Order F08-13

MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL

Catherine Boies Parker, Adjudicator

June 27, 2008

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Summary: Applicant requested video footage taken of her while she was held in custody at the Vancouver City Jail. The public body refused access on the basis of s. 15(1)(f), s. 15(1)(l) and s. 22. The public body argued that s. 22 required it to withhold information relating to other individuals in custody, but not that relating to officers working at the Jail. Third-party officers whose images were on the videos objected to the disclosure. There was no persuasive evidence that releasing the videos which reveal incidents of interest to the applicant would endanger the life or physical safety of a law enforcement officer or harm the security system of the jail. The public body is required to provide access to some of the video footage, but must withhold information which would identify other individuals held in custody. The fact that the videos will identify the third parties in their employment capacity does not render disclosure of the videos an unreasonable invasion of privacy.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 4(2), 15(1)(f) and (l), 22(1), 25.

Authorities Considered: B.C.: Order No. 321-1999, [1999] B.C.I.P.C.D. No. 34; Order 00-01, [2000] B.C.I.P.C.D. No. 1; Order 03-08, [2003] B.C.I.P.C.D. No. 8; Order 02-50, [2002] B.C.I.P.C.D. No. 51; Order 01-20, [2001] B.C.I.P.C.D. No. 21; Order 02-38, [2002] B.C.I.P.C.D. No. 38; Order F06-14, [2006] B.C.I.P.C.D. No. 21; Order F08-03, [2008] B.C.I.P.C.D. No. 6; Order 01-01, [2001], B.C.I.P.C.D. No. 1; Order 03-41, [2003] B.C.I.P.C.D. No. 41; Order F07-22, [2007] B.C.I.P.C.D. No. 36; Order F06-11, [2006] B.C.I.P.C.D. No. 18; Order 03-34, [2003] B.C.I.P.C.D. No. 34. **Ont.:** Order PO-2358, [2004] O.I.P.C. No. 308.

1.0 INTRODUCTION

[1] This review arises out of the applicant's request for all video footage of her taken during her incarceration at Vancouver City Jail ("VCJ" or "Jail") from 00:30 am until 2:00 pm on March 28, 2006.[1] According to the Portfolio Officer's fact report issued in this inquiry, prior to April 1, 2006, the VCJ was administered by the Ministry of Public Safety and Solicitor General (the "public body") and since that time has been jointly administered by the Vancouver Police Department ("VPD") and the Court Services Branch of the Ministry of Attorney General.[2] The Affidavit of the Deputy Warden of the Corrections Branch, submitted by the public body, states that up until April 17, 2006, the VCJ was a shared facility between the Corrections Branch and the City of Vancouver.[3] The incidents which took place during the applicant's time in custody are at issue in a civil action which the applicant has launched against the Ministry of the Attorney General and one or more of the third parties in this inquiry.[4] According to the fact report, the Ministry of the Attorney General declined to be included as an appropriate party to this inquiry.[5]

[2] The public body denied the applicant access to the records, relying on ss. 4(2), 15 and 22 of the *Freedom of Information and Protection of Privacy Act* ("FIPPA").[6] The applicant, through legal counsel, requested a review of that decision, stating that she wanted "a copy of the video, solely as it pertains to her treatment."[7] Notice of the Inquiry was given to the applicant and the public body and, as appropriate persons, the VPD and three Correctional Officers whose images were recorded on the video records. I will refer to these individuals as Third Party A, B and C. Third Party A is a Correctional Officer who the applicant alleges assaulted the applicant while she was being held at the VCJ. Third Party B was an Acting Sergeant with the Vancouver Police Department and was performing the duties of the Officer in Charge at the VCJ at the time the applicant was held there. Third Party C is another Correctional Officer.

[3] The applicant and the public body made initial and reply submissions. The VPD made only brief initial submissions stating its position with respect to the matters at issue, and later made a reply submission. Because the reply submissions of the VPD included matters which should have been set out in initial submissions, and to which the applicant had a right of reply, I gave the applicant a further opportunity to respond to the VPD's reply submissions and, in

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[1] Portfolio Officer's Fact Report, para. 1.
[2] Portfolio Officer's Fact Report, para. 6.
[3] Deputy Warden's affidavit, para. 3.
[4] Applicant's initial submission; applicant's reply submission.
[5] Portfolio Officer's Fact Report, para. 6.
[6] Portfolio Officer's Fact Report, para. 3.
[7] Applicant's Request for Review.

response, she provided additional reply submissions. Each of the third parties also provided one-page submissions.

2.0 ISSUE

[4] The Notice of Written Inquiry that this Office issued sets out the following issues to be determined at this inquiry:

1. Is the public body required to refuse access to the records under s. 22(1) of FIPPA?

2. Is the public body authorized to refuse access to the records under ss. 15(1)(a), (f) or (l) of FIPPA?

3. Can the public body reasonably sever information from the records under s. 4(2) of FIPPA?

[5] Pursuant to s. 57 of FIPPA, the public body has the burden of proof with respect to s. 15(1), while the applicant has the burden to show that the disclosure of a third party's personal information is permitted under s. 22 of FIPPA.

[6] In its submissions, the public body states that it is not relying on s. 15(1)(a), which is triggered when disclosure would "harm a law enforcement matter."[8] As a result, s. 15(1)(a) is no longer an issue between the parties and I will not address it in this decision.

