Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER PO-2474

Appeal PA-050083-1

Ministry of Community Safety and Correctional Services

Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9188
TTY: 416-325-7539
http://www.ipc.on.ca

NATURE OF THE APPEAL:

The Ministry of Community Safety and Correctional Services (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to an identified "Criminal Investigative Analysis – Preliminary Report" concerning the requester.

The Ministry located the responsive record and denied access to it on the basis of the exemption in section 49(a) (discretion to refuse requester's own information), in conjunction with sections 14(1)(c), (d), (e), (h), (l) and 14(2)(a) (law enforcement), and 15(b) (relations with other governments) of the *Act*.

The requester (now the appellant) appealed the Ministry's decision. During the mediation stage of this appeal, the parties confirmed that the sole issue is whether the exemptions claimed apply to the record. Following mediation, the appeal was transferred to the inquiry stage of the process. I initially sent a Notice of Inquiry to the Ministry, and received representations in response. I then sent the Notice of Inquiry, along with a copy of the Ministry's representations, to the appellant, who also provided representations. The appellant's representations were shared with the Ministry, and the Ministry responded with reply representations.

RECORD:

The record at issue is a report relating to the appellant entitled "Criminal Investigative Analysis – Preliminary Report".

DISCUSSION:

PRELIMINARY MATTERS

The appellant refers to two matters in his representations which do not directly relate to the issue of access to the record. One is his concern that the record at issue may have been inappropriately released by the Ministry at some point in time. The other relates to his interest in correcting the information contained in the record that he believes is inaccurate. Although the appellant referred to these issues in his letter of appeal, neither of these matters were identified as being at issue at the end of the mediation stage of this process and, accordingly, they are not addressed in this decision.

PERSONAL INFORMATION

Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exceptions to this general right of access.

As the section 49 exemption applies only to information that qualifies as "personal information", I must first determine whether the record contains personal information and if so, to whom that information relates. Personal information is defined, in part, in section 2(1) as follows:

> 'personal information' means recorded information about an identifiable individual, including,

> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> …
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The Ministry takes the position that the record contains the personal information of the appellant as defined in the sections set out above. The appellant agrees that the record contains his personal information. I find that the record relates directly to the appellant and contains his personal information as defined in sections 2(1)(a), (b), (c), (d), (g) and (h) of the *Act*. It does not contain the personal information of any other identifiable individual.

IS THE RECORD EXEMPT UNDER SECTION 49(a), IN CONJUNCTION WITH SECTIONS 14(1)(c), (d), (e), (h), (l), 14(2)(a) and/or 15(b)?

General principles

Under section 49(a), an institution has the discretion to deny an individual access to their own personal information where the exemptions in sections 14 and 15 (among others) would apply to the disclosure of that information.

Because section 49(a) is a discretionary exemption, even if the information falls within the scope of one of the listed sections, the Ministry must nevertheless consider whether to disclose the information to the requester.

In this appeal, the Ministry relies on section 49(a) in conjunction with sections 14(1)(c), (d), (e), (h), (l), 14(2)(a) and 15(b).

Section 14(2)(a): Report prepared in the course of law enforcement

Introduction

As stated above, the Ministry takes the position that section 49(a), in conjunction with section 14(2)(a), applies to the record at issue. Section 14(2)(a) reads:

> 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 for a record to qualify for exemption under section 14(2)(a) of the *Act*, the institution must satisfy each part of the following three part test:

- the record must be a report; and
- the report must have been prepared in the course of law enforcement, inspections or investigations; and
- the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

(See Order 200 and Order P-324)

The word "report" is not defined in the *Act*. However, previous orders have found that in order to qualify as a report, a record 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 200).

Representations

The Ministry begins by identifying that it is involved in "law enforcement" as that term is defined in the *Act*. Section 2 of the *Act* states:

> "law enforcement" means,
>
> > (a) policing,

> (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
>
> (c) the conduct of proceedings referred to in clause (b)

The Ministry submits that, although the term "policing" is neither defined in the *Act* nor in the *Police Services Act*, (the *PSA*), the *PSA* provides the primary statutory basis for the existence of police services in Ontario. The Ministry refers to section 1 of the *PSA* which states:

> Police services shall be provided throughout Ontario in accordance with the following principles:
>
> 1. The need to ensure the safety and security of all persons and property in Ontario.

