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Concealed RCMP documents, govt. admits it broke law

By Peter Calamai
Southam News

The government broke its own privacy law in ordering the concealment of RCMP security dossiers on more than 700,000 Canadians, the federal justice department has admitted.

The admission, made public only Wednesday, has raised immediate questions about 19 secret federal data banks containing files on an estimated 1.5 million individuals.

"There's cause for concern," Privacy Commissioner John Grace told Southam News in an interview.

Grace said his officials were "giving immediate attention" to the revelations. He agreed with a reporter's suggestion that the practice could undermine the whole theory of the federal privacy law, which gives Canadians the right to examine personal files held by any government agency.

A person's right to review his file can be wiped out if the federal cabinet declares a whole bank of files exempt from the privacy law. Once a data bank is declared exempt, the government agency does not even have to confirm that a file exists on an individual.

Winnipeg activist Nick Ternette attacked the operation of one such exempt bank through the Federal Court last year, winning a judicial order that the federal government must show the secret bank was properly set up.

And the government can't.

In a Sept. 20 letter to Ternette, justice department lawyer Barbara McIssac provides proof that the federal cabinet acted illegally in April, 1983 when it passed an order establishing RCMP data bank P130.

The data bank contains files on an estimated 700,000 Canadians, supposedly personal information "predominantly" dealing with national security or terrorism.

"There is no evidence that all of the files in the bank in question were examined in order to ascer-

tain whether or not they met the test prior to the enactment of the order-in-council," wrote McIssac, using the formal term for an order from at least five cabinet ministers.

Nor, continues the justice lawyer, does the government have any other evidence that the files are what the cabinet order claimed they were — predominantly containing personal information the disclosure of which would endanger national security or law enforcement.

"It looks like they just picked up all the files the RCMP had gathered over the years and just declared them exempt without even looking at them," said Ternette in a telephone interview.

The justice department is still refusing to let either the Winnipeg resident examine his security file, even after admitting the cabinet order "was not validly enacted." The federal lawyer claims any such personal file would be exempt under another provision of the Privacy law.

The federal government also tried to stop judges from examining personal files in the exempt banks but lost that argument in an earlier round of Ternette's fight.

Commissioner Grace, appointed by Parliament as a privacy watchdog, said Wednesday a regular audit of personal files in the federal employment and immigration department has also turned up "some findings" about an exempt bank there. He would not elaborate.

"We don't want to make snap judgments about other banks. We had to assume they were properly constituted."

Ken Rubin, a researcher and privacy advocate, said the whole concept of exempt banks is "alien to basic rights about privacy."

"It's wonderful that one citizen has successfully challenged the notion that the government can keep secret files hidden away forever," Rubin said.