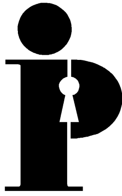

Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER MO-1356

Appeals MA-000016-1 and MA-000017-1

Sudbury Regional Police Services Board

80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9195
TTY: 416-325-7539
http://www.ipc.on.ca

NATURE OF THE APPEALS:

The appellant submitted two requests to the Sudbury Regional Police Services Board (the Police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). In the first request (Appeal MA-000016-1), the appellant asked for all materials compiled between April 28, 1999 and September 1, 1999, relating to Police investigations concerning himself. The appellant provided a list of six types of information to which he was particularly seeking access.

The appellant subsequently included, as part of this request, access to a copy of a taped interview which took place on July 1, 1999.

In the second request (Appeal MA-000017-1) the appellant asked for a copy of all materials in regards to a specified incident number.

In both cases, the appellant advised the Police that he was seeking the requested records in connection with a legal proceeding in which he was involved.

The Police located records responsive to both requests and granted partial access to them. The Police then denied access to the remaining portions of the records with respect to each request as follows:

Appeal MA-000016-1

The Police withheld the remaining portions of the records on the basis of the following exemptions under the *Act*: sections 8(2)(a) (law enforcement report), 14(1)(f) with reference to sections 14(3)(a) and 14(3)(b) and 38(b) (invasion of privacy). The Police also indicated that certain identified portions of the records were not responsive to the request.

Appeal MA-000017-1

The Police withheld the remaining portions of the records on the basis of the following exemptions under the *Act*: sections 8(1)(c) (law enforcement - investigative techniques), 8(2)(a) (law enforcement report), 8(2)(c) (law enforcement - civil liability), 14(1)(f) with reference to sections 14(3)(a) and 14(3)(b) and 38(b) (invasion of privacy). The Police also identified certain portions of these records as not responsive to the request.

The appellant appealed both decisions.

During mediation, the Police disclosed additional information to the appellant. The Police also withdrew their reliance on section 14(3)(a) in Appeal MA-000016-1 and sections 8(1)(c) and 14(3)(a) in Appeal MA-000017-1.

Also during mediation, the Mediator assigned to these appeals explained to the appellant the nature of the information which the Police had withheld as being not responsive to his request. The appellant does not accept that this information is not responsive; therefore, the responsiveness of these portions of the records remains at issue in this appeal.

During mediation, the Mediator raised the possible application of section 38(a) (discretion to refuse requester's own information) to the records for which section 8 had been claimed. The Police subsequently agreed that it should have been claimed and issued a supplemental decision to the appellant advising him that they also rely on section 38(a) to withhold the records from disclosure.

The Mediator issued a Report of Mediator to the parties. This document sets out the issues in the appeals, those issues which have been resolved and those remaining in dispute. After receiving the Report, the appellant contacted this office and raised the possible application of the so-called "public interest override" in section 16 of the *Act*. Although this issue was raised late in the process, I have decided to include it as an issue in this appeal.

The appellant also indicated that he takes issue with the Police claiming an additional discretionary exemption after the date set out in the Confirmation of Appeal for doing so. As I indicated above, the Police claimed the application of section 38(a) following discussions with the Mediator regarding its possible applicability.

I sent a Notice of Inquiry to the Police, initially. The Police submitted representations in response and I subsequently sent the non-confidential portions of them to the appellant along with a modified Notice of Inquiry. The appellant submitted extensive representations in response. As well, the appellant submitted a note from two individuals identified in the videotape that is at issue in Appeal MA-000016-1 consenting to the disclosure of their personal information contained in the videotape to the appellant. In responding to my subsequent queries regarding the consent issue, the Police indicated that although they are no longer concerned about the disclosure of the personal information relating to these two individuals in this record, they continue to rely on sections 38(b), 8(2)(a) and 38(a).

RECORDS:

Appeal MA-000016-1

The records at issue consist of the withheld portions of Incident Details, a General Occurrence Report, Supplementary Reports, Persons Lists - Involved in Incident and Police Officer's notes and a videotape which was denied in its entirety.

Appeal MA-000017-1

The records at issue consist of the withheld portions of Incident Details, a General Occurrence Report, Persons Lists - Involved in Incident and Police Officer's notes.

