

**THE SIGNIFICANCE OF BANK RECORDS ANALYSIS AS A TECHNIQUE IN
TRACING FRAUD SUSPECTS**

by

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DECLARATION OF AUTHENTICITY

I declare that the significance of bank records analysis as a technique in tracing fraud suspects is my own work and that all the sources that I have used and quoted have been indicated and acknowledged by means of complete references.

I further declare that I have not previously submitted this work, or part of it, for examination at UNISA for another qualification or at any other higher education institution.

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(NW Myeza)

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Date

ABSTRACT

The research attempts to establish the significance of bank records analysis as a technique in tracing fraud suspects. The purposes of conducting this research was to establish the current approach by the investigators of the SAPS in respect of bank records analysis in tracing fraud suspects; to explore and report on the findings of national and international literature in an attempt to find new information thereby improving the current method of bank records analysis and its specific use in tracing fraud suspects; and to make new information, in the form of written articles and this dissertation, available to the SAPS to be considered for inclusion in the training curriculum for their investigators.

In collecting data, the researcher used literature study, interviews with individual participants and case dockets analysis. Essentially, the recommendations were drawn from the conclusions of the data obtained. These recommendations may offer solutions to the problem identified.

SUMMARY

This research examines the significance of bank records analysis as a technique in tracing fraud suspects. The study intends to give guidelines to investigators to follow during the analysis in order to trace fraud suspects.

While the banking system in many parts of the world has improved people's lifestyles, it has also created opportunities for criminals to extend their illicit operations without being detected by authorities. The movement of funds makes it easy for them to move from one location to another.

During financial investigation, investigators may find themselves having completed an investigation without locating the suspect. The use of traditional tracing methods does not necessarily yield positive results at all times. It is for this reason that new investigative techniques should be continuously developed for the benefit of the justice system.

This research explains the types of bank records that exist and how investigators should analyse such records to establish the location of the subject under investigation.

KEY TERMS

Bank records; financial investigation; fraud suspects; types of bank records; bank account; analysis; tracing suspects; investigation techniques.

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DEDICATION

This research is dedicated to my late parents, Joshua Myeza and Thokozile Myeza, who taught me discipline and respect for others.

LIST OF ABBREVIATIONS AND ACRONYMS

ATM	Automatic Teller Machine
CAS	Case Administration System
CCTV	Closed Circuit Television
CCU	Commercial Crime Unit
CPA	Criminal Procedure Act
CSC	Community Service Centre
DPCI	Directorate for Priority Crime Investigation
EFT	Electronic Funds Transfer
FIC	Financial Intelligence Centre
FICA	Financial Intelligence Centre Act
IP	Internet Protocol
PIN	Personal Identification Number
POS	Point of Sale
SALC	South African Law Commission
SAPS	South African Police Service
SARB	South African Reserve Bank
SCCU	Specialised Commercial Crime Court
UNISA	University of South Africa
WEF	World Economic Forum

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CHAPTER ONE

GENERAL ORIENTATION

1.1 INTRODUCTION

In terms of section 205 (3) of the Constitution of the Republic of South Africa, Act 108 of 1996 (the Constitution), one of the objectives of the South African Police Service (SAPS) is to investigate crime (South Africa, 1996). One of the preliminary phases of the investigation of crime is to register a case docket at the SAPS Community Service Centre (CSC), which is then transferred to the relevant investigation section for further attention. The case docket is assigned to a specific investigator, who in turn begins collecting more information regarding the reported crime. During this phase, the investigator uses investigative techniques and skills to collect and obtain statements from the witnesses, hearsay from the community, experts' reports, information gained from visiting and securing the crime scene, additional information from the complainant/s (if available) and circumstantial evidence.

It is clear that investigators need to have a working understanding of the Criminal Procedure Act 51 of 1977 (CPA) (South Africa, 1977), criminal law, law of evidence and the Constitution. In addition to this, investigators need to have an acceptable understanding of the statutory laws that may relate to the case under investigation.

