the requested records will be arguably relevant to that issue. That is to say, the Applicant has not provided evidence in her Application to support this request.

23. Autopsy reports are properly third-party records and should be sought by way of a summons to the appropriate coroners' officers. However, the Respondent OPS will respond substantively to the Applicant's request for autopsy reports in this motion.

24. In the Ontario Civilian Police Commission decision in *Jaswal*, the Commission accepted that it has the jurisdiction to order production of third-party records.

25. The Respondent OPS takes no position on part 2, it is clear that the Applicant is seeking preliminary and final autopsy reports. Where the Respondent fails to meet the *West Park* test is at parts 1, 3 and 4.

26. Turning to part one of the *West Park* test the requirement that the information must be arguably relevant. The Applicant has failed to articulate the relevance of these reports.

27. The request for disclosure of infant autopsy reports could only possibly be properly characterized as a “fishing expedition”. There is zero nexus between these reports and the issue at hand. The applicant is charged with Discreditable Conduct pursuant to the PSA. The particulars involve allegations of accessing numerous child and infant death files to which she was not assigned for some self-assigned project. The officer is further alleged to have contacted a father of one of deceased infants to inquire about the mother’s vaccination status. The details of the of the nine child and infant death autopsy reports are completely unrelated to this PSA proceeding.

28. This request is very broad. Presuming “Vaccine Adverse Event” refers to negative health effects experienced as a result of the COVID-19 vaccine, where this request must fail is on parts 1, 3, and 4 of the *West Park* test.

29. At best, the Applicant’s position would engage the Tribunal in a fishing expedition, and more likely would draw the tribunal into complicated and speculative questions of public health and science, both of which are beyond the purview of the *Police Services Act*.

30. Though this is an additional consideration over and above the *West Park* test, it should be noted that these records all contain extremely sensitive personal and personal health information of parties that are not subject to these proceedings, have no standing and will not be called as witnesses.

“Witness list and summaries of witness anticipated evidence from the Prosecutor”. (Item 1 at paragraph 42 of the Applicant’s factum).

31. This has been disclosed as of January 10, 2023.

“All investigation notes that are material and relevant;,” “Professional Standards Expert Evidence” and “PSU File No. 22-0063 all records, notes et cetera”. (Items 2, 3 and 27 at paragraph 42 of the Applicant’s factum).

32. This request must fail on part 2 of the *West Park* test. The OPS submits that the requested records are not sufficiently particularized. No arguable relevance has been articulated by the Applicant. Due to a lack of detail, it cannot be known whether this is a fishing expedition or whether there is a nexus between the records and the Applicant’s position.



33. The Applicant has made numerous requests for records which overlap and are of varying degrees of specificity. As a result, it remains unclear exactly what records the Applicant is requesting, and, therefore, the request is not sufficiently particularized as required by the this prong of the *West Park* test.

“Any information as to media leaks or communications to Yogaretnam and other Media”.

“Decision to not investigate media leaks to Yogaretnam and other media”.

“Decision to close any and all OPS investigations into any media leaks”.

“Information and notes as to OPS Professional Standards refusal on April 7, 2022 grant request by Grus that PSU investigate the leaks”.

“The full statement to news media ‘sent March 15, at 4:06pm’ including the writer’s name and the recipients”. (Items 4-6, 14 and 16 at paragraph 42 of the Applicant’s factum).

34. The Applicant has not articulated how communications or decisions regarding a media leak have any relevance to this PSA matter.

35. The request is sufficiently particularized, though duplicative.

36. Without any information about the relevance of these items, it is difficult to characterize this anything but a fishing expedition. For the reasons outlined above in satisfaction of parts one to three of the *West Park* test, the OPS submits that there does not exist a clear nexus between the records being requested and the positions in dispute.

“Email from PSU to Grus stating there would be no investigation”. (Item 15 at paragraph 42 of the Applicant’s factum).

37. This has been disclosed as of January 10, 2023.

“A copy of the General Occurrence Report 22-7482 and investigation notes including evidence of printing”. (Item 7 at paragraph 42 of the Applicant’s factum).

38. The OPS is not alleging that Cst. Grus printed General Occurrence (GO) Report 22-7482.

39. Again, the Applicant has not argued the relevance of this GO. The request is sufficiently particularized. It appears once more that the Applicant intends to engage in a fishing expedition.

“A party to an administrative hearing such as the one decided by the Hearing Officer is not entitled to use a request for disclosure to rummage around the files of the adverse party to see if a case can be made. Such a party must be able to articulate why the requested material is relevant and is not entitled to base a



disclosure application or argument on suspicion or speculation alone.” [Emphasis added]

*Cardi v. Peel Regional Police Service*, 2013 OCPC 10 at para. 82.

40. GO 22-7482 is one of nine related OPS records that Cst. Grus is alleged to have accessed as part of the Notice of Hearing. It is important to remember that Cst. Grus is not facing an allegation of Insubordination for the access itself, she is alleged to have used information gleaned from her RMS access in an inappropriate way or for an inappropriate purpose. The contents of the records at issue are extremely sensitive and contain details regarding infant deaths.

41. The prosecution does not intend to rely on this document (and would obviously be obligated to produce it otherwise). No nexus has been established.

