

Subject Officer: CST. GRUS

Exhibit Number: 11

Date: MAR 28, 2023

Signature: [Redacted]

**OTTAWA POLICE SERVICE DISCIPLINE HEARING
IN THE MATTER OF ONTARIO REGULATION 268/10**

**MADE UNDER THE POLICE SERVICES ACT, RSO 1990,
AND AMENDMENTS THERETO;**

**IN THE MATTER OF
OTTAWA POLICE SERVICE**

AND

CONSTABLE HELEN GRUS, BADGE #1631

CHARGES:

1. DISCREDITABLE CONDUCT

RULING ON MOTION FOR DISCLOSURE

Before: Superintendent (Retired) Chris Renwick

Counsel for the Defence:
(Applicant) Ms. Bath-Sheba van den Berg
Mr. Brendan Miller

Counsel for the Prosecution:
(Respondent) Ms. Angela Stewart

Disposition Hearing Date: Written submissions received December 29, 2022
and January 12 and 22, 2023.

OVERVIEW

Parties to this Motion and Order Sought

The Applicant, Constable (Cst.) Helen Grus, an investigator within the Sexual Assault and Child Abuse Unit, was charged with one count of Discreditable Conduct on July 26, 2022. On the same day, Cst. Grus was served with a Notice of Increased Penalty, formally advising her that, if misconduct is proven, the penalties of dismissal or demotion may be sought by the Ottawa Police Service (OPS).

Cst. Grus is represented by Ms. Bath-Sheba van den Berg and Mr. Brendan Miller, and the OPS is represented by Ms. Angela Stewart, as the Prosecutor.

The first appearance occurred via teleconference on August 8, 2022, followed by three additional videoconference appearances to determine progress on readiness and disclosure. At the December 6, 2022 appearance, the Tribunal was advised that there was no resolution on disclosure and that a date would be required to hear a motion by the Applicant, represented by Ms. van den Berg. Due to the timing around the holiday season, all parties agreed that the motion would be conducted by way of written submissions, foregoing the Tribunal convening for oral submissions.

Ms. van den Berg submitted a written Motion Regarding Disclosure to the Tribunal on December 29, 2022, followed by a written submission on January 12, 2023 by the Respondent, Ms. Angela Stewart. A written Reply was received by the Applicant on January 23, 2023.

Allegations of Misconduct

It is alleged that Cst. Grus committed the following act of misconduct contrary to the *Police Services Act*, R.S.O 1990, c. P.15, as amended:

Count one: Discreditable Conduct

Cst. Grus is alleged to have committed Discreditable Conduct in that between June 2020 and January 2022, she did, without lawful excuse, act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Ottawa Police Service, in that she self-initiated an unauthorized project, wherein she accessed nine child and/or infant death cases in which she had no investigative role/responsibility, and failed to then record her involvement or findings in the files. Further, on or about January 30, 2022, she interfered in an investigation of an infant death, without the lead detective's knowledge or authorization, by contacting the father of the deceased baby to inquire about the COVID vaccination status of the mother. The foregoing conduct constitutes an offence against discipline as prescribed in section 2(1)(a)(xi) of Schedule 1 of the Code of Conduct, Ontario Regulation 268/10, as amended, and is thereby contrary to section 80(1) of the *Police Services Act*.

THE MOTION

Background

The Applicant's motion is for a decision, for the OPS and Chief, the Professional Standards Unit (PSU), legal counsel for the OPS, designated Prosecutor, or either or all of them to produce full disclosure in order to assist Superintendent Renwick (retired), the designated hearing officer, to provide full and complete disclosure to the Applicant.

Initial disclosure was received by the Applicant on August 30, 2022. Between September 11 and December 5, 2022, the Applicant made disclosure requests for 13 additional documents. Some of the documents were disclosed by the Respondent while others were denied. Contained within the December 29, 2022 Motion for Disclosure were an additional 27 document requests, bringing the Applicant's total requests for disclosure up to 40 documents.

As of January 12, 2023 (the date of the Respondent's written submission on the Motion), 16 of the requested items have been disclosed and the Respondent has affirmed that for five requests, 'no such notes, recordings, emails, or documents exist'.