[7] In her initial submissions, the applicant asserts that disclosure is required in the public interest.[9] As a result, in its reply submissions, the public body provides its submissions on s. 25 of FIPPA.[10] Given the mandatory nature of s. 25, and given that the public body has made submissions on this issue, I have also considered this section.

3.0 DISCUSSION

[8] **3.1 Records at Issue**—The public body has identified six digital video recordings ("DVRs") as being responsive to the applicant's request. These have been labelled #1-6 although the numbering does not appear to be related to the order in which the DVRs were recorded. There is nothing on the DVRs to indicate the time at which they were made. The affidavit of the Deputy Warden identifies what part of the VCJ is shown in each of the DVRs as follows: DVR #1- the booking area, DVR #2 – the pre-hold cell, DVR #3 – cell 119,

[8] Public body's initial submissions, para. 6.
[9] Applicant's initial submission, para. 3, applicant's reply submission, pp. 1 and 2,
[10] Public body's reply submissions, Appendix 1.

DVRs #4 and #5 – the hallway outside the pre-hold cell and DVR #6 - the nurses station.[11]

[9] In her initial submissions, the applicant states: "To make this process as simple as possible I really only need footage of certain incidents so this should make things a lot easier for the people who would be reproducing the video footage."[12] The applicant identifies two incidents in which she is interested. The first involves her treatment in what she refers to as a "holding cell". She states:

> I was put into the holding cell at approximately 00:30AM on March 28/06 and was left in there for 4 hours with my hands handcuffed behind my back, which was very painful, and there was no bench, toilet, nothing. I was forced to sit on a cold, concrete floor in this position which caused me extreme mental distress. The staff also refused to let me go to the bathroom. Leaving a person in this position for that length of time constitutes torture. I am requesting all video footage of my time spent in that room which is approximately from 00:30AM–04:30AM. The other guards [*sic*] face can be blocked out, but I am requesting [Third Party A's] be shown in order to seek the justice I deserve through the courts. Also at 2 different times the acting sergeant [Third Party B] came into the room, yelling and screaming at me, and I want that enclosed as well, but her face can be blocked out.[13]

[10] The Deputy Warden's affidavit identifies DVR #2 as showing the "pre-hold cell." The Deputy Warden deposes that he received a letter from the applicant in which she alleged that she had been mistreated in the VCJ, and that, in response, he conducted a review, which including reviewing the DVRs at issue in this inquiry.[14] He states that he and the applicant viewed portions of DVRs #2, #4 and #5, which he states "show her time in the pre-hold cell and her transfer to and from this area".[15] He states "DVR #2 does display what the applicant alleged was a Correctional Officer using unreasonable force to restrain the Applicant from leaving the cell while another inmate was being removed from the same cell."[16]

[11] I have reviewed all of the DVRs in their entirety. DVR #2 is the only one which shows a woman, presumably the applicant, in a cell with her hands handcuffed behind her back. It appears that DVR #2 contains the entirety of the first incident in which the applicant is interested.

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[11] Deputy Warden's affidavit, para. 5.
[12] Applicant's initial submissions, p. 1.
[13] Applicant's initial submission, para. 5.
[14] Deputy Warden's affidavit, para. 5.
[15] Deputy Warden's affidavit, para. 6.
[16] Deputy Warden's affidavit, para. 6.

[12] The applicant describes the second incident thus:

> I am also requesting all video footage of me being grabbed by a man who was booking me in, then pushing me down the hall and threw [*sic*] me into another room, where I was forced to lay on a concrete floor with cold air blasting on me, shivering and freezing for about 2 hours, even though I repeatedly told them I was already sick and the cold air was making me sicker. This room was much smaller than the first and also had no bench or toilet. I want all that video footage from the moment he grabbed me and shoved me down the hall until they finally let me out of that room. I ended up with a major throat infection because of this cruel punishment. I was so upset that I was hyperventilating at one point. I was subjected to this abuse just because the male guard asked me "where do you work?" and I stated "I prefer not to say" and he came out from behind his desk, grabbed me and shoved me down the hall into this room, stating "I would be spending the entire day in there, as I was acting up." This was at approximately 04:30AM until 06:30-7:00AM. His face can be blocked out."[17]

[13] DVR #3 is the only recording, apart from #2, which shows the applicant in a cell. This cell appears to be smaller than the other cell, and appears to have a concrete floor. The DVR shows the applicant being held there for approximately 2¼ hours. I will treat DVR #3 as being part of the request with respect to the second incident, assuming that this is the room into which the applicant says she was thrown.

[14] However, there is nothing on the DVRs which appears to be a recording of the first part of the incident as described by the applicant—that is, a male guard coming out from behind a desk and grabbing the applicant and pushing her down the hall. DVRs #4 and #5 do show a hallway. These recordings were made through plastic sheeting which was hanging up at the time because of renovations.[18] As a result, they are extremely unclear, and it is impossible to ascertain exactly what is happening. However, they do not appear to show the applicant being pushed down the hall. According to the Deputy Warden's affidavit, these DVRs show the applicant's transfer to and from the pre-hold cell, that is, the cell recorded in DVR #2. There does not appear to be any recording of the applicant's transfer into the cell shown in DVR #3.