“Email dated January 21, 2022 from Det Renee STEWART to Sgt Julie DOBLER”. (Item 8 at paragraph 42 of the Applicant’s factum).

42. This has been disclosed as of January 10, 2023.

“Email dated January 21, 2022 from Det Renee STEWART to Sgt Julie DOBLER”. (Item 9 at paragraph 42 of the Applicant’s factum).

43. No such email exists; there is nothing to disclose.

“Email dated February 2, 2022 from det STEWART to Sgt Marc-Andre GUY”. (Item 10 at paragraph 42 of the Applicant’s factum).

44. This has been disclosed as of January 10, 2023.

“All notes and emails of Sgt Marc-Andre GUY pertaining the Chief’s Complaint”. (Item 11 at paragraph 42 of the Applicant’s factum).

45. This has been disclosed as of January 10, 2023.

“OPS Information General User Acknowledgement Form”. (Item 12 at paragraph 42 of the Applicant’s factum).

46. This has been disclosed as of January 10, 2023.

“Authorizations to Intercept Private Communications, namely decision to wiretap the Applicant”. (Item 13 at paragraph 42 of the Applicant’s factum).

47. There was no Wiretap authorization sought or granted in relation to this PSA matter. Further, any application to access materials filed and sealed in support of a *Criminal Code* s.188 (wiretap) authorization must be brought pursuant to section 187(1.3) of the *Criminal Code*, i.e.,

an application to unseal the packet must be brought before a provincial court judge, a judge of a superior court of criminal jurisdiction, or a judge as defined in section 552 of the *Criminal Code*.

*Criminal Code*, R.S.C., 1985, c. C-46.

“Details (including but not limited to dates and attendees) of meetings /communications between personnel from the Public Health Agency of Canada (“PHAC”) and OPS personnel - whether involving other agencies or not – that occurred between November 1, 2019 and the current date”. (Item 17 at paragraph 40 of the Applicant’s factum).

48. The applicant has not articulated any relevance of the above-sought records. This request is also extremely broad, insufficiently particularized and speculative.

“From January 1, 2020 to the current date produce information showing how many times OPS personnel accessed reports on the RMS where they were not the reporting officer or assigned to the case mentioned in the report”.

“From January 1, 2020 to the current date produce information showing how many times OPS personnel accessed reports on the RMS where they were not the reporting officer or assigned to the case mentioned in the report and worked with a different unit than the reporting officer or officer in command of the case”.

“From January 1, 2020 to the current date produce information showing how many RMS reports were locked to prevent general access without special authorization or assignment, including the OPS units that imposed access controls”.

“From January 1, 2020 to the current date produce information showing how many RMS reports contain alerts to notify the report creator or officer in charge of a case that another officer had examined the report / record”. (Items 18-21 at paragraph 42 of the Applicant’s factum).

49. It bears repeating that the mere fact of accessing RMS is not part of the Notice of Hearing, i.e., Cst. Grus is not alleged to have committed Insubordination. Whether other officers accessed files not their own, or outside their unit has no bearing on this case.

50. This request is overbroad and would shed no light on the salient issues in this case. A request for records of this nature and covering this span of time is clearly a fishing expedition.

“Copy of the OPS Computer Forensics Unit Report on Detective Grus’ workstation hard drive”. (Item 22 at paragraph 42 of the Applicant’s factum).

51. This has been disclosed as of January 10, 2023.

“Copy of the Forensics Investigator(s) notes and draft reports”. (Item 23 at paragraph 42 of the Applicant’s factum).

52. The Forensic Investigator, Cst. Desjardin's full forensic report along with a supplementary chart has been disclosed to the Applicant. Emails between Sgt. Arbuthnot, the assigned PSU investigator and Cst. Desjardins have also been disclosed. These pieces of disclosure pertain to an investigation into whether Cst. Grus had saved or downloaded records relating to the autopsy reports onto a USB. The report contains all the relevant information that the Applicant might require. The Applicant has not articulated the relevance of a draft report or the notes of the forensic investigator. The Applicant is fishing to see what she can find. There has been no nexus established between the request and the position of the Applicant, particularly in light of the disclosure that has already been made.

"Copies of internal communications between any OPS Unit or Officer and the Computer Forensics Unit and assigned investigators - relating to the Grus case". (Item 24 at paragraph 42 of the Applicant's factum).

53. This has been disclosed as of January 10, 2023.

"All communications, emails, reports, notes of any kind between the Information and Privacy Commission (IPC) and the Ottawa Police Service relating to the Grus case". (Item 25 at paragraph 42 of the Applicant's factum).

54. This request is sufficiently particularized but it must fail on the other three prongs of the *West Park* test. Whether or not there was a concurrent process involving the IPC as a result of possible privacy breaches by Cst. Grus does not have any relation to this PSA matter. The Applicant has failed to demonstrate any relevance of any potential communications between the IPC and the OPS or any nexus between these records and the Applicant's position.

## **PART V – ORDER REQUESTED**

55. The Respondent requests that this motion be dismissed.

ALL OF WHICH is respectfully submitted by:

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Angela Stewart  
Prosecutor  
Ottawa Police Service

Dated at Ottawa, this 12th day of January 2023.