The Ministry also submits that the requested record falls within parts (a) and (b) of the definition of "law enforcement", as the Ministry (through the Ontario Provincial Police (the OPP)) is involved in both "policing", as well as various activities relating to the enforcement of compliance with standards, duties and responsibilities set out in statutes or regulations. With respect to the "policing" activities of the OPP, the Ministry states that these activities include the collection and analysis of law enforcement information, as well as the prevention of crime.

With respect to the issue of whether the record qualifies as a "report" for the purpose of section 14(2)(a), the Ministry initially refers to previous orders of this office which have defined the term "report". The Ministry then states:

> The [record] at issue was prepared by OPP investigative staff at the conclusion of the criminal investigative analysis concerning the appellant undertaken by the Behavioral Sciences Section of the Investigative Support Bureau of the OPP. The resulting report is a formal, preliminary report containing background and factual information, a criminal analysis of information pertaining to the appellant, investigative opinions, a summary and a detailed conclusion by the author.

The appellant states in his representations that he was never assessed while in custody, and only assessed after release at his own request. The appellant also identifies that, based on information he has obtained about the contents of the record, he has concerns about the accuracy of the information which it contains.

Analysis and Findings

I find that the record at issue is properly characterized as a "report" for the purposes of section 14(2)(a). Having reviewed its content, I find that the record represents a formal written account of the information gathered by an OPP officer working in the Behavioral Sciences Section of the

Investigative Support Bureau of the OPP. In addition to summarizing and analyzing the information, it contains the results of the collation and consideration of that information, along with the officer's conclusions based on his analysis of it.

I also find that the report was prepared in the course of law enforcement undertaken by the OPP, specifically the analysis of law enforcement information pertaining to the appellant conducted by the OPP. Finally, I am satisfied that the OPP is an agency which has the function of enforcing and regulating compliance with the law. Accordingly, I conclude that all three parts of the section 14(2)(a) test have been met.

Because I have found that all of the requirements of section 14(2)(a) have been established, the record qualifies for exemption under section 49(a) of the *Act*.

Absurd result

This office has applied the "absurd result" principle in situations where the basis for a finding that information qualifies for exemption would be absurd and inconsistent with the purpose of the exemption.

Senior Adjudicator John Higgins first applied the absurd result principle in Order M-444 where, after finding that the disclosure of identified information would, according to the legislation, be a presumed unjustified invasion of privacy, he went on to state:

> However, it is an established principle of statutory interpretation that an absurd result, or one which contradicts the purposes of the statute in which it is found, is not a proper implementation of the legislature's intention. In this case, applying the presumption to deny access to information which the appellant provided to the Police in the first place is, in my view, a manifestly absurd result. Moreover, one of the primary purposes of the *Act* is to allow individuals to have access to records containing their own personal information, unless there is a compelling reason for non- disclosure. In my view, in the circumstances of this appeal, non-disclosure of this information would contradict this primary purpose.

Numerous subsequent orders have supported this position and include similar findings. The absurd result principle has been applied where, for example:

- the requester sought access to his or her own witness statement [Orders M-444, M-451, M-613];
- the requester was present when the information was provided to the institution [Orders P-1414];
- the information is clearly within the requester's knowledge [Orders MO-1196, PO-1679, MO- 1755].