This decision will provide a ruling on the following remaining unresolved disclosure issues, as brought forward by the Motion:

1. Copies of the preliminary and final autopsy reports for 2021 infant deaths.
2. Witness list and summaries of witnesses' anticipated evidence from the Prosecutor.
3. All investigation notes that are material and relevant.
4. Professional Standards Expert Evidence.
5. Any information as to media leaks or communications to Ms. Yogaretnam and other media.
6. Decision to not investigate media leaks to Ms. Yogaretnam and other media.
7. Decision to close any and all OPS investigations into any media leaks.
8. Information and notes as to OPS Professional Standards refusal on April 7, 2022 to grant request by Cst. Grus that PSU investigate the leaks.
9. The full statement to news media sent March 15, 2020, at 4:06 pm, including the writer's name and the recipients.
10. A copy of General Occurrence Report 22-7482 and investigation notes including evidence of printing.
11. 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.
12. 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.

13. 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.
14. 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.
15. 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.
16. Copy of the Forensics Investigator(s) notes and draft reports.
17. All communications, emails, reports, notes of any kind between the Information and Privacy Commission (IPC) and the OPS relating to the Grus case.
18. 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.
19. PSU file No. 22-0063 all records, notes, et cetera.
20. Investigation notes of A/S/Sgt. Clement, PSU, and S/Sgt. Dikah.

ANALYSIS

Submissions

The Applicant submitted that the decision of *May v. Ferndale Institution*, [2005] 3 S.C.R. 809, Supreme Court of Canada, dictates that the OPS is required to disclose the actual evidence used to come to the conclusion with respect to the allegations made. Procedural fairness demands full and frank disclosure in allegations of Discreditable Conduct under section 2(1)(a) of the PSA Code of Conduct. The denial of the Applicant's request for disclosure of all information relevant to the conduct of case, whether it be damaging to or supportive of the Applicant's position, is prejudicial to the Applicant and undermines the procedural fairness.

The Respondent submitted, in agreement, that disclosure is governed by the administrative law principle of procedural fairness and statutory disclosure obligations, with the applicable standard of disclosure being found in section 83(5) of the *Police Services Act* (PSA) and in section 5.4(1) of the *Statutory Powers Procedure Act* (SPPA).

I am in full agreement that the overriding principle that I must apply in this Motion for Disclosure is that of procedural fairness. The Discreditable Conduct charge before this Tribunal is a serious charge that, if substantiated, could lead to demotion or dismissal, both serious sanctions. I will foremost adhere to the principle of procedural fairness in my decision.

The Applicant cited *R. v Stinchcombe* [1991] 3 SCR 326 and submitted that full and complete disclosure includes anything that is “clearly not irrelevant”. This includes evidence that the Prosecution does not intend to call to make its case, noting that it is generally accepted that *Stinchcombe* applies to discipline proceedings. Ms. van den Berg, in her Reply, goes further by submitting that *Stinchcombe* principles are crucial for the preservation of procedural fairness and should guide the Tribunal in applying the higher standard of disclosure when the situation warrants it. The duty to disclose extends to exculpatory evidence with the only bar being information that is clearly irrelevant. (*May v. Ferndale Institution*, 2005 SCC 82 (CanLII)).

The Respondent submitted that *Stinchcombe* principles do not apply in the administrative context which was reinforced in the 2005 *May v. Ferndale Institution* decision and is further spoken to in Paul Ceyssens’ *Legal Aspects of Policing* (Toronto: Earls Court, 1994), stating the Ontario Civilian Police Commission has repeatedly refused to import the *Stinchcombe* principles into the police complaint and discipline process.

The Respondent included the decision of the *Ontario Civilian Police Commission v. Deputy Chief Uday Jaswal* 2021 OMCPD 6, in her Book of Authorities. In paragraph 19 it reads:

“The parties agree that the disclosure principles set out in *R. v. Stinchcombe*, [1991] 3 S.C.R. 668 do not apply to a hearing before the Commission. This has been the position taken by the Commission in a number of past decisions”.

As to Police Service Act hearings, the Respondent submitted that these hearings are administrative disciplinary hearings to which criminal disclosure rules do not apply. 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.)

