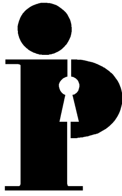

ORDER M-1086

Appeal M_9700312

Ottawa-Carleton Regional Police Services Board

NATURE OF THE APPEAL:

The Ottawa-Carleton Regional Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to a police file relating to three bank robberies and a holdup of a Brinks guard. The requester was involved in all four incidents.

The Police identified 87 pages of responsive records, consisting of general occurrence reports, supplementary and follow-up investigation reports, witness statements, subpoenas, an information and a bail record. The Police denied access to all of these records pursuant to the following exemptions under the Act:

- invasion of privacy - sections 14(1)(f) and 38(b)
- law enforcement - section 8(2)(a)
- discretion to refuse requester's own information - section 38(a)

The requester (now the appellant) appealed the Police's decision.

During mediation, the Police disclosed 15 pages, five in full and ten partially severed. The appellant believed that additional records exist. The Police conducted another search and found an additional two-page occurrence report, but denied access on the basis of the same exemption claims. The appellant continued to believe there were other witness statements that had not been identified.

A Notice of Inquiry was sent to the Police and the appellant. Representations were received from both parties.

DISCUSSION:

PERSONAL INFORMATION

Section 2(1) of the Act defines "personal information," in part, to mean recorded information about an identifiable individual.

Having examined the records, I find that page 49 contains the personal information of the appellant only, and all other pages contain either the personal information of both the appellant and other individuals, or only the personal information of individuals other than the appellant.

As far as the witness statements are concerned, the appellant is not interested in knowing witnesses names, addresses or telephone numbers. Therefore, I must determine whether severing this information is sufficient to remove the remaining parts of these records from the scope of the definition of "personal information."

In Order P-230, former Commissioner Tom Wright stated:

> I believe that provisions of the Act relating to protection of personal privacy should not be read in a restrictive manner. If there is a reasonable expectation that the individual can be identified from the information, then such information qualifies under subsection 2(1) as personal information.

In applying this reasoning to the witness statements, in my view, even if the names, addresses and telephone numbers are severed, it is still reasonable to expect that the witnesses can be identified. Therefore, I find that these records contain the personal information of the witnesses, with or without the severances.

INVASION OF PRIVACY

Section 14(1) of the Act prohibits an institution from disclosing personal information of an individual other than the requester, except in circumstances listed in sections 14(1)(a) through (f). Section 14(1)(f) permits disclosure if it "does not constitute an unjustified invasion of personal privacy."

Section 36(1) of the Act gives individuals a general right of access to their own personal information. However, this right of access is not absolute. Where a record contains the personal information of both the requester and another individual, section 38(b) allows an institution to withhold information from the requester, if it determines that disclosure would constitute an unjustified invasion of the other individual's personal privacy.

In considering both sections 14(1)(f) and 38(b), sections 14(2) and (3) of the Act provide guidance in determining whether the disclosure of personal information would result in an unjustified invasion of privacy. Section 14(2) outlines some criteria for the institution to consider in making this determination, while section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of privacy.

The only way in which a section 14(3) presumption can be overcome is if the personal information falls under section 14(4), or where a finding is made under section 16 of the Act that there is a compelling public interest in the disclosure of the information which clearly outweighs the purpose of the section 14 exemption.

The Police submit that the presumption in section 14(3)(b) applies. This section reads as follows:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if 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;

The Police submit that the personal information contained in the records was compiled during investigations into allegations that offences under the Criminal Code of Canada had been

committed. The Police point out that the personal information was used to investigate the offences and prosecute the offenders.

Having examined the records, I find that the personal information on pages 1-29 and 48-88 was clearly compiled and is identifiable as part of an investigation into a possible violation of law. Therefore, the presumed unjustified invasion of personal privacy in section 14(3)(b) applies to these pages.

Pages 30-47 are subpoenas, affidavits of service, an information, bail documents, and other similar records used as part of the criminal prosecution of the appellant and other individuals. Pages 41, 42 and 47 have already been disclosed to the appellant, and pages 40 and 43-46 have been disclosed with severances.

In Orders M-734 and M-841, Inquiry Officer Donald Hale found that records which are created following an investigation into a possible violation of law cannot fall within the ambit of the presumption in section 14(3)(b). In Order M-734, he held that:

> The records at issue are documents which are generated upon the **completion** of an investigation at which time charges are laid. The Information and Summons are not compiled as part of the investigation but rather these documents initiate the court proceedings which follow the investigation.

Similarly, in Order 841, he found that probation documents, informations, undertakings and bail documents are *post-investigation* records that are not covered by the section 14(3)(b) presumption.