[15] I will treat the applicant's request as being for DVRs #2 and #3, since these are the only ones which appear to be relevant to the incidents identified by the applicant. As noted, the Deputy Warden has stated that the applicant and the Deputy Warden viewed parts of DVRs #4 and #5 and the public body has indicated its willingness to allow the applicant to review the DVRs in their

[17] Applicant's initial submissions, para. 6.
[18] Deputy Warden's affidavit, para 5; applicant's reply submissions, paras. 10 and 12.

entirety.[19] If any of the parties have reason to believe that any of the DVRs record other aspects of the incidents referred to by the applicant, they are to notify this office within 10 business days of the date of this decision.

DVR #2

[16] DVR #2 is approximately 3¼ hours long. It is a recording of the interior of a cell. The applicant enters the cell and remains there until the end of the recording, with the exception of a very brief time when she leaves with a guard and returns without her shoes. The other people shown in the DVR are a number of jail personnel, including three female persons who are presumably the Third Parties, and a male person, likely a Correctional Officer. There is also one other person who enters the cell for a period. This appears to be a female, who lies on the floor of the cell, and is later taken away by two female Correctional Officers. It is while this second individual is being taken out of the cell that the incident of primary concern to the applicant occurs.

[17] The second individual is in the cell for approximately 27 minutes. For most of this period, her face is entirely hidden. Her face is clearly shown, however, when the two Correctional Officers enter the room and the incident involving the applicant occurs. This episode takes less than a minute.

DVR #3

[18] DVR #3 is approximately 2¼ hours long. It shows the interior of another cell. The applicant enters the cell and remains there until very near the end of the recording, when the door is opened and she walks out. After she leaves, the door is left open and it is possible to see other individuals moving about. It is not clear which of these are employees.

[19] **3.2 Introduction**—DVRs #2 and #3 contain the applicant's image, and record where she was and what she was doing on the date that they were recorded. This is information about the applicant, who is clearly identifiable by her image in the videos. This information on the DVRs is the personal information of the applicant.

[20] Section 4 of FIPPA provides, in relevant part:

> **Information rights**
>
> 4(1) A person who makes a request under section 5 has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.

[19] Public body's initial submission, paras. 20 and 77, Deputy Warden's Affidavit para. 8. I also note that the third parties do not appear to object to the applicant viewing the DVRs as long as the tapes remain in the control of the public body.

(2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record an applicant has the right of access to the remainder of the record.

[21] Section 5(2) provides that an applicant may ask for a copy of the record or ask to examine the record. Under s. 9(2) of FIPPA, if the applicant is entitled to access to a record and has asked for a copy of a record, the applicant must be provided with a copy of the record if the copy can reasonably be reproduced. As a result, the applicant is entitled to a copy of the DVRs unless information on the DVRs is excepted from disclosure and that information cannot reasonably be severed, or if a copy cannot reasonably be reproduced.

[22] **3.3 Is the Public Body Required to Disclose the Information Pursuant to Section 25?**—Section 25 of FIPPA requires the mandatory disclosure of certain information and provides, in part:

25(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information

(a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or

(b) the disclosure of which is, for any other reason, clearly in the public interest.

(2) Subsection (1) applies despite any other provision of this Act.

[23] Previous orders have established that the disclosure requirement under s. 25(1)(b) is triggered only when there is an urgent and compelling need for public disclosure without delay and that disclosure is clearly in the public interest.[20] Section 25 is triggered when there are circumstances of clear gravity and present significance which compels disclosure without delay.[21] While the applicant makes extensive submissions on why it was in the public interest for the activities of officers in the VCJ be made public, she has not explained what circumstances would require urgent disclosure. I find that disclosure is not required under s. 25.

[24] **3.4 Is the Ministry Entitled to Refuse Access Under Section 15(1)(f) or Section 15(1)(l)?**—The portions of s. 15 on which the public body relies provide:

[20] See, for example, Order 01-20, [2001] B.C.I.P.C.D. No. 21; Order F06-14, [2006] B.C.I.P.C.D. No. 21.
[21] Order 02-38, [2002] B.C.I.P.C.D. No. 38; Order F06-14.

Disclosure harmful to law enforcement

15(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to….

(f) endanger the life or physical safety of a law enforcement officer or any other person….

(l) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system.

[25] As the public body noted,[22] the former Commissioner, in Order No. 321-1999,[23] held that "the harm in Section 15(1)(a) need not be shown to be grave, but neither would it be sufficient to establish a harmful impact which is of an utterly frivolous or insignificant variety."[24]

[26] In Order 00-01,[25] Commissioner Loukidelis outlined the nature of the evidence required to meet a harms based test such as that set out in s. 15(1):

> …a public body must adduce sufficient evidence to show that a specific harm is likelier than not to flow from disclosure of the requested information. There must be evidence of a connection between disclosure of the information and the anticipated harm. The connection must be rational or logical. The harm feared from disclosure must not be fanciful, imaginary or contrived.[26]

[27] In Order 03-08,[27] Commissioner Loukidelis reviewed the reasonable expectation of harm test discussed in Order 02-50,[28] and applied it to section 17:

> Taking all of this into account, I have assessed the Ministry's claim under s. 17(1) by considering whether there is a confident, objective basis for concluding that disclosure of the disputed information could reasonably be expected to harm British Columbia's financial or economic interests. General, speculative or subjective evidence is not adequate to establish that disclosure could reasonably be expected to result in harm under s. 17(1). That exception must be applied on the basis of real grounds that are connected to the specific case. This means establishing a clear and direct connection between the disclosure of withheld information and the harm alleged. The evidence must be detailed and convincing enough to establish specific circumstances for the contemplated harm to be reasonably expected to result from disclosure of the information. …

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[22] Public body's initial submission, para. 16.
[23] [1999] B.C.I.P.C.D. No. 34.
[24] Public body's initial submission, para. 16.
[25] [2000] B.C.I.P.C.D. No. 1.
[26] Order 00-01, p. 5.
[27] [2003] B.C.I.P.C.D. No. 8.
[28] [2002] B.C.I.P.C.D. No. 51.