In Order MO-1323, Adjudicator Laurel Cropley elaborated on the rationale for the application of the absurd result principle in the context of the *Municipal Freedom of Information and Protection of Privacy Act* as follows:

> As noted above, one of the primary purposes of the *Act* is to allow individuals to have access to records containing their own personal information unless there is a compelling reason for non- disclosure (section 1(b)). Section 1(b) also establishes a competing purpose which is to protect the privacy of individuals with respect to personal information about themselves. Section 38(b) was introduced into the *Act* in recognition of these competing interests.
>
> In most cases, the "absurd result" has been applied in circumstances where the institution has claimed the application of the personal privacy exemption in section 38(b) (or section 49(b) of the provincial *Act*). The reasoning in Order M-444 has also been applied, however, in circumstances where other exemptions (for example, section 9(1)(d) of the *Act* and section 14(2)(a) of the provincial *Act*) have been claimed for records which contain the appellant's personal information (Orders PO-1708 and MO-1288).
>
> In my view, it is the "higher" right of an individual to obtain his or her own personal information that underlies the reasoning in Order M-444 which related to information actually supplied by the requester. Subsequent orders have expanded on the circumstances in which an absurdity may be found, for example, in a case where a requester was present while a statement was given by another individual to the Police (Order P-1414) or where information on a record would clearly be known to the individual, such as where the requester already had a copy of the record (Order PO- 1679) or where the requester was an intended recipient of the record (PO-1708).

However, previous orders have also established that if disclosure is inconsistent with the purpose of the exemption, the absurd result principal may not apply, even if the information was supplied by the requester or is within the requester's knowledge [Orders M-757, MO-1323, MO-1378].

The record at issue in this appeal is a criminal investigative analysis report relating to the appellant. I have found that it qualifies for exemption under sections 14(2)(a) and 49(a) of the *Act*. However, in his representations the appellant indicates that, at his bail hearing, his lawyer presented him with (but did not provide him with) a copy of the record at issue in this appeal. His representations refer in detail to some of the specific information relating to him that is contained in the report. In addition, he attaches to his representations a copy of a document that was distributed to the Executive Committee of an organization which regulates the appellant's former profession. That document includes a detailed summary of the portion of the report which contains the appellant's "traits and characteristics". It also contains some information about the material found in the appellant's possession.

In my view, to deny access to the portion of the report which describes the appellant's "traits and characteristics", and which are referenced in the attachments to the appellant's representations, which are clearly within his knowledge, and which he viewed at his bail hearing, would lead to an "absurd result". Accordingly, I find that the appellant's "traits and characteristics" identified in point form on page 4 of the report, do not qualify for exemption under section 14(2)(a) in the context of section 49(a) of the *Act*, on the basis that to deny the appellant access to this information would result in an absurdity.

With respect to the other information contained in the report, although the appellant identifies that his lawyer presented him with a copy of the report at his bail hearing, in the circumstances of this appeal, I find that the principle of "absurd result" is not applicable. I have found above that the entire record qualifies for exemption under sections 14(2)(a) and 49(a). Other than the appellant's statement that his lawyer presented him with a copy of the report, and a brief summary of the materials found in the appellant's possession (which is contained in the material attached to the appellant's representations), I have not been provided with sufficient evidence to conclusively demonstrate that the appellant is aware of the specific contents of the other portions of the record. Furthermore, the appellant has not provided information indicating whether the report was presented to him by his lawyer without any conditions or restrictions attached to it.

I have reviewed the remaining portions of the record and considered the purpose of the section 49(a) and 14(2)(a) exemptions. Bearing in mind the extreme sensitivity of some of the information contained in the record, I find that the absurd result principle does not apply to the remaining portions of the record, and they should not be disclosed to the appellant.

I have found above that the absurd result principle applies only to that portion of the record which consists of the list of the appellant's "traits and characteristics" identified in point form on page 4 of the report, and that this portion of the record ought to be disclosed to the appellant. I will now review the possible application of the other exemptions relied on by the Ministry to this portion of the record. It is not necessary for me to review the application of these exemptions to the portions of the record which I have found qualify for exemption under section 49(a) in conjunction with section 14(2)(a).

Sections 14(1)(c), (d), (e), (h), (l)

Sections 14(1)(c), (d), (e), (h) and (l) state:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;

> (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;
>
> (e) endanger the life or physical safety of a law enforcement officer or any other person;
>
> (h) reveal a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation;
>
> (l) facilitate the commission of an unlawful act or hamper the control of crime.