I agree with Inquiry Officer Hale, and find that pages 30-47 are records generated after the completion of a criminal investigation and, therefore, fall outside the scope of section 14(3)(b) of the Act.

Neither party makes specific reference to the various factors listed in section 14(2) which need to be weighed in order to determine whether the disclosure of pages 30-39 and the remaining portions of pages 40 and 43-46 would constitute an unjustified invasion of privacy. The appellant submits that the main reason for making his access request is to correct certain mistakes about him contained in the Police and court files. He identifies information that he feels is not correct, and submits that if he is not able to correct these errors he will be subject to improper treatment. He also feels the records are necessary in order to pursue a civil action. These statements raise the type of considerations that might be relevant under section 14(2)(d) (fair determination of rights). In my view, section 14(2)(f) (highly sensitive) is also a relevant consideration with respect to the personal information of individuals other than the appellant.

Pages 30-37 and the remaining portions of pages 40 and 43-46 contain the personal information of individuals other than the appellant. Only pages 38 and 39 contain the personal information of both the appellant and others. In my view, the personal information contained in these pages would not assist the appellant in correcting information about him which he feels is inaccurate.

Having weighed the factors favouring privacy protection against the appellant's right to access his own personal information, I find that the factors favouring privacy protection are more compelling in the circumstances of this appeal. Therefore, I find that the disclosure of pages 30-

39 and the remaining portion of pages 40 and 43-46 would result in an unjustified invasion of another individual's privacy.

Neither section 14(4) nor section 16 of the Act is applicable in this appeal.

Therefore, I find that records which contain the person information of individuals other than the appellant are properly exempt under section 14(1), and those which contain the personal information of both the appellant and other individuals are properly exempt under section 38(b) of the Act.

REQUESTER'S OWN INFORMATION

As previously stated, page 49 contains the personal information of the appellant only.

Section 38(a) of the Act gives an institution discretion to deny access to a record containing a requester's own personal information where certain listed exemptions, including section 8, would otherwise apply.

Section 8(2)(a) of the Act reads as follows:

> A head may refuse to disclose a record,
>
> > that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

In order to qualify for exemption under section 8(2)(a) of the Act, a record must satisfy each part of the following three part test:

1. the record must be a report; **and**

2. the report must have been prepared in the course of law enforcement, inspections or investigations; **and**

3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

[Orders M-84, M-1048 and P-324]

Consistent with my findings under section 14(3)(b), I am satisfied that page 49 was prepared by the Police in the course of a law enforcement investigation by an agency that has the function of enforcing and regulating compliance with a law, thereby satisfying requirements 2 and 3.

In order to satisfy the first requirement, the record must be a "report." The word "report" is not defined in the Act. Previous orders have found that in order for a record to be considered a report, it must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact (Order M-1048).

In my view, page 49 is most accurately described as a recording of facts, which as noted above, does not qualify as a "report" for the purposes of section 8(2)(a). Therefore, this exemption claim does not apply, and page 49 should be disclosed.

REASONABLENESS OF SEARCH

Where a requester provides sufficient details about the records which he is seeking and the institution indicates that further records do not exist, it is my responsibility to ensure that the institution has made a reasonable search to identify all responsive records. The Act does not require the institution to prove with absolute certainty that further records do not exist. However, in my view, in order to properly discharge its statutory obligations, the institution must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified, the appellant must nevertheless provide a reasonable basis for concluding that such records may, in fact, exist.

The appellant submits that there should be more witness statements concerning the four robberies in which he was involved. He indicates that there were at least 10 eye witnesses to each of two bank robberies, 3 at another and at least 20 at the holdup of the Brinks' guard.

The Police indicate that initially a search was conducted thorough its in-house computer using the appellant's name. Four occurrences were identified, three of which were felt to be responsive to the appellant's request. The supervisor in the general filing section searched microfilm records for a complete copy of all relevant records. During mediation another search was conducted by staff of the Freedom of Information and Privacy office, and two additional pages were located. The Police explained that these two pages were not located during the initial search due to the reports being cross-referenced.

Based on the representations provided to me, I am satisfied that the Police have made reasonable efforts to identify and locate all records responsive to the request.

ORDER:

1. The search for responsive records conducted by the Police was reasonable and this portion of the appeal is dismissed.

2. I order the Police to disclose page 49 to the appellant by sending him a copy by **April 1, 1998**.

3. I uphold the decision of the Police to deny access to the remaining records.

4. In order to verify compliance with the provisions of this order, I reserve the right to require the Police to provide me with a copy of the record disclosed to the appellant pursuant to Provision 2.

Original signed by: March 17, 1998
Ann Cavoukian, Ph.D.
Commissioner