[28] Commissioner Loukidelis recently commented again on the evidentiary requirements under s. 15(1):

> As I have said many times before, the evidence required to establish that a harms-based exception like those in ss. 15(1)(a) and (l) must be detailed and convincing enough to establish specific circumstances for the contemplated harm that could reasonably be expected to result from disclosure of the withheld records; it must establish a clear and direct connection between the disclosure of the withheld information and the alleged harm. General speculative or subjective evidence will not suffice.[29]

[29] In this case, the anticipated harms under s. 15(1)(f) and s. 15(1)(l) are linked, in that the concerns about harm to individuals arise as a result of the anticipated compromise of the VCJ's security systems. As a result, it is appropriate to consider the two subsections together.

The positions of the parties

[30] The public body asserts that the release of information about the limitations of security cameras in the VCJ could facilitate the commission of an offence and thereby endanger the physical safety of VCJ staff, Correctional Officers, individuals in custody and visitors.[30] The submissions state that disclosing the limitations of the cameras will effectively increase risks to people in the VCJ.[31] As well, the public body asserts that "the release of information about the security features of the VCJ, including how officers move around the facility and what kind of weapons they carry, decreases the security of the Jails and therefore endangers the physical safety of Correctional Officers.[32]

[31] The Deputy Warden states that he has no concerns about the applicant viewing the DVRs but that he has serious privacy and security concerns should copies of the DVRs be released into her possession as she indicated that she intends to widely circulate them. Attached as an exhibit to the Deputy Warden's affidavit is a letter from the applicant which includes the statement "I have also asked for the video footage through the FOI Act and as soon as I receive it, I'm going to every news station in this City to air my assault."[33]

[32] The public body states that the release of the DVRs can reasonably be expected to harm the security of the VCJ generally and the effectiveness of the video surveillance system specifically.[34] The public body states that it "has

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[29] Order F08-03, at para. 27.
[30] Public body's initial submissions, para. 40.
[31] Public body's initial submissions, para. 41.
[32] Public body's initial submissions, para. 43.
[33] Deputy Warden's affidavit, para. 8 and Exhibit "A".
[34] Public body initial submissions, para. 14.

a rational belief" that the release will enable individuals in custody to exploit the limitations of the video cameras; expose security weaknesses of the Jail to criminals; and give critical information about the layout and security features of the Jail to criminals who are intent on breaking into, or out of, the facility.[35]

[33] The Deputy Warden deposes that "An important element to maintaining a secure Jail is limiting the availability of the information available to the public about security features and management techniques of a jail."[36] The Deputy Warden notes that the importance of limiting the information available about the security system is reflected in the policy of allowing only a select group of managers and supervisors to have access to the DVRs taken by the security cameras.[37]

[34] The Deputy Warden states that "Each DVR reveals what a particular camera can and cannot view from the position where it is mounted." He states "For example, in DVR #2 and #3, it is not possible to see certain portions of the cell." He notes the importance of keeping blind spots confidential as, in his experience, inmates will attempt to exploit these areas to ingest drugs, or harm themselves or others.[38] He states "there have been occasions where Correctional Officers have been unaware that an assault was taking place because of the gaps in the coverage of the cameras."[39] He says that it is not uncommon for individuals to try to break or obscure the cameras in their cells, with the intent of escaping video surveillance.[40]

[35] The Deputy Warden states that the DVRs reveal some of the security features of the Jail. He sets out specific concerns with DVRs #4, #5 and #6, some of which were provided *in camera*.[41] The Deputy Warden does not raise any such concerns with respect to DVRs #2 or #3.

[36] The Deputy Warden states that his concerns about release of the DVRs extend beyond the "specific security details to the information that the DVRs provide about the general layout and operation of the Jail."[42] He says that the DVRs "provide much better details about the Jail than could ever be communicated verbally". He notes that the Jail may hold high profile individuals, including members of organized crime, and that there is a concern that someone will try to break in to help these inmates escape.[43] He sets out specific concerns with respect to DVRs #1, #4 and #5.[44]

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[35] Public body initial submissions, para. 24.
[36] Deputy Warden's affidavit, para. 12.
[37] Deputy Warden's affidavit, para. 13.
[38] Deputy Warden's affidavit, para. 15.
[39] Deputy Warden's affidavit, para. 17.
[40] Deputy Warden's affidavit, para. 18.
[41] Deputy Warden's affidavit, paras. 21-25.
[42] Deputy Warden's affidavit, para. 23.
[43] Deputy Warden's affidavit, para. 23.
[44] Deputy Warden's affidavit, paras. 24-25.