I view that the preservation of procedural fairness to be paramount in this Hearing, but I do not find the application of the *Stinchcombe* principles as binding nor crucial to procedural fairness. The sanctions of demotion and dismissal in an employer-employee disciplinary hearing are indeed serious consequences, however I reject the Applicant’s position that demotion or dismissal constitute the same threshold of innocence and liberty being at stake that is applicable in criminal proceedings. There is established, sufficient case law for me to conclude that the *Stinchcombe* principles are not binding nor applicable to PSA disciplinary hearings.

The Respondent submitted that the applicable legal test for contested disclosure in a PSA Hearing is the four-part test found in *West Park Hospital v Ontario Nurses’ Assn.*, [1993] OLA 12, being: The information requested must be relevant; it must be

particularized; it is not being requested as a fishing expedition; and there must be a clear nexus between the information being requested and the position in dispute.

The Applicant, in reply, submitted that the West Park test was developed in administrative tribunals, is not a legal test recognized or applied in the Courts of Ontario, and certainly does not supersede the overarching rule of procedural fairness or the duty to act fairly.

Again, turning to the Motion for Disclosure in *Ontario Civilian Police Commission v. Deputy Chief Uday Jaswal* 2021 ONCPC 6, paragraph 25, the Panel speaks to the SPPA allowance for a Tribunal to determine its own procedures and practices and found that the West Park four-part test “strikes an appropriate balance between the interests of all concerned and should be applied...”. I agree and find that the West Park test is both appropriate and applicable in the motion before me.

Order

1. The Applicant’s motion for copies of the preliminary and final autopsy reports for 2021 infant deaths is dismissed. (Item iii at paragraph 40 of the Applicant’s Factum).

In her submissions, the Applicant does not directly speak to the relevance nor the nexus of the requested autopsy reports to the issues at hand.

The Respondent submitted that the Applicant has not provided evidence in her application to support such a request and the details of the nine child and infant death autopsy reports are completely unrelated to this PSA proceeding. In applying the West Park test, the Respondent submitted that that Applicant fails to meet parts one (relevance), three (not a fishing expedition), and four (clear nexus to the positions in dispute).

The Respondent is charged with one Count of Discreditable Conduct in that she is alleged to have self-initiated an unauthorized project, accessed nine child and/or infant death cases where she had no investigative role/responsibility, and failed to record her involvement or finding in the files. Further, the Applicant is alleged to have interfered in an investigation of an infant death without the lead detective’s knowledge or authorization by contacting the father of the deceased baby to inquire about the COVID vaccination status of the mother.

I do not see relevancy or nexus between the above facts in issue to the conclusions and contents of 2021 infant death autopsy reports. One of the particulars is the Applicant accessed the nine reports in which she had no investigative role or responsibility. Her actions of accessing the reports were not deemed to be misconduct, but her subsequent actions were. The contents of the nine reports are not factors in this hearing.

These are highly sensitive, personal, third-party medical records that I would reluctantly order to be disclosed, even if I deemed them to be relevant, which I do not.

I do note here that the Applicant has indicated in the Motion her intent to make a specific application to this Tribunal for the disclosure of third-party records should this motion now before me not be granted. Relevance and a direct nexus to the misconduct noted in the Notice of Hearing will have to be firmly demonstrated for me to consider such an application.

2. The Applicant's motion for witness list and summaries of witnesses' anticipated evidence from the Prosecution is allowed. (Item 1 at paragraph 42 of the Applicant's Factum).

The Respondent has advised the Tribunal that this request for disclosure was fulfilled as of January 10, 2023, whereas the Applicant indicates that requested witness summaries have not been provided as asserted.

A witness list with summaries of anticipated evidence is reasonable and disclosable.

3. The Applicant's motion for all investigation notes that are material and relevant, is dismissed. (Item 2 at paragraph 42 of the Applicant's Factum).

4. The Applicant's motion for Professional Standards Expert Evidence is dismissed. (Item 3 at paragraph 42 of the Applicant's Factum).

I concur with the Respondent's position that the below three requests are not sufficiently particularized in relation to part two of the West Park Test. If this request is for investigative notes beyond the PSU investigators, then relevancy and nexus would come into play and will be required.

As a former criminal investigator and court designated expert witness, I do not understand the reference to "professional standards expert evidence". Clarity from the Applicant on exactly what documents are being requested will be required.