The term "law enforcement" is used in several parts of section 14(1). I have found above that the record at issue in this appeal was prepared in the course of law enforcement, and that the OPP is an agency which has the function of enforcing and regulating compliance with the law.

Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context [*Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.)].

Except in the case of section 14(1)(e), where section 14 uses the words "could reasonably be expected to", the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.), *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

In the case of section 14(1)(e), the institution must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated [*Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.)].

It is not sufficient for an institution to take the position that the harms under section 14 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfilment of the requirements of the exemption [Order PO-2040; *Ontario (Attorney General) v. Fineberg*].

Sections 14(1)(c): investigative techniques and procedures

In order to meet the "investigative technique or procedure" test, the institution must show that disclosure of the technique or procedure to the public could reasonably be expected to hinder or

compromise its effective utilization. The exemption normally will not apply where the technique or procedure is generally known to the public [Orders P-170, P-1487].

The techniques or procedures must be "investigative". The exemption will not apply to "enforcement" techniques or procedures [Orders PO-2034, P-1340].

The Ministry submits as follows in support of its position that the report qualifies for exemption under section 14(1)(c):

> The report reveals the step by step methodologies and resources accessed to collect necessary law enforcement information relating to the appellant and the particular circumstances of his criminal charges. … The information in the report conveys details of the procedures and the investigative tools used by the OPP for the purposes of preparing a detailed criminal investigative analysis report relating to the appellant. … The methodologies contained in the report are not widely known to the general public and release could undermine their law enforcement effectiveness in future cases. For example, an individual involved in the type of criminal activities for which the appellant has been convicted could use the information contained in the report to modify his/her behaviour, associations, relationships, activities, etc. in order to avoid attracting either further or future attention from law enforcement officials.

On my review of the information remaining at issue in this appeal (the appellant's "traits and characteristics"), I am not satisfied that the disclosure of this portion of the record would reveal investigative techniques and procedures currently in use or likely to be used in law enforcement. Although I accept that portions of the record which I have found to qualify for exemption under section 14(2)(a) may disclose this type of information, in my view the discreet portion of the record under consideration could not reasonably be expected to disclose this type of information. Accordingly, the list of the appellant's "traits and characteristics" do not qualify for exemption under section 49(a) in conjunction with 14(1)(c).

In any event, based on the discussion under "absurd result" set out above, and in light of the information provided to me by the appellant, to deny access to this information on the basis of section 49(a) and 14(1)(c), would lead to an absurd result.

Section 14(1)(d): confidential source

In order for a record to qualify for exemption under section 14(1)(d), the Ministry must establish a reasonable expectation that the identity of the source or the information given by the source would remain confidential in the circumstances [Order MO-1416].

The Ministry has provided very general arguments in support of its position that the record qualifies for exemption under this section. As identified above, the institution must provide

"detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient.

On my review of the portion of the record remaining at issue, I am not satisfied that the disclosure of this information could reasonably be expected to disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source.

In any event, based on the discussion under "absurd result" set out above, and in light of the information provided to me by the appellant, to deny access to this information on the basis of section 49(a) and 14(1)(d), would lead to an absurd result.

14(1)(e): life or physical safety

In the case of section 14(1)(e), the Ministry must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated.

In this appeal, the representations from the Ministry on the possible application of this exemption to the record are very brief. On my review of the information remaining at issue in this appeal (the appellant's "traits and characteristics"), I am not satisfied that the Ministry has established that there exists a reasonable basis for its belief that the disclosure of this information could endanger the life or physical safety of a law enforcement officer or any other person.

14(1)(h): record confiscated by a peace officer

The purpose of this section is to exempt records that have been confiscated or "seized" by search warrant [Order PO-2095]. This exemption applies where the record at issue is itself a record which has been confiscated from a person by a peace officer, or where the disclosure of the record could reasonably be expected to reveal another record which has been confiscated from a person by a peace officer [Order M-610].

The Ministry states that release of the requested record would reveal detailed information regarding the materials possessed by the appellant which were confiscated by the Police.