[37] The public body argues that the records "disclose information of a nature that makes it at risk of the 'mosaic effect' and therefore, there is a greater harm that arises from their release."[45] The concern is that the DVRs, when viewed together or along with others that might subsequently be released, will allow linkages to be made which will reveal additional information not available from one of the tapes alone. The public body also submits that the digital nature of the tapes increases the risk of harm from their release because "there may be technology available now, or in the future, that could enable someone to discern or 'clean up' the images on the tape."[46] The public body urges me to consider "what extra information can be gleaned from the records if they are read together or if they are digitally enhanced to reveal more information about the security of the Jail."[47]

[38] The VPD relied, in its reply submission, on the affidavit of the Staff Sergeant in the Court and Detention Services Section with the VPD. Part of this affidavit was submitted *in camera*. The open portion of the affidavit includes this statement "Based on my experience as Staff Sergeant in charge of Court and Detention Services, I submit that any requests for public disclosure of DVR evidence should not be granted as the importance of keeping our surveillance system confidential is paramount in keeping the camera's limitations secure, thus ensuring the safety all of the staff who work at the Jail and the detainees housed therein." [48]

[39] Under the heading "DVR Camera Limitations", the Staff Sergeant states that disclosure of "any DVR evidence" could expose security weaknesses of the Jail both to the public and criminals and expose vital information about day to day Jail operations including the layout and security systems in place, and that this information could lead to an escape or rescue attempt. He states that the release could compromise the ability of jail staff to monitor an individual's well being while in custody.[49] Under the heading "Safety of Staff", he states that some safety concerns associated with the disclosure of the video at issue include, but are not limited to: "enabling prisoners to plan or commit criminal acts; increasing risk to staff by exposing what types of arms or limitations of arms are in place for personal or jail security; exploiting and possibly defeating restraint devices that are in place in the jail;" and one additional concern expressed *in camera*.[50] The affidavit concludes "I submit that any access request for any DVR images from the Vancouver Jail would severely compromise the day to day operations of the jail, and more importantly, could endanger the

[45] Public body's initial submissions, para. 33.
[46] Public body's initial submissions, para. 37.
[47] Public body's initial submissions, para. 38.
[48] Staff Sergeant affidavit, para. 4.
[49] Staff Sergeant affidavit, para. 5.
[50] Staff Sergeant affidavit, para. 7.

lives and physical safety of any staff member or Law Enforcement Officer who are present at the jail."[51]

[40] Third Party A states that she is "vehemently opposed to the release of [DVR] evidence related to the strip search of an accused while in the performance of [her] duties as a Correctional Officer." I note that the DVRs at issue do not contain any evidence of a strip search. Most of the submissions of the third parties appear to be most relevant to s. 22 of FIPPA. However, Third Party A does state that public disclosure of the DVRs "could inevitably lead to considerable, harmful and possibly unintended consequences", which she says include but are not limited to:

- a contextual data merger for distribution on the Internet
- complexity and incomprehensibility of data
- covert operations (selectively edited or manipulated)[52]

[41] Third Party B stated that she believes that "uncontrolled release of the video will reveal Jail safeguards that should be kept confidential to ensure the safety and protection of all persons who work in the Vancouver Jail."[53]

[42] The applicant denies that disclosing the footage she has requested will cause a threat to anyone's safety or the security of the VCJ, and submits that the concerns by the public body and VPD in this regard are speculative.[54] She notes that the public body and VPD have not provided any specific examples of threats to the employees of VPD, or of any attempt to break out of, or into the VCJ. She states that she has not seen the footage and is not able to properly refute the assertions of the public body about how the footage reveals the camera's limitations.[55] She notes that the VCJ was being renovated at the time she was in custody, and that it is not clear that cameras will even be in the same position after renovations.[56] She also notes that a high volume of people go through the VCJ, and that as a result information about the cameras' whereabouts can be easily acquired.[57]

Findings

[43] I agree with the public body that, at least in the circumstances of this case where there is evidence that the applicant intends to widely disseminate the information, it is appropriate to consider disclosure to the applicant as amounting

[51] Staff Sergeant affidavit, para. 8.
[52] Submissions of Third Party A.
[53] Submissions of Third Party B.
[54] Applicant's reply submissions, paras. 8, 9, 15 and 17; applicant's further reply submissions, pp. 2-3.
[55] Applicant's reply submissions, para. 4.
[56] Applicant's reply submissions, paras. 10 and 12.
[57] Applicant's reply submission, para. 2; applicant's further reply submission, p. 3.

to disclosure to the world.[58] I also agree with the public body that the video surveillance system and the security features of the jail are part of the class of objects contemplated by s. 15(1)(l)'s reference to "property or system".[59]

[44] As noted above, it appears that DVRs #2 and #3 contain the information of interest to the applicant. Each of these DVRs is shot entirely within a cell. The only concern raised by the Deputy Warden specific to these DVRs is the fact that the DVRs reveal some information about the camera's limitations: first, what portion of the cell cannot be seen by the security camera; and second, that some of the images are of poor quality.