5. The Applicant's motion for any information as to media leaks or communications to Ms. Yogaretnam and other media is dismissed. (Item 4 at paragraph 42 of the Applicant's Factum).

6. The Applicant's motion for decision to not investigate media leaks to Ms. Yogaretnam and other media is dismissed. (Item 5 at paragraph 42 of the Applicant's Factum).

7. The Applicant's motion for decision to close any and all OPS investigations into any media leaks is dismissed. (Item 6 at paragraph 42 of the Applicant's Factum).

8. The Applicant's motion for information and notes as to OPS Professional Standards refusal on April 7, 2022 to grant request by Cst. Grus that PSU

investigate the leaks is dismissed. (Item 14 at paragraph 42 of the Applicant's Factum).

9. The Applicant's motion for the full statement to news media sent March 15, 2020, at 4:06pm, including the writer's name and the recipients is dismissed. (Item 16 at paragraph 42 of the Applicant's Factum).

The Respondent has submitted that the Applicant has not articulated how communications or OPS actions/decisions regarding a media leak and any subsequent investigation into the source of the leak have any relevance to this PSA matter.

Without any information about the relevance of the disclosure requests pertaining to the media leaks, the Respondent submitted that it is difficult to characterize this as anything but a fishing expedition. To part three of the West Park test, there is no clear nexus between the records being requested and the positions in dispute.

The Applicant submitted that the disclosure obligation of the OPS extends to evidence from all investigations if that information is potentially relevant to the matter under consideration, such as the media leaks, coronary and pathologist reports, and any investigations linked to the involvement of the Public Health Agency of Canada (PHAC).

The Applicant submitted that the actual misconduct that brought the reputation of the OPS into disrepute were the actions of the unidentified person(s) who revealed the confidential police information to the media, and not as alleged, the conduct of Cst. Grus.

The Applicant submitted that it is an abuse of process to blame the Applicant for conduct that was not hers and a further abuse of process for the OPS not to have acted in good faith in investigating the leak of information.

The particulars of the Discreditable Conduct charge are very specific: The Respondent is charged with one Count of Discreditable Conduct in that she is alleged to have self-initiated an unauthorized project, accessed nine child and/or infant death cases where she had no investigative role/responsibility, and failed to record her involvement or finding in the files. Further, the Applicant is alleged to have interfered in an investigation of an infant death without the lead detective's knowledge or authorization by contacting the father of the deceased baby to inquire about the COVID vaccination status of the mother.

It would be logical and expected that the Applicant would mount a defence to address each of the particulars and any other issues that are directly relevant to allegations, the key being the relevancy.

I view the matter of an investigation (or lack thereof) into the source of the leaks a separate and apart incident of misconduct and if there was an investigation undertaken and the source identified, then any misconduct charges would be separate from the PSA charge brought against the Applicant. I fail to see the relevancy of investigative material

in the leak, if any such material in fact exists, or the internal decision-making process to pursue or not pursue an internal investigation to the misconduct charge before this Tribunal.

This is a Motion for Disclosure and not an abuse of process motion although the Applicant makes submissions in paragraph 18 of her Written Reply which speaks to the grounds for an abuse of process. From the content of the submission, I would hesitate to allow an abuse of process motion based on the submissions to date.

10. The Applicant's motion for a copy of General Occurrence Report 22-7482 and investigation notes, including evidence of printing, is dismissed. (Item 7 at paragraph 42 of the Applicant's Factum).

The Applicant submitted that the February 3, 2022 Notice of Internal Complaint alleged that the Applicant accessed the OPS Record Management System (RMS) database for the purpose of researching and collecting information involving the death of children and printed General Occurrence (GO) Report 22-7482. The allegations under investigation were one count of Insubordination for unauthorized accessing and printing of RMS records, and one count of Discreditable Conduct for undertaking an unsanctioned project without informing her chain of command or the lead investigation and for contacting the father of one of the deceased infants to inquire into the mother's vaccine status.

The resulting July 6, 2022 OPS Professional Standards Unit Investigative Report found there was insufficient evidence to form grounds that the Applicants query of the RMS reports substantiated Insubordination as the queries were not done for personal reasons.