In this order, I will refer to "the records" as meaning the records contained in both Appeals MA-000016-1 and MA-000017-1 unless it is necessary to refer to a particular record in a particular appeal in which case the relevant appeal number will be identified.

PRELIMINARY MATTER:

LATE RAISING OF A DISCRETIONARY EXEMPTION

As I indicated above, as a result of discussions between the Mediator and the Police, the Police agreed that section 38(a) should have been claimed for the records to which section 8 had been applied. The appellant took issue with this decision and the involvement of the Mediator in arriving at it.

In the Notice of Inquiry, I stated that I would not include the late raising of a discretionary exemption as an issue in these appeals, and therefore, not seek submissions from the Police, for the following reasons:

> Part I of the *Act* deals with "Access to Records". Section 4, which is included in Part I, provides individuals with a general right of access to records within the custody or control of institutions, subject to a number of exemptions outlined in sections 6 through 15. Section 8 of the *Act* is a discretionary exemption. This means that if it is established that the records qualify for exemption pursuant to any part of section 8, the institution may deny access to that information.
>
> Part II of the *Act* deals with the "Protection of Personal Privacy". Section 36(1), which is included in Part II, provides individuals with a general right of access to their own personal information, subject to a number of exemptions outlined in section 38. One of these exemptions, section 38(a), permits the institution to refuse to disclose a record containing the requester's own personal information where section 8, among others, applies.
>
> In Order M-352, former Adjudicator John Higgins reviewed the statutory context under which an analysis of personal information in a record should be made. Although his analysis of this issue was made in the context of the exemptions in sections 14 and 38(b), in my view, the principles underlying the decision are equally applicable to section 38(a).
>
> He discussed at some length the legislature's purpose for creating a distinction in the *Act* between an individual's own personal information and that of another individual, and pointed out that the rationale is to emphasize the special nature of requests for one's own personal information. In recognizing that individuals have a greater right of access to their own personal information, the *Act* gives institutions the power to grant access in situations where responsive records may also contain the personal information of other individuals.
>
> This approach has been consistently followed in other orders of this office (Orders M-449, M-514 and P-1031 and Reconsideration Order R-980036, for example) dealing with both sections 38(a) and (b). Applying this reasoning to the circumstances of the present appeal,

> where a record contains the personal information of the appellant, the request falls under Part II of the *Act* and the analysis of the issues must be done under section 38. In these circumstances, had the Police not issued a new decision to the appellant claiming the application of this section, I would have raised it as an issue in this Notice of Inquiry on my own initiative.

The appellant continues to object to the raising of section 38(a) in this inquiry. In response to my explanation of the reason for raising this section, the appellant states:

> As this is a discretionary exemption that the Police chose not to raise initially or within the deadline set by the Commission you nor the Commission have the authority to cite discretionary exemptions on their behalf contrary to your statement.
>
> It is very clear that you and the Commission, on your own initiative, did not cite section 28, 29, 30, 31 and 32 as an issue in this inquiry.
>
> ...
>
> It is quite obvious that all levels of the Commission continue to display bias favouring the Police and, again the Commission has failed to maintain the integrity of the IPC and continues to make decisions outside the mandate and parameters of the IPC practices and procedures to the writer's detriment. [emphasis in the original]

At another point, the appellant states:

> I again advise you that the Commission have no authority to raise or cite discretionary exemptions on behalf of the Police. Therefore exemption 38(a) is not relevant in these appeals and the Commission cannot apply it. [emphasis in the original]

Commissioner's Authority to Raise a Discretionary Exemption

In Order M-352, the Commissioner's office raised the possible application of section 38(b) in circumstances where the institution claimed section 14(1) for the personal information at issue. Former Adjudicator Higgins specifically addressed the ability of the Commissioner to raise the possible application of section 38 in the absence of such a claim by the institution. He found:

> As noted, the *Act* has created two separate schemes for responding to requests for information, depending on the nature of the information requested. These two schemes are expressly recognized in the context of appeals by section 39(1) of the *Act*, which states, in part, as follows:

> A person may appeal any decision of a head under this *Act* to the Commissioner if,
>
> (a) the person has made a request for access to a record under subsection 17(1);
>
> (b) the person has made a request for access to personal information under subsection 37(1);
>
> ...
>
> The Commissioner's role in reviewing access decisions is defined, in part, by sections 43(1) and (3) of the *Act*. Those sections state as follows:
>
> (1) After all of the evidence for an inquiry has been received, the Commissioner shall make an order disposing of the issues raised by the appeal.
>
> (3) The Commissioner's order may contain any conditions the Commissioner considers appropriate.
>
> In my view, these sections authorize the Commissioner to consider the overall scheme of the *Act* and, as part of that authority, to determine whether a request or a particular record ought to have been reviewed by an institution under Part I or Part II of the *Act*, and to make an order consistent with that determination. This authority is further supported by the importance which the *Act* places on personal information, and the difference in the nature of the exemptions available under each part, as outlined above.
>
> Furthermore, an essential component of the *Act* is the balance between the right of access to information and the right of individuals to have their privacy protected. In circumstances where an individual has requested access to his or her own personal information and the privacy rights of other individuals may be affected by disclosure, this balance is achieved by applying the provisions of section 38(b).

In explaining why a request for an individual's personal information should be considered under Part II as opposed to Part I, former Adjudicator Higgins stated:

> This distinction emphasizes the special nature of requests for one's own personal information, and the desire of the legislature to give institutions the power to grant access in

> situations where responsive records also contain the personal information of another individual or individuals.
>
> In order to give effect to the legislature's intention to distinguish between requests for an individual's own personal information and other types of requests, the Commissioner's office has developed an approach for determining whether Part I or Part II of the *Act* applies. In that approach, the unit of analysis is the **record**, rather than individual paragraphs, sentences or words contained in a record.
>
> This approach has been applied in many past orders, and it is set out in detail in the October 1993 edition of *IPC Practices* entitled "Responding to Requests for Personal Information". That publication states, in part, as follows:
>
>> Generally, an individual seeking access to a record that contains his or her personal information has a greater right of access than if the record does not contain any such information. ... Part II of the municipal *Act* oblige[s] institutions to **consider** whether records should be released to an individual, regardless of the fact that they may otherwise qualify for exemption under the legislation.
>
> In my view, the record-by-record analysis best reflects the special character of requests for records containing one's own personal information, and it provides a practical, uniform procedure which all institutions can apply in a consistent manner.
>
> It requires institutions to analyse records which are identified as responsive to a request in order to determine whether any of them contain personal information pertaining to the requester. For records which are found to contain the requester's own personal information, the institution's access decision is to be made under Part II of the *Act*. For records which do not contain the requester's own personal information, the decision would be under Part I.

As I indicated above, although Order M-352 deals with the possible application of section 38(b) of the *Act*, in my view, the principles underlying the decision are equally applicable to the consideration of section 38(a). Essentially, the Commissioner's office has taken the view that, because Part II of the *Act* (in particular, sections 36, 37 and 38) sets out a complete procedure to deal with requests for an individual's own personal information, the provisions of Part I do not apply to records which contain the requester's own personal information.

This position is based on the scheme of the *Act* as a whole, and gives effect to the intent of Part II of the *Act*, which is to confer a higher right of access on an individual seeking his or her own personal information.

Contrary to the appellant's belief that he will be disadvantaged by the consideration of section 38(a), the Police have acknowledged that they should have turned their minds to the fact that the requested records contain the appellant's personal information. Further, the Police have now been asked to explain why they exercised their discretion to refuse to disclose to the appellant his own personal information even though an exemption against disclosure may apply to it.

On this basis, I will consider the possible application of section 38(a) in the event that I find section 8 applies to any part of the records.

DISCUSSION:

NON-RESPONSIVE RECORDS

In Order P-880, former Adjudicator Anita Fineberg defined "responsive" as meaning "reasonably related to the request." I agree with this interpretation.

The Police indicate that portions of the police officers' notes relate to other matters recorded by the officers during their tour of duty. In this regard, the Police note that, in performing their duties, police officers are obliged to keep a notebook. The Police indicate that pages and spaces are not to be unreasonably left blank. As a result, several different matters or incidents may be recorded on the same page. The Police submit that none of the information in these records which has been removed as being non-responsive pertains in any way to the appellant's request.

The appellant states that pages 26, 27 and 38 (in Appeal MA-000016-1) "clearly pertain to the request".