[45] I agree that disclosure of gaps in the coverage of a surveillance system might compromise the effectiveness of such a system in some circumstances. However, in DVRs #2 and #3, the cells are small and the blind spots appear to be very limited. In addition, the nature of the blind spot is such that it is likely obvious to anyone who can see the camera's position and angle. Nothing in the evidence suggests that the cameras are hidden or inaccessible. Indeed, the evidence of the Deputy Warden is that inmates often try to disable the cameras. This suggests that they are easily identified. In the case of DVRs #2 and #3 then, there is nothing of significance about the cameras' limitations which will be disclosed by the footage which would not already be apparent to anyone in a position to take advantage of the blind spot. There is no clear and direct connection between the disclosure of the information in question and the alleged harm.

[46] With respect to the poor quality of portions of the video, I do not accept that this is a serious limitation which would be likely to be exploited in a manner which would give rise to the concerns raised by the public body.

[47] The Deputy Warden's affidavit does set out specific concerns which he has with revealing the layout and security features of the VCJ. However, none of these relates to DVRs #2 and #3. Unlike some of the other DVRs, these tapes do not show the movement of officers or personnel through various parts of the VCJ, and do not show the relationship of the various areas in the VCJ to each other. As a result, these DVRs are not likely to raise the security concerns set out in the Deputy Warden's affidavit.

[48] Because DVRs #2 and #3 are limited to the interiors of single cells, they are also unlikely to give rise to the concerns cited by the public body in its submissions on the mosaic effect. I note, as well, that Commissioner Loukidelis has stated that the cases where the mosaic effect applies will be the exception and not the norm.[60] In cases where it has been applied, there has been clear and convincing evidence that the evidence could be linked, and was intended to

[58] See Order 01-01, para. 39.
[59] Ontario Order PO-2358; Order F08-03.
[60] Order 01-01; Order F08-03.

be linked, with already available information.[61] In this case, there is only speculation that the information in any of the DVRs may be linked with other unidentified information that may or may not exist. None of the parties set out how the information in DVRs #2 and #3 might be linked with other information to present a security risk.

[49] While the safety and security of staff and others in the VCJ are undoubtedly of great importance, the concerns raised in the submissions of the public body and of the VPD do not establish a clear connection between the release of DVRs #2 and #3 and any risk of harm. The concerns raised in this regard are, to say the least, generalized and speculative. While I accept that the safety of officers and individuals in custody may be compromised if limitations in a security system are well-known, I do not, for the reasons set out above, accept that releasing DVRs #2 and #3 will reveal any such limitations. In coming to this conclusion, I have kept in mind the concerns the public body raised with respect to the possibility that the tapes might be technically enhanced and might be viewed alongside other information, including other DVRs. Arguably, such concerns are too speculative to form part of the determination regarding s. 15(1). However, even taking them into account, I find that the public body has not discharged its burden under s. 15(1).

[50] The VPD made virtually no specific submissions on the application of s. 15(1) to the specific DVRs in question. Its affidavit evidence states that "any DVR evidence" should be withheld on the basis that it could expose limitations in the security system and compromise the ability of staff to monitor individuals in custody. Section 15(1) clearly contemplates a harms-based, rather than a class exception. The VPD put forward no evidence which was "detailed and convincing enough to establish specific circumstances for the contemplated harm to result from the disclosure of the information". There is no explanation of how the disclosure of the information in DVRs #2 and #3 could lead to any of the harmful consequences alluded to, such as enabling prisoners to commit criminal acts, or exploiting the restraint devices that are in place.

[51] With respect to the third parties' concerns as outlined above, these are entirely speculative. I find that the public body is not authorized to refuse access to DVRs #2 and #3 under s. 15(1).

[52] **3.5 Is the Public Body Required to Refuse Access to the Records Under Section 22(1)?**—Section 22 provides, in part:

> 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.

[61] See, for example, Order 03-41.

(2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

(a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny, …

(c) the personal information is relevant to a fair determination of the applicant's rights, …

(e) the third party will be exposed unfairly to financial or other harm,

(f) the personal information has been supplied in confidence,

(g) the personal information is likely to be inaccurate or unreliable, and

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.

(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,

(c) the personal information relates to eligibility for income assistance or social service benefits or to the determination of benefit levels,

(d) the personal information relates to employment, occupational or educational history….

(4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if …

(e) the information is about the third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff….

[53] As noted by the public body, there are two classes of people whose personal information is recorded on the DVRs: staff of the VCJ (including Correctional Officers and others) and other third parties (presumed to be individuals in custody).[62] The public body refers to the latter group as the "Inmates", although it notes that it has no information on whether these individuals were charged with or convicted of an offence, or in some cases, whether they were in custody at all.[63]

[62] Public body initial submissions, para. 55.
[63] Public body initial submissions, para. 61.

Individuals in Custody

[54] The public body states:

> The DVRs reveal the face of other individuals in custody, as well as their sex, and in some cases indications of race or ethnic origin. It reveals that these persons were at the Jail at a particular time and date. Just because this information is recorded via DVR rather than on paper does not make it any less personal information.[64]

[55] The public body refers to ss. 22(2)(a), (c) and (h) as relevant to the determination of whether release of these third parties' personal information would be an unreasonable invasion of those individuals' privacy.[65] The public body argues that the release of the information is not relevant to public scrutiny of the third party, and will not advance any claims the applicant has made against the public body or others for mistreatment. However, it says, the release could unfairly damage the reputation of those third parties, since it is presumed that the individuals were involved in some criminal act.[66]

[56] The applicant states that she is not requesting footage of any inmates and that the faces of any inmates who appear can be removed.[67] I agree with the public body that the release of the images of other individuals who appear to be in custody would be an unreasonable invasion of their privacy. It may be that s. 22(3)(b) applies to this information, such that there is a presumption that its disclosure is an unreasonable invasion of privacy. In any case, I find that the only relevant consideration under s. 22(2) is s. 22(2)(h) and this militates against disclosure. As a result, the public body is required to withhold the information on the DVRs relating to identifiable third parties who are not staff.