The Respondent submitted that GO 22-7482 is one of nine related OPS reports that the Applicant is alleged to have accessed but it is important to remember that she is not facing an allegation of Insubordination for the access itself, rather the allegation of Discreditable Conduct in the inappropriate application of the information accessed. The Respondent further submitted that the Applicant has not established a nexus between information being requested and the positions in dispute at the hearing.

I am in agreement with the Respondent. The accessing and printing of RMS report 22-7482 was deemed not to be improper conduct and has no direct relevance to the issues at hand. This extremely sensitive infant death investigation report and the corresponding notes are not, in my view, necessary for a defence as there was no issue found in the accessing or printing of the RMS report.

11. The Applicant's motion for 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 is dismissed. (Item 17 at paragraph 42 of the Applicant's Factum).

The Applicant submitted that the request for disclosure of meetings and communications between the OPS and the PHAC, along with 13 other disclosure requests, must be disclosed in order to protect procedural fairness and the integrity of these proceedings, if the information is potentially relevant to the matter under consideration.

The Respondent submitted the Applicant has not articulated any relevance of the above-sought records, the request is extremely broad, and is insufficiently particularized and speculative.

Based on relevance alone, I cannot support this particular disclosure request.

12. The Applicant's motion, from January 1, 2020 to the current date, to 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 is dismissed. (Item 18 at paragraph 42 of the Applicant's Factum).

13. The Applicant's motion, from January 1, 2020 to the current date, to 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 is dismissed. (Item 19 at paragraph 42 of the Applicant's Factum).

14. The Applicant's motion, from January 1, 2020 to the current date, to 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 is dismissed. (Item 20 at paragraph 42 of the Applicant's Factum).

15. The Applicant's motion, from January 1, 2020 to the current date, to 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 is dismissed. (Item 21 at paragraph 42 of the Applicant's Factum).

The Applicant submitted that all information from other investigations being conducted by the OPS, if potentially relevant to the matter under consideration, must be disclosed in order to protect procedural fairness and the integrity of these proceedings.

The Respondent submitted that the mere act of accessing RMS is not part of the Notice of Hearing in that the Applicant is not alleged to have committed Insubordination when she accessed the reports. Whether or not other officers accessed files not their own or outside their unit has no bearing on this case.

The Respondent further submitted that this request is overbroad, would shed no light on the salient issues in this case, and a request of this nature, covering this span of time, is clearly a fishing expedition.

Again, the Respondent is not being accused of unauthorized access to reports and information contained within the RMS system. The issue is what she did with the information that formed the allegation of misconduct. OPS policy and General Orders permits the accessing of the RMS system for official police inquiries during an officer's duties. I see no correlation between accessed RMS data and the particulars of the Applicant's PSA charge.

16. The Applicant's motion for Copy of the Forensics Investigator(s) notes and draft reports is allowed. (Item 23 at paragraph 42 of the Applicant's Factum).

The Applicant submitted that the request for disclosure of the notes and draft reports of the Forensic Investigator who examined whether the Applicant electronically downloaded or saved autopsy reports onto a USB must be disclosed in order to protect procedural fairness and the integrity of these proceedings, if the information is potentially relevant to the matter under consideration.

The Respondent submitted that the full forensic report of the Forensic Investigator, Det. Desjardin, has been disclosed, along with e-mails between the Forensic Investigator and the PSU investigators.

The Respondent submitted that the report contains all the relevant information, and the Applicant has not articulated the relevance of the draft report, if any, and notes. Further, the Applicant is fishing to see what she can find and there is no nexus between the request and the position of the Applicant.

I find that Det. Desjardin's Forensic Report is relevant to this Hearing in that it was an investigation directly into the actions of the Applicant and parallel to the PSU investigation into alleged misconduct. It is, in my opinion, disclosable and I am pleased to see it was disclosed, along with the connected e-mail correspondence.

As the report and emails are disclosable, I see it as reasonable for any notes that Det. Desjardin may have taken and a draft report, if one exists, to be subjected to the same disclosure, as requested by the Applicant.

17. The Applicant's motion for all communications, emails, reports, notes of any kind between the Information and Privacy Commission (IPC) and the OPS relating to the Grus case is dismissed. (Item 25 at paragraph 42 of the Applicant's Factum).

As above, the Applicant submitted that a record of all OPS communications with the Information and Privacy Commission must be disclosed in order to protect procedural fairness and the integrity of these proceedings, if the information is potentially relevant to the matter under consideration.