Upon review, I agree that the portions of the records which have been withheld as being non-responsive, in fact, do not pertain in any way to the appellant, but rather, contain information about other matters which is routinely the case in these types of documents (Orders M-1032, MO-1192 and MO-1219). Therefore, I find that these portions of the records are not reasonably related to the appellant's request and were properly withheld as being non-responsive to the request.

PERSONAL INFORMATION

Section 2(1) of the *Act* defines "information", in part, as recorded information about an identifiable individual. The records all relate to police investigations into matters involving the appellant. As such, I find that they all contain his personal information. All of the records at issue also contain information about other identifiable individuals, including but not limited to names, addresses, telephone numbers, relationship to the appellant and personal statements.

The appellant submits that the information at issue in the records was provided by individuals in their professional or employment capacities and, therefore, does not qualify as personal information. Further, the appellant submits that the records contain the personal views and opinions of these people about him and, therefore, only contain his personal information under section 2(1)(e) and (g).

Previous decisions of this office have drawn a distinction between an individual's personal, and professional or official capacity, and found that in some circumstances, information associated with a person in his or her professional or official capacity will not be considered to be "about the individual" within the meaning of the section 2(1) definition of "personal information" (See Orders P-257, P-427, P-1412 and P-1621). For example, information associated with the names of individuals contained in records relating to them only in their capacities as officials with the organizations which employ them, is not personal in nature but is more appropriately described as being related to the employment or professional responsibilities of the individuals (See Order R-980015). Previous orders have also recognized that even though information may pertain to an individual in that person's professional capacity, where that information relates to an investigation into or assessment of the performance or improper conduct of an individual, the characterization of the information changes and becomes personal information (Orders 165, P-447 and M-122).

I agree that many of the individuals referred to in the records are identified in their "official" capacities. However, within the context of the police investigations, it cannot be said that these people were identified, contacted or interviewed in a manner that relates to their employment or professional responsibilities. Rather, they were contacted in relation to their capacities as "complainant", "witness" or "participant". In this context, the information in the records about these individuals cannot be characterised as "professional" or "employment". I find that this information qualifies as the personal information of these individuals.

INVASION OF PRIVACY

Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by a government body. Section 38 provides a number of exceptions to this general right of access.

Under section 38(b) of the *Act*, where a record contains the personal information of both the appellant and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information.

Sections 14(2) and (3) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 14(2) provides some criteria for the institution to consider in making this determination. Section 14(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) refers to certain types of information the disclosure of which does not constitute an unjustified invasion of personal privacy.

In this case, the Police have cited section 14(3)(b) in conjunction with section 38(b). Those sections read:

> 38. A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > (b) if the disclosure would constitute an unjustified invasion of another individual's personal privacy;
>
> 14. (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
> > (b) 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 indicate that the records at issue contain information provided by identifiable individuals concerning violations of the *Criminal Code* (threatening and harassing telephone calls) and other provincial legislation such as the *Trespass to Property Act*. In this regard, the Police submit:

> In order for the police to properly investigate allegations of possible violations of the law, and to be able to confirm or dispute the allegation, they must interview all complainants and witnesses. As these interviews contain statements and opinions relative to the allegations, the police have an obligation to ensure that the information that has been supplied will be kept in the strictest of confidence, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

The appellant has submitted extensive representations relating to his views of the Police and their actions in investigating him. He indicates that he knows the identities of all of the individuals involved and argues that the information provided by them is "unfounded". He believes that the Police have violated his "rights" by disclosing his personal information to others.

The appellant submits that section 14(3)(b) does not apply to the information at issue because he does not believe that it qualifies as personal information. Even if it does, the appellant submits that the exception to section 14(3)(b) applies as he is conducting his own investigation into these matters and the information is necessary to "continue the investigation".

I am satisfied that all of the records at issue pertain to police investigations into either criminal matters under the *Criminal Code* or provincial offences. The appellant has been provided with certain information from

these records. I find that the remaining personal information in them was compiled and is identifiable as part of an investigation into a possible violation of law.