Staff of VCJ

[57] The public body and the applicant both take the position that the release of the DVRs would not constitute an unreasonable invasion of the staff members' privacy. The public body states:

> On the DVRs the Staff appear in the context of the performance of their duties, and the videos merely factually report on their activities and functions at the Jail. Based on the information that the Ministry currently has, the Ministry believes that for the purposes of the records at issue in this inquiry, the disclosure of the personal information of the Staff is not an unreasonable invasion of their privacy.[68]

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[64] Public body initial submissions, para. 53.
[65] Public body initial submissions, para. 57.
[66] Public body initial submissions, paras. 60-61.
[67] Applicant's reply submission, para. 11; applicant's further reply submissions, pp. 1-2.
[68] Public Body's initial submissions, para. 56.

[58] The applicant notes that the staff were aware that there were cameras recording their activities. She states that she is content with the faces of staff being removed or blacked out, with the exception of Third Party A, who the applicant says assaulted her. The applicant makes it clear that she is seeking this footage for use in her civil suit against, among others, Third Party A.[69]

[59] The three third parties object to the disclosure of the DVRs. Third Party A states, in a passage that Third Party C repeats word for word:

> Release of DVR evidence must be prohibited in all instances where an Officer may be at risk of being publicly identified either through image or likeness. Once released, there is no longer any reasonable expectation that a public body would be able to control the use of the images.[70]

[60] Third Party A states "I am not satisfied that the integrity of any DVR image will be maintained as originally intended and constitutes an unreasonable invasion of my personal privacy." Third Parties A and B both state that they support any other review process where the evidence remains in control of the public body.[71]

[61] Third Party B states:

> I strenuously object to the disclosure of any personal information and any digital video recordings of myself in relation to this matter being pursued by [the applicant]. If released, there would no longer be any reasonable expectation that a public body would be able to control the use of these recordings. I am uncertain for what purpose [the applicant] intends to use the video footage and if released to her, I fear it would be for ill purposes and would cause harm or damage to myself in some way. I am not satisfied that the integrity of any DVR image will be maintained as originally intended. The disclosure of the video in issue would constitute an unreasonable invasion of my personal privacy and would put myself at risk. To clarify, I believe [the applicant] will use the video for her benefit in civil litigation against myself. In the civil discovery forum, it is possible to set conditions on the use and release of the video.

[62] The third parties' concern that the integrity of the images will not be maintained cannot be sufficient to prevent disclosure, since that would apply to any digital image. As well, the fact that the applicant may intend to use the DVR in civil proceedings is not a reason to refuse disclosure.

[63] The third parties suggest that any recording which "identifies" them must not be released. However, nothing in s. 22 suggests that identifying a third party as an employee of a public body constitutes an unreasonable invasion of the

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[69] Applicant's initial submission, para. 5.
[70] Submissions of Third Party A; submissions of Third Party C.
[71] Submissions of Third Party A; submissions of Third Party B.

third party's privacy. Indeed, s. 22(4)(e) demonstrates that the legislature did not intend to treat the disclosure of information about a third party's position with a public body as an unreasonable invasion of the third party's privacy.

[64] As noted above, the third parties were not explicit about what section of FIPPA they rely on to argue that disclosure of the DVRs would constitute an unreasonable invasion of their privacy. Section 22(3)(d) provides that the disclosure of personal information relating to employment, occupational or employment history is presumed to be an unreasonable invasion of a third parties' privacy. Section 22(3)(d) can sometimes apply to descriptions of third parties' work activities, especially if they occur in the context of a disciplinary investigation.[72] In this case, however, the public body and the third parties' position is that the activities of the third parties which are captured in the DVRs simply involve the proper discharge of their duties. While the applicant does not agree that the activities, including the alleged assault, are part of the proper discharge of the employees' duties, she notes that the employees were aware of the cameras and that their actions were being recorded.

[65] The third parties' concerns about their own privacy seem to be based on the fact that the videos will identify them as employees of a public body. This would appear to be information which falls within s. 22(4)(e). However, even if the information is within s. 22(3)(d), I find that its disclosure will not constitute an unreasonable invasion of privacy. The factors set out in s. 22(2)(a) and (c) favour disclosure. The third parties have not argued that s. 22(2)(h) militates against disclosure and none of the other s. 22(2) factors is relevant. As a result, the public body is not authorized to withhold the information regarding the staff of VCJ or other employees pursuant to s. 22. I note, however, that the applicant has stated that she is not interested in seeing the faces of staff, other than Third Party A,[73] and it is therefore open to the public body to decline to disclose the information which would identify the other employees.

[66] **3.6 Severance**—The public body, while asserting that the entirety of the DVRs should be withheld, also argues that it is not reasonable to require it to sever the records. In its initial submission, the public body asserts that it did not have the technical capability to sever the DVRs. An affidavit from the Acting Director of the Privacy, Information and Records Management Division of the public body outlines efforts to access the expertise necessary to edit the DVRs. She states that she was told that the Corrections Branch did not have the technology "to sever parts of the DVRs" and that she was told that "the Ministry does not have any programs that are capable of detailed editing of the DVRs".[74] She deposes that it is possible that the Public Affairs Bureau may have the

[72] Order F07-22, [2007] B.C.I.P.C.D. No. 36, at para. 27; Order F06-11, [2006] B.C.I.P.C.D. No. 18, at para. 51; Order 03-34, [2003] B.C.I.P.C.D. No. 34, at paras. 25-26.
[73] Applicant's initial submission, paras. 5 and 6; applicant's reply submission, para. 19, applicant's further reply submissions, pp. 1-2.
[74] Acting Director's affidavit, paras. 6 and 7.

technology to sever the DVRs, although their ability to do so is "limited in its capability with other computer programs/file types". She states that the complexity would increase greatly for those portions of the DVR where there is movement of people in and out of the frame and that until they undertake the work, the Public Affairs Bureau cannot confirm whether or not they have the technology or programs that will be compatible.[75] The Acting Director sets out several concerns with having a private company edit the tapes.[76] She states that it would not be reasonable to require the Ministry to sever the DVRs because they would have to be sent outside the Ministry.[77]

[67] The reply submission of the public body includes an affidavit from a privacy analyst with the Privacy, Information and Records Management Division of the public body, who deposes that she contacted a company which provides film and video editing services. She states that an individual at that company advised her that it takes approximately one day to edit an hour of this kind of video, when the editing consists of blurring of faces and possibly other items appearing in the images. She deposes that "the fee for this kind of work is $225 per hour and $1800 per day" and that it would take six days to process all of the videos, for a total of $10,800.00.[78]

[68] The applicant takes the position that the cost of editing the footage is not relevant. However, she goes on to state that she contacted several companies who provide video editing services She states that one company provides services at $60 per hour. The applicant suggests that the evidence tendered by the public body on this issue was intentionally vague and misleading.[79]

[69] I have held that the public body is required to give access to DVRs #2 and #3, and that in doing so, it is required to withhold information which would identify other persons being held in custody at the VCJ. DVR #3 only reveals information about other inmates at the end, after the applicant is removed from the cell, when the door is left open and it is possible to see people moving about. This part of the DVR does not include any of the applicant's personal information, and as a result any copy of DVR #3 which is reproduced can simply end when the applicant is removed from the cell. There is no evidence before me which suggests that this would be difficult to do.

[70] As described above, DVR #2 includes images of another woman being held in the same cell as the applicant. I find that, prior to releasing DVR #2, the public body is required to determine a manner of withholding from release that information which would identify this third party. This will require some editing or manipulation of the video. While the third party is in the cell with the applicant for

[75] Acting Director's affidavit, para. 8.
[76] Acting Director's affidavit, para. 9.
[77] Acting Director's affidavit, para. 11.
[78] Privacy Analyst's affidavit, para. 4.
[79] Applicant's further reply submissions.

about 25 minutes, for the most part she is lying on the floor of the cell with her face completely obscured. For the very brief (less than one minute) period of the altercation of interest to the applicant, however, the third party's face is clearly seen. Removing the information which identifies the third party will involve, at the very least, blacking out or blurring the third party's face during the period of the altercation. It may also require some blacking out or blurring of the third party's face at the time she is brought into the cell.

[71] The public body has not persuaded me that it will be impossible or prohibitively expensive to edit the DVR in this manner. The evidence from the public body about whether the Public Affairs Bureau has the expertise and ability to sever the tapes is inconclusive. The cost estimate for utilizing a private company is provided in such general terms that it is impossible for me to find that the cost associated with the small bit of editing required will be such that the public body is absolved of its s. 4(2) duty to sever. I am also not persuaded that the public body cannot institute appropriate safeguards which would adequately minimize any risks associated with utilizing a private company to edit the tapes. I am not persuaded that this function cannot be outsourced to the private sector, noting among other things that the public body remains accountable under FIPPA for the security of personal information in the DVRs during performance of the outsourced functions.

4.0 CONCLUSION

[72] For the reasons given above, under s. 58 of FIPPA, I make the following orders:

1. The public body is to provide the applicant with a copy of DVR #3, edited to withhold the last portion of the tape which records the time after the applicant has left the room.

2. The public body is to provide the applicant with a copy of DVR #2, edited to remove information which would identify the other person held in custody in the same cell.

3. If the applicant wishes to view the remainder of the DVRs in issue in order to determine if they are relevant to the matters of interest to her, she is to make a request in writing to the public body, with a copy to this office, and the public body is to provide the applicant with access to viewing the DVRs within one week of receiving her request.

4. If the applicant determines that some or all of DVRs #1, #4, #5 and #6 are relevant to her request, she is to inform this office within one week of reviewing the DVRs, and any further request for disclosure will be dealt with on an expedited basis.

5. I require the Ministry of Public Safety and Solicitor General to give the applicant access to this information within 30 days of the date of this order, as FIPPA defines "day", that is, on or before August 12, 2008 and, concurrently, to copy the Registrar of this Office on its cover letter to the applicant, together with a copy of the records.

June 27, 2008

ORIGINAL SIGNED BY

Catherine Boies Parker
Adjudicator

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