The Respondent concedes that the request is sufficiently particularized but it must fail on the other three prongs of the West Park test: relevance; not a fishing expedition; and a clear nexus between the information being requested and the positions in dispute.

I agree with the position of the Respondent that even if the actions of the Applicant led to the initiation of communications between the IPC of Ontario and the OPS, the Applicant had not presented any potential relevance to this Tribunal.

18. The Applicant's motion for 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, is dismissed. . (Item 26 at paragraph 42 of the Applicant's Factum).

The Applicant, in paragraph 19 of her Written Reply dated January 23, 2023, has submitted that the charges are in effect "an orchestrated ambush against the Applicant" and the failure of OPS to disclose all relevant information, "including exculpatory evidence" is indicative of the Respondent's failure to discharge their disclosure obligation. There is further reference in paragraph 20 of a "concealment of evidence" or of an "outcome directed investigation". In the absence of a direct submission on relevance and the connection between the facts in issue and an OPS generated document on reported adverse effects of vaccinations, this Tribunal is left to surmise on the linkage and relevance.

The argument is further developed in the Applicant's Written Reply in paragraph 15 which concludes that Cst. Grus' alleged inquiry into the vaccination status of a parent of a deceased child can be rightly considered a particular of the charge, therefore all information relating to COVID vaccinations is relevant and material to the charge and must be considered.

The Respondent submitted that the Applicant has not established how the requested records will be arguably relevant to this issue, nor has she provided evidence in her application to support the request. Thirdly, the Applicant's position would engage this Tribunal into a fishing expedition, drawing in complicated and speculative questions of public health and science, both of which are beyond the purview of the PSA.

In my view, the Applicant has failed to demonstrate any relevance or nexus between OPS personnel's vaccine adverse incidents and the unauthorized investigative project that the Applicant is alleged to have undertaken without the permission or knowledge of her peers/supervisors. I also fail to see a nexus between parental vaccination status and that of OPS personnel, along with evidence of adverse effects to vaccination.

19. The Applicant's motion for PSU file No. 22-0063 is allowed. The motion for all records, notes, et cetera, is dismissed. (Item 27 at paragraph 42 of the Applicant's Factum).

The Applicant's Motion Regarding Disclosure, in paragraph 1, identifies PSU File 22-0063 as the Chief's Complaint that resulted in this PSA Hearing. In Paragraph 14, the Applicant references a July 6, 2022 PSU Investigative Report, containing the conclusion that insufficient grounds to substantiate the allegation of Insubordination while substantiating

sufficient evidence to form the grounds for the allegation of Discreditable Conduct. Paragraph 30 confirms that a redacted version of Chief's Complaint 22-0063 was received on August 30, 2022, in the initial disclosure package.

From this, I can conclude that Chief's Complaint 22-0063 (although redacted) has been disclosed, and the issue still alive here are the records, notes, et cetera, that remain undisclosed and contested.

Although the Respondent does not specifically reply that Chief's Complaint 22-0063 has been disclosed, she submitted that the request must fail on part two of the West Park Test, that being the requested records are not sufficiently particularized.

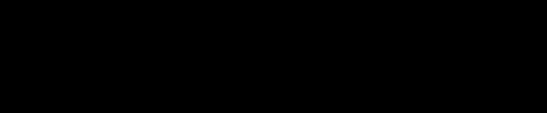
I find that Chief's Complaint 22-0063 is subject to disclosure, redacted as required, and if it has not been disclosed, then it must be. The request for the records, notes, et-cetera, will be dismissed as they are not sufficiently particularized to satisfy me on relevance.

20. The Applicant's motion for investigation notes of A/S/Sgt. Clement, PSU, and S/Sgt. Dikah is allowed. (Item 8 at paragraph 42 of the Applicant's Factum).

In her Reply, the Applicant advised at paragraph 25 that the requested notes of A/S/Sgt. Clement and S/Sgt. Dikah remain outstanding.

It appears that the Respondent made an error by referring to same item twice (Respondent's Factum, paragraphs 42 and 43) and it is unclear if the notes were in fact disclosed on January 10, 2022.

The notes are subject to disclosure and will be disclosed.



Chris Renwick
Superintendent (Retired)

January 31, 2023