In Order M-718, former Adjudicator Fineberg considered the meaning of the phrase "continue the investigation". She concluded:

> The appellant also suggests that the address of the witness is necessary in order for him to "continue the investigation" as he will use it in an attempt to locate the witness for the purposes of testifying at the trial. This interpretation of the exception assumes that the "investigation" referred to in the exception need not be confined to the Police investigation but could include any investigation conducted by any party, including the investigative activity of a private party seeking to enforce its legal rights.
>
> In Order M-249, I considered this issue and made the following comment:
>
> > In my view, the exception contained in the phrase "continue the investigation" refers to the investigation for which the personal information was compiled, i.e. the investigation 'into a possible violation of law".
>
> There is nothing in the appellant's submissions which persuade me that this interpretation should not apply in this case. It is, therefore, my view that the personal information requirements for a presumed unjustified invasion of personal privacy under section 14(3)(b) have been established and that, in the circumstances of this appeal, the exception does not apply.

I agree with former Adjudicator Fineberg's conclusion and find that the exception does not apply in the circumstances of this appeal. There is nothing in the appellant's submissions that would lead me to conclude that the personal information is required to continue the investigation for which the personal information was compiled. Rather, the appellant seeks the information for his own personal purposes in challenging the motivations and actions of the Police and others in instigating and conducting the investigations in the first place.

Consequently, I find that the disclosure of this information would constitute a presumed unjustified invasion of privacy under section 14(3)(b) of the *Act*. This section only requires that the investigation be into a "possible" violation of law (Orders M-198, MO-1256, P-233, P-237, P-1225 and PO-1777, for example). Therefore, even though the Police did not bring criminal charges against the appellant the presumption in section 14(3)(b) may still apply.

The appellant claims that a number of factors in section 14(2) are relevant in the circumstances of this appeal, including sections 14(2)(b), (d), (e), (i) and submits that, in combination, they are "so compelling as to outweigh a presumption under section 14(3)(b)".

The Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in 14(2) [Order P-1456, citing John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767].

The Divisional Court has stated further that the only way in which a section 14(3) presumption can be overcome is if the personal information at issue falls under section 14(4) of the *Act* or where a finding is made under section 16 of the *Act* that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the section 14 exemption.

Therefore, having found that the presumption in section 14(3)(b) applies to the personal information in the records, neither any one nor a combination of the factors in section 14(2) can be used to rebut the presumption. Further, even if I were to find that any of the section 14(2) factors favouring disclosure were relevant, the Police nevertheless may exercise their discretion under section 38(b) to withhold the information in question on the basis of an unjustified invasion of privacy.

Absurd result

In Order M-444, former Adjudicator John Higgins found that non-disclosure of information which the appellant in that case provided to the police in the first place would contradict one of the primary purposes of the *Act*, which is to allow individuals to have access to records containing their own personal information unless there is a compelling reason for non-disclosure. This approach has been applied in a number of subsequent orders and has been extended to include not only information which the appellant provided, but information which was obtained in the appellant's presence or of which the appellant is clearly aware (Orders M-451, M-613, MO-1196, P-1414, P-1457 and PO-1679, among others).

As I indicated above, one of the records at issue in Appeal MA-000016-1 is a videotape of an interview of the appellant that took place on July 1, 1999. The appellant brought two individuals with him to this interview and as I noted above, both have consented to the disclosure of their personal information contained in this record to the appellant. The Police indicate that they no longer have any concerns about the disclosure of personal information in this record at least as far as these two individuals are concerned. The primary concern of the Police now is that portions of the videotape contain the same type of information that they have withheld in other records.

During the interview, references are made to a number of other named individuals. I found above that all references to identifiable individuals in the records qualifies as their personal information. Previous orders of

this office have found that where the personal information of the consenting party is intertwined with the personal information of another individual, the records containing the consenting party's personal information must be considered under section 14(1)(f) (Orders MO-1244 and MO-1256, for example) or, as in this case, section 38(b).

I have considered the disclosure of the personal information in this record in light of the consents given by the two witnesses to the interview and the principles underlying the absurd result. In most cases, the references to other individuals are made by the appellant himself. Where they are not, they were made to him. In my view, to withhold the videotape of the interview given by the appellant in these circumstances would be contrary to one of the primary purposes of the *Act*, which is to provide a right of access to information which the appellant provided to the Police in the first place.

In my view, the concern that disclosure of the videotape would reveal the withheld information in the other records does not alter this finding. The videotape is quite lengthy. It would be virtually impossible to link any particular part of the discussions in it to the withheld portions of the other records. Moreover, the information withheld from the other records is in a different form and the result of independent collection by the police officers involved. Accordingly, I find that to withhold the videotape would result in an absurdity and on this basis I find that its disclosure would not constitute an unjustified invasion of privacy. Therefore, this record is not exempt under section 38(b).