On my review of the portion of the record remaining at issue, in the circumstances, I am not satisfied that the disclosure of this information could reasonably be expected to reveal a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation. A portion of the record remaining at issue describes in a general way the type of material collected by the appellant. In my view, the exemption in section 49(a) in conjunction with 14(1)(h) does not apply to the general description of the information that is contained in the portion of the record remaining at issue.

In any event, based on the discussion under "absurd result" set out above, and in light of the information provided to me by the appellant, to deny access to this information on the basis of section 49(a) and 14(1)(h), would lead to an absurd result.

Section 14(1)(l): commission of an unlawful act or control of crime

The Ministry submits that the release of the responsive record could reasonably be expected to facilitate the commission of an illegal act and hamper the control of crime. The Ministry proceeds to identify the extreme seriousness of the type of crime referred to in the record, and provides supporting information regarding the impact and extent of criminal activities of this nature. The Ministry also identifies specifically its concerns regarding the possible disclosure of the record to others, and how that could hamper the control of crime.

On my review of the information remaining at issue in this appeal (the appellant's "traits and characteristics"), I am not satisfied that the disclosure of this portion of the record would facilitate the commission of an unlawful act or hamper the control of crime.

I accept the Ministry's position that crimes of the nature referred to in the record are extremely serious. I also accept that the disclosure of portions of the record which I have found to qualify for exemption under section 14(2)(a) may result in the harms identified in section 14(1)(l). However, with respect to the discreet portion of the record remaining at issue, I am not satisfied that the disclosure of the list of the appellant's "traits and characteristics" could reasonably be expected to facilitate the commission of an illegal act and hamper the control of crime. Accordingly, this portion of the record does not qualify for exemption under section 14(1)(l) nor 49(a).

Section 15(b): information received in confidence from another government

The Ministry takes the position that section 15(b) applies to the record. That section states:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> > reveal information received in confidence from another government or its agencies by an institution;

For this exemption to apply, the institution must demonstrate that disclosure of the record "could reasonably be expected to" lead to the specified result. To meet this test, the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

If disclosure of a record would permit the drawing of accurate inferences with respect to information received from another government, it may be said to "reveal" the information received [Order P-1552].

Representations

The Ministry takes the position that the disclosure of the record at issue could reasonably be expected to reveal information received in confidence from a municipal police force. In support of its position that a municipal police force is a "government agency" for the purpose of section 15(b), the Ministry refers to section 2 of the *Municipal Act, 2001*, which came into force on January 1, 2003, and which reads:

> Municipalities are created by the Province of Ontario to be responsible and accountable governments with respect to matters within their jurisdiction and each municipality is given powers and duties under this Act and many other Acts for purposes which include,
>
> (a) providing the services and other things that the municipality considers are necessary or desirable for the municipality;
>
> (b) managing and preserving the public assets of the municipality;
>
> (c) fostering the current and future economic, social and environmental well-being of the municipality; and
>
> (d) delivering and participating in provincial programs and initiatives.

The Ministry states that the former *Municipal Act* contained no equivalent to section 2.

Findings

Previous orders of this office have consistently found that municipal entities do not constitute "another government or its agencies" for the purpose of section 15(b) of the *Act*. Adjudicator John Swaigen recently issued Order PO-2456, in which he addressed the issue of whether a municipal police force could be regarded as a "government agency" for the purpose of section 15(b). In that appeal, the Ministry similarly referred to section 2 of the *Municipal Act, 2001*. Adjudicator Swaigen reviewed a previous order of this office (Order 69) in some detail, and then stated:

> The Ministry does not explain why it believes section 2 should form the basis for a change in the interpretation of section 15. I note that the section refers to

municipalities as "governments". However, the fact that municipalities are referred to as "governments" in section 2 of the *Municipal Act, 2001* is not necessarily a significant departure from the previous *Municipal Act*. Sections 25.1, 70, 72, and 100 of the former *Municipal Act* also referred to municipalities as governments.