The understanding of the above laws will assist investigators to collect and process the information into evidence in preparation for the arrest of the suspect and subsequent prosecution. The continuous training of investigators with respect to the application of the laws available to them and execution of investigative techniques assists the SAPS to increase its conviction rate. It is against this background that this research seeks to establish the significance of bank records analysis with the intention of tracing and locating the suspects of fraud cases.

This research attempts to determine the extent to which bank records can be utilised in the investigation of cases where the suspect has escaped or is evading arrest. The research begins by defining the problem and presenting the research question and aim and objectives of the study. It defines the key technical concepts used in the study and describes the methodology used in gathering and analysing data for the research. Bank records are discussed extensively followed by the significance of bank records analysis as a technique in tracing fraud suspects,

which includes the process of analysing bank statements. The research concludes by detailing and discussing the findings and by making recommendations for implementation.

The discussion that follows focuses on the problem statement.

1.2 PROBLEM STATEMENT

The SAPS crime statistics report for 2010/2011 indicated a significant increase of 88 388 commercial crime cases reported as compared to the 84 842 commercial crime cases reported in 2009/2010 (South Africa Police Service, 2014). According to the Crime Administration System (CAS) SAP 6 of the Durban Commercial Crime Unit (CCU) of the Directorate for Priority Crime Investigation (DPCI), of the 1 840 commercial crime cases reported in 2009/2010, 638 of these cases were reportedly undetected, meaning that the suspects could not be found. The unit recorded 1 001 withdrawn cases; this figure included cases withdrawn in court. These statistics clearly show that, while there was an increase in cases reported, this unit had a low conviction rate. Such revelations point to poor investigation methods, specifically the lack of ability of investigators to trace suspects.

According to the South African Law Commission (SALC) (2000:26) report, there are well documented problems in the South African justice system that would account for low conviction rates; among these problems are under-trained detectives and a general lack of skills among the police. The researcher has been involved in criminal investigation for ten years in the SAPS and is a former member of the DPCI and is therefore well aware of the problems relating to investigation. In order to understand the extent of the problem, in 2010 the researcher sought permission from the relevant authorities to conduct a preliminary inspection of case dockets, with the intention of conceptualising a research investigation into the use of bank records analysis in investigation. The researcher then inspected undetected case dockets, perused the DPCI commercial crime level 1 and level 2 training curriculum and interacted with DPCI investigators with respect to fraud-related cases that required bank records analysis.

Permission was given for a preliminary inspection only and not for a fully-fledged study. The investigative diaries in the perused case dockets revealed that investigators had used basic suspect-tracing techniques, which included the briefing of informers, profiling of suspects, and visiting of places thought to be well known to the suspects. However, there was no indication that investigators used information derived from the bank records of suspects to

locate them. It was evident from the DPCI training curriculum that investigators had not been trained to conduct bank records analysis as no training had been provided to them that would have incorporated this tracing and investigative technique. There is no indication in the DPCI training curriculum that bank records analysis forms part of the training course for investigators. The researcher concluded that such a shortcoming may have been a contributory factor in the withdrawal of cases; hence, this also formed a basis for this research problem. The problem that this study examines is therefore that investigators do not use bank records analysis as a technique for tracing fraud suspects. This problem may be further attributed to a lack of knowledge or a total underestimation of the value of this investigative technique.

The problem identified by the researcher, that bank records analysis is not used as an investigative technique, may have negative results for the investigation process and in the resolving of crime in general. If suspects are not successfully traced because investigators confine themselves to specific tracing techniques, these suspects will not be apprehended. It is also obvious that if they are not arrested, there will be no conviction in fraud cases and the victims of fraud or of different crimes in general will lose hope in the police. The most worrying result of the problem is that the fraud suspects will commit these offences over and over again without being arrested and in this case the criminal justice system will fail to deal with recidivism. It is also important that criminal investigators should understand that the analysis of bank records is not limited to cash flow analysis but can also be secondarily used to locate evasive suspects by the proper analysis of transactions. If this analysis technique is used effectively, many fraud cases will be solved and the conviction rate will rise, in this way restoring public confidence.

1.3 RESEARCH AIM

According to Denscombe (2002:25), there should be a reason for doing research; if not, it is pointless spending money and time undertaking investigation. Mouton (1996:103) is of the view that the aim of a study is to obtain new data and establish interesting patterns in the data.

The aim of this study is to determine the significance of bank records analysis as a technique in tracing fraud suspects.

1.4 RESEARCH OBJECTIVES

Bless, Higson-Smith and Kagee (2006:45) point out that one of the most important ways of classifying the various types of social research is in terms of their objectives. The research problem and the aim of the research are made clear if specific objectives are formulated. The objectives of this study are to:

- Provide a comprehensive description of bank records;
- Explore the significance of bank records analysis in tracing fraud suspects;
- Provide a comprehensive meaning of financial investigation; and
- Determine the process to be followed in analysing bank records.

1.5 RESEARCH QUESTIONS

According to Leedy and Ormrod (2005:54), the research questions provide guidance for the kind of data the researcher should collect and suggest how the researcher should analyse and interpret the data. Leedy and Ormrod argue that it is usual for the researcher to ask questions about the research problem.

The researcher formulated the following research questions to address the research problem:

- What are bank records?
- What is the significance of bank records analysis in tracing fraud suspects?

1.6 RESEARCH PURPOSES

Denscombe (2002:27) states that there are various purposes for conducting research, one of which is to solve a practical problem and improve on procedures. For Maxfield and Babbie (1995:70), the purposes of research include exploration, description, explanation, forecasting or prediction, empowerment and application.

The purposes of conducting this research are:

- To establish the current approach by the investigators of the SAPS in respect of bank records analysis in tracing fraud suspects;
- To explore and report on the findings of national and international literature in an attempt to find new information, thereby improving the current method of bank record analysis and its specific use in tracing fraud suspects; and

- To make new information, in the form of written articles and this dissertation, available to the SAPS to be considered for inclusion in the training curriculum for their investigators.

1.7 KEY CONCEPTS

A term must be defined operatively; that is, the definition must interpret the term *as it is employed in relation to the researcher's project* (Leedy, 1997:59). The key theoretical concepts used in this research are defined below.

1.7.1 Fraud

Fraud is the unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial to another (Snyman, 1995:487). This means that for fraud to occur there must be a misrepresentation and this misrepresentation must prejudice a victim.

1.7.2 Forensic Investigation

The term 'forensic' is derived from the Latin word '*forensis*', which means a forum or a place of discussion. According to Van Rooyen (2004:7), forensic investigation is usually associated with investigation of computer-related crimes, which include corruption, fraud, embezzlement and other white collar crimes.

1.7.3 Evidence

Evidence is material adduced at trial to establish disputed facts (Durstun, 2011:1). Evidence, according to Schmidt and Zeffertt (1996:311), encompasses all the information that is given in a legal investigation to establish the facts of the matter in question. These authors consider 'evidence' to be a flexible term that may have different meanings for different purposes. From both definitions, it is clear that evidence may include written and oral statements from witnesses, victims, suspects, or experts, and testimonials and objects submitted for inspection either by the court or in any legal proceedings.

1.7.4 Investigation

Investigation is the medium through which facts that are necessary for successful criminal prosecution or civil action are discovered, identified, gathered and prepared as evidence in legal proceedings (Van Rooyen, 2007:5). Van der Westhuizen (1996:01) defines

investigation as a systematic search for the truth, with the primary purpose of finding a solution to a crime with the help of objective and subjective clues.

1.7.5 Bank Records

Bank records are a primary source of information about where money is flowing to and from (Kass-Shraibman & Sampath, 2011:174). The most common bank record is the statement that lists each transaction cleared in the account since the date of the last statement (Peterson, 1998:16). This means that bank statements form part of bank records, which contain a listing of all withdrawals and deposits made in the account during the period covered.

1.7.6 Suspect

A suspect is a person suspected of being involved in the commission of a crime and includes accomplices (people who assisted in committing the crime) and accessories (people who assisted in furthering the crime) (Snyman, 1991:220).

1.8 PRELIMINARY LITERATURE STUDY

According to Creswell (1998:27), a preliminary literature study helps the researcher to limit the scope of their enquiry and convey the importance of studying a particular topic to readers. Huysamen (1994:190) points out that the prospective researchers should acquaint themselves with previous research on a topic before they start planning research on it. In accordance with the views of these authors, the researcher visited the University of South Africa (Unisa) library and Durban Metropolitan libraries to search for literature that covers the research topic, aims and questions. However, no literature was found on the topic. Internet searches revealed that there had been some research on bank statement analysis; however, the research did not deal with the use of this technique to trace fraud suspects. All information obtained that addresses the research aims and questions was selected for use in the research.

1.9 RESEARCH APPROACH AND DESIGN

The research design provides the overall structure for the procedures that a researcher follows; the data that the researcher collects; and the data analysis that the researcher conducts (Leedy & Ormrod, 2001:91). According to Mouton (2001:149), a researcher uses an empirical design to answer research questions by embarking on fieldwork, in which the focus is on the personal experience of the participants. The researcher used an empirical design to

search for any relevant information regarding the use of bank records analysis to trace fraud suspects, with the aim of answering the research questions.

Leedy (1993:139) argues that an interview with a purpose of gathering information involves a qualitative research approach. The same qualitative approach is used when gathering information from the case dockets. Qualitative research explores attitudes, behaviour and experiences through methods such as interviews or focus groups. It attempts to obtain an in-depth opinion from participants (Dawson, 2009:14-15). An interview schedule may comprise 'closed' or 'open' questions. With closed questions, the researcher has limited the responses. With open questions, the researcher leaves it to the participants as to how they word their answers (McNeill, 1990:26). Mason (2009:7) highlights the following key points about qualitative data:

- It should be systematically and rigorously conducted;
- It should be accountable for its quality and its claims;
- It should involve critical self-scrutiny by the researcher or active reflexivity; and
- It should produce explanations or arguments, rather than claiming to offer mere descriptions.

In addition to the empirical design, the researcher made use of a qualitative research approach, in which he conducted interviews with participants with a structured interview schedule that contained open and closed questions. The interviews were used as a data-collection instrument to obtain information about the participants' life experiences and practical knowledge.

1.10 POPULATION

According to Huysamen (1994:38), the populations of interest to social and behavioural scientists are so large that from a practical point of view it is simply impossible to conduct research on all of them. The ideal population for this study would consist of all investigators attached to the DPCI across the country. Owing to the large number of DPCI investigators and the fact that their offices are all over the country, the researcher concluded that it would be impractical, expensive and time consuming to conduct interviews with all of DPCI investigators. Maxfield and Babbie (1995:186) write that a study population is the aggregate of the elements from which the sample is actually selected. Taylor (1994:158) states that a 'study population' refers to all individuals or cases of a certain type.

For the purpose of this study, the research population chosen was the investigators of the DPCI attached to the Durban CCU, which consists of 65 investigators. Blaickie (2003:161) argues that a sample is a selection of elements from a population and is used to make a statement about the whole population. As conducting interviews with 65 investigators would have been time consuming, in line with the view of Blaickie (2003:161), the researcher made use of a sample of investigators.

1.10.1 Sampling

Mason (2001:83) refers to the principles and procedures used to identify, choose and gain access to relevant units which will be used for data generation by any method. The basic principle of sampling is that it is possible to produce accurate findings without the need to collect data from each and every member of a survey 'population' (Denscombe, 2010:23).

This researcher used simple random sampling, which gave each member of the population the same chance of being included in the sample and each sample of a particular size the same probability of being the sample chosen (Huysamen, 1994:39). Huysamen (1994:41) points out that the probability that a simple random sample will include, for example, men and women in the appropriate proportions increases as the size of the sample increases. A stratified random sample also ensures representativeness, irrespective of sample size, because it has been built into the sampling strategy right from the very beginning. This researcher concluded that the simple random sampling method was the most suitable for this research because at each draw each investigator had the same probability of being included in the sample.

In order to select a sample, all 65 names of investigators were written on pieces of paper individually, put in a box and the researcher randomly selected one name at a time until 13 names had been selected to form a sample. In this way, all names had an equal chance of being selected. The number 13 was mathematically selected as it meant that every fifth member in the population of 65 was selected. This study did not use a quantitative approach, meaning that the numbers did not matter much but rather the content analysis of the responses of the participants.

1.11 DATA COLLECTION

According to Denscombe (2002:70), it is crucial to gain access to documents and people for the purpose of research so that researchers do not engage in speculation on the subject. The following qualitative data-collection techniques were used.

1.11.1 Literature Study

According to Mouton and Marais (1994:77), data can be collected from various sources. The objective of the literature review is to allow the researcher to establish what is already known on the subject, so that this knowledge can be used as a background for the investigation, which will progress and guide the study through new learning (Denscombe, 2002:86). The researcher conducted in-depth research using international and national sources in the area of law, policing, forensic investigation, criminal investigation and criminology.

In an attempt to find a larger number of studies on the subject, the researcher divided the research topic into key concepts as follows:

- Bank records
- Bank statement analysis
- Tracing suspects
- Fraud suspect

Literature that was found to be relevant to the research was evaluated to find answers to the research questions.

1.11.2 Interviews

The interview method involves questioning or discussing issues with people; it can be a useful technique for collecting data that would probably not be accessible using techniques such as observation or questionnaires (Blaxter, Hughes & Tight, 2004:172). An interview schedule was administered to participants, leaving the interviewer no discretion as to how to ask the questions or in what order (McNeill, 1990:23). In conducting interviews with the participants, the researcher made use of the guidelines for productive interviews provided by Leedy and Ormrod (2005:147-149) as follows:

- The researcher ensured that the participants were representative of the group of Durban CCU investigators, using the random sampling technique.

- The researcher found suitable locations for the interviews.
- The researcher kept his reactions to himself.
- The researcher recorded the interviews verbatim.
- The researcher reminded himself that he would not necessarily be getting facts but that the responses of the participants might constitute perceptions.
- The researcher did not put words in people's mouths.
- The researcher allowed the participants to choose their own way of expressing their thoughts.
- The researcher focused on the actual rather than on the abstract or hypothetical.
- The researcher requested and obtained written permission from the participants in the form of a signed consent form.
- The researcher requested and obtained written permission from the SAPS to conduct research.

1.11.3 Case Dockets Analysis

The researcher obtained a list of police stations that are served by the DPCI. From the list, the researcher chose SAPS Durban Central, SAPS Pinetown, SAPS Maydon Wharf, SAPS Point and SAPS Durban North. These stations recorded the highest number of fraud cases reported for 2009/2010. Of the chosen police stations, SAPS Durban Central indicated that it could not participate in the research due to the renovation of the case dockets store room and was subsequently excluded from the research.

The researcher requested a list of undetected fraud case dockets covering 2009/2010 for the four remaining stations. For each police station selected, the researcher wrote down the CAS numbers of the closed fraud case dockets separately on small pieces of paper. These pieces of paper were placed in a box. The researcher randomly and individually selected 12 pieces of paper from each police station. This meant that the researcher eventually had 48 closed fraud case dockets randomly selected from the four police stations.

The researcher studied the case dockets to obtain specific information. The following questions were used to extract information relevant to the research questions:

- In which period of time did the crime take place?
- In which area did the crime take place?

- Was the suspect arrested?
- Did the suspect appear before the Durban Magistrate Court or Specialised Commercial Crime Court (SCCU)?
- What tracing techniques were used to locate the suspect?
- Was the bank account of the suspect ever analysed to locate the suspect?
- Was there any information retrieved from the bank records indicative of the possible geographical location of the suspect?
- Was the place of arrest in any way connected to any of the transaction places on the bank statements of the suspect?
- What was the outcome of the case?
- What type of bank records is available in the case dockets?
- What are the legal frameworks pertaining to the bank records that are available in the case dockets?
- What are the significant transactions that are found in the bank records?
- What are the income deposits that are found in the bank records?
- Are there any routine payments in the bank records?
- Are there any frequent transactions in the bank records?

The researcher chose the Durban Metropolitan area because he resides and is employed in the area.

1.12 DATA ANALYSIS

The researcher used preliminary research questions and related literature developed earlier in the proposal as guidelines for data analysis (Marshall & Rossman, 2006:156). Mouton (1996:111) makes a point that the outcome of the analysis is certain conclusions, which must follow