I find that section 14(4) has no application to the remaining information in the records. The appellant has raised the possible application of the so-called "public interest override" in section 16.

Compelling Public Interest

The basis for the appellant's assertion that there is a compelling public interest in disclosure of the records is his belief that the Police acted improperly in investigating what he claims are "fraudulent" allegations against him and in the manner in which the investigations were conducted. The appellant submitted a number of newspaper clippings relating to incidents involving the Police in support of his position that the Police do not act in the public interest in performing their duties under the *Police Services Act*. Further, the appellant states:

> It is a matter of a compelling public interest when the Police forces actions continuously collects liabilities on behalf of the public tax payers, the writer included.
>
> It is of a compelling public interest that the public is aware that the Police will directly violate an *Act* or Statute and, then lie about what they did in order to cover it up...
>
> ...

> [I] is of a compelling public interest that the public is aware of how the rookie Constable, Sergeants and Detectives are being trained. All of the information and Police actions in my case were produced and carried out by senior Sergeants, Inspectors and Detectives while under the leadership of the Chief of Police and, the public has a right to know the scope of their abilities and, more importantly, their capabilities. [emphasis in the original]

Section 16 may operate to permit disclosure of a record even if a provision in section 14 would otherwise prohibit such disclosure. Section 16 states:

> An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

In Order P-984, Adjudicator Holly Big Canoe discussed the meaning of section 16, as follows:

> In my view, the public interest in disclosure of a record should be measured in terms of the relationship of the record to the *Act*'s central purpose of shedding light on the operations of government. In order to find that there is a compelling public interest in disclosure, the information contained in a record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.

There is nothing in the material before me demonstrating a compelling **public** interest which outweighs the protection of personal privacy. Rather, it is apparent from the records that this is essentially a private matter. Therefore, I find that section 16 is not applicable in the circumstances and the records qualify for exemption under section 38(b).

Exercise of Discretion

The Police have explained why they exercised their discretion in favour of non-disclosure of the personal information in the records. The Police note that the records pertain to allegations against the appellant of threatening and harassing behaviour. Due to confidentiality concerns I am unable to discuss their reasons further in this order. However, I am satisfied that the Police have properly exercised their discretion in applying section 38(b) to the withheld portions of the records at issue in this discussion.

Because of these findings, it is not necessary for me to consider the application of the other exemptions claimed for the records in Appeal MA-000017-1. The Police claim that sections 8(2)(a) and 38(a) also apply to exempt the records in Appeal MA-000016-1. Because I have found that all but the videotape are exempt under section 38(b), I will only consider the application of sections 8(2)(a) and 38(a) to this one record.

DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION/LAW ENFORCEMENT

Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by a government body. Section 38 provides a number of exceptions to this general right of access.

The Police have relied on section 38(a) to deny access to the undisclosed portions of the records. Under section 38(a), an institution has the discretion to deny access to an individual's own personal information in instances where the exemptions in sections 6, 7, **8**, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information.

Section 8(2)(a) states:

> A head may refuse to disclose a record,
>
> (a) 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;

Only a report is eligible for exemption under this section. The word "report" is not defined in the *Act*. For a record to be a report, it must consist of a formal statement or account of the results of the collation and consideration of information (Order P-200). Generally speaking, results would not include mere observations or recordings of fact (Order M-1048).

The videotape contains details of the appellant's interview with the Police in which he outlines, discusses and provides documents in support of his contention that certain individuals are involved in illegal activities. It is not a formal statement or account of the results of the collation and consideration of information. Rather, it is more appropriately described as a collection of "mere observations and recordings of fact". Therefore, this record does not qualify as a "law enforcement report" and sections 8(2)(a) and 38(a) do not apply to it.

ORDER:

1. I order the Police to provide the appellant with a copy of the videotape recording of his interview with the Police held on July 1, 1999 by sending him a copy of this videotape by November 28, 2000.

2. I uphold the decision of the Police to withhold the remaining records from disclosure.

3. In order to verify compliance with Provision 1, I reserve the right to require the Police to provide me with a copy of the record disclosed to the appellant.

Original signed by: October 30, 2000
Laurel Cropley
Adjudicator