Section 2 of the new act does not address the issues of access to information or protection of personal privacy. There is nothing in this section that purports to change the *Freedom of Information and Protection of Privacy Act* in any way. I agree with Commissioner Linden's conclusion [set out in Order 69] that the intent of the Legislature, as evidenced by the Williams Report and the statements of the Attorney General during legislative debates on the *Act*, was that municipalities are not "governments" for the purpose of section 15 of the *Act*. In particular, the statements of the Attorney General make it clear that the Legislature turned its mind to the question of whether municipalities are governments for the purpose of section 15.

When the Legislature passed the *Municipal Freedom of Information and Protection of Privacy Act* in 1991, it included a parallel provision to section 15 of the *Act*. Section 9 of the *Municipal Freedom of Information and Protection of Privacy Act* provides:

> (1) A head shall refuse to disclose a record if the disclosure could reasonably be expected to reveal information the institution has received in confidence from,
>
> (a) the Government of Canada;
>
> (b) the Government of Ontario or the government of a province or territory in Canada;
>
> (c) the government of a foreign country or state;
>
> (d) an agency of a government referred to in clause (a), (b) or (c); or
>
> (e) an international organization of states or a body of such an organization.
>
> (2) A head shall disclose a record to which subsection (1) applies if the government, agency or organization from which the information was received consents to the disclosure.

> Under the *Municipal Freedom of Information and Protection of Privacy Act*, it is clear that a municipality cannot claim the "relations with governments" exemption for information it receives from another municipality or municipal board. That is, section 9 does not apply to information received from another municipality.
>
> It would be inconsistent with the overall scheme of the two freedom of information statutes if a provincial institution could claim the "relations with other governments" exemption for information received from a municipality when a municipality cannot.
>
> Therefore, the Legislature implicitly reaffirmed its intention that information received from municipalities is not covered by this statutory regime when it passed the *Municipal Freedom of Information and Protection of Privacy Act*, incorporating section 9.
>
> Accordingly, I find that the municipal police service that provided these records to the Ministry is not an agency of another government for the purposes of section 15 of the *Act*. Therefore, I find that the exemption claimed under section 49(a) in conjunction with section 15(b) does not apply to these records.

I adopt the approach to this issue taken by Adjudicator Swaigen in Order PO-2456, and find that a municipal police service is not "an agency of another government" for the purpose of section 15 of the *Act*. Accordingly, the exemption claimed under section 49(a) in conjunction with section 15(b) does not apply to these records

EXERCISE OF DISCRETION

The section 49(a) exemption is discretionary, and permits the Ministry to disclose information, despite the fact that it could be withheld. On appeal, this office may review the Ministry's decision in order to determine whether it exercised its discretion and, if so, to determine whether it erred in doing so (Orders PO-2129-F and MO-1629).

The Ministry made detailed submissions in support of its decision to exercise discretion not to disclose to the appellant the information which is exempt under section 49(a), in conjunction with section 14(2)(a). The Ministry states that it considers each request on a case-by-case basis, and that it gave "careful consideration" to the appellant's right of access to his own personal information held by the Ministry, and considered releasing the record to the appellant notwithstanding the application of the exemptions. The Ministry then states:

> The Ministry gave careful consideration to the future law enforcement harms that could result from the release of the report to the appellant in the circumstances of his criminal charges. The Ministry also took into consideration the fact that

> confidentiality of highly sensitive law enforcement information in some instances is necessary for public safety and protection.
>
> The Ministry took into account that the report at issue reflects information that is relatively recent. …
>
> The historic practice of the Ministry with respect to such highly sensitive law enforcement reports is that generally they are released only as necessary for the purposes of law enforcement or public safety.

The Ministry also identifies that it considered whether the release of the record would increase public confidence in the delivery of public services, and decided that it would not. Furthermore, the Ministry states:

> The Ministry is aware of the December 1, 2004 memorandum issued by the Honourable Gerry Phillips and Attorney General Bryant respecting the application of discretionary exemptions from disclosure. The Ministry claims discretionary exemptions from disclosure relating to sensitive police records only as necessary.

Finally, with respect to whether portions of the report could be severed and disclosed, the Ministry states:

> … the Ministry did consider whether it would be appropriate to release any information from the report in the circumstances of the appellant's request. The Ministry decided in its exercise of discretion that it would not be appropriate to release any information from the law enforcement report to the appellant.

The Ministry's representations were shared with the appellant, who also provided representations on this issue. The appellant's representations focus on his position that he saw a copy of the report at his bail hearing, and that some of the specific information relating to him contained in the report was distributed to the Executive Committee of an identified organization which regulates the appellant's former profession.

In addition, the appellant identifies his concern that, in his view, some portions of the report relating to him are inaccurate. He states:

> I was shocked as I read the report … I was never interviewed or assessed…. The most disturbing aspect of this report is that it contains unmistakable and provable incorrect and flawed information which has obviously had a profound influence on the conclusions drawn.

The appellant then correctly identifies that his right to request that his personal information be corrected under section 47(2) of the *Act* is restricted to information which he is entitled to access. Section 47(2) states:

> Every individual *who is given access under subsection (1) to personal information* is entitled to,
>
> (a) request correction of the personal information where the individual believes there is an error or omission therein;
>
> (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made;
>
> [emphasis added]

The appellant also refers to his concerns that the report was released to others, who relied on it to make decisions relating to him. He then states that without an opportunity to correct these errors in writing, his rights to life, liberty and security of person under section 7 of the *Canadian Charter of Rights and Freedoms* are "hopelessly compromised". Furthermore, he identifies that he would not be sharing the report with anyone except his lawyer, and that he would be satisfied with a severed copy of it.

The appellant's representations were shared with the Ministry, which confirmed that, after carefully reviewing the appellant's submissions, it was maintaining its position to deny access to the record. The Ministry refers to the corrections that the appellant would like to request as "relating primarily to" opinion information contained in the report. With respect to the appellant's concerns that his rights under the *Charter* are compromised, the Ministry refers to Order 106 which set out certain criteria which must be met in order for a *Charter* claim to be supported.

Findings

In assessing the Ministry's exercise of discretion in this case, I have considered the appellant's stated frustration in having viewed a report containing extremely sensitive personal information relating to him; his knowledge that copies of it have been circulated to others both within and outside the law enforcement community; and his inability to access it under the *Act* and, accordingly, request that factual information in it be corrected. Having said that, I acknowledge the Ministry's interest in maintaining the confidentiality of what it describes as "sensitive and confidential information to be used for law enforcement purposes".

As set out above, I have found that the appellant is entitled to access a portion of the record on the basis that denying access to this information would produce an "absurd result" and would contradict the purposes of the *Act*. I found that the appellant is entitled to access information

relating specifically to his "traits and characteristics". This includes information relating to his age and other facts about him, and this is the type of information that an individual may request be corrected under section 47(2) of the *Act*, if all of the other conditions described in that section exist.

With respect to the other portions of the report, which I have found qualify for exemption and which should not be disclosed to the appellant, much of this information is the background findings and observations of the author of the report or the investigators. Other portions of the record, as identified by the Ministry, are more in the nature of "opinion information". These types of information cannot be the subject of a correction request (see Order 186).

In considering all of the circumstances surrounding this appeal, and particularly in light of my finding above that the appellant is entitled to a portion of the record at issue, I am satisfied that the Ministry has taken the appropriate factors into consideration in exercising its discretion to deny access to the remaining portions of the record, and has not erred in the exercise of its discretion not to disclose the remaining portions of the record to the appellant under section 49(a) of the *Act*.

ORDER:

1. I order the Ministry to provide the appellant with access to the appellant's "traits and characteristics" identified in point form on page 4 of the report by **June 30, 2006**. I have provided the Ministry with a highlighted copy of page 4 of the record, highlighting those portions which should be disclosed.

2. I uphold the Ministry's decision to deny access to the remaining portions of the record.

Original signed by: May 30, 2006
Frank DeVries
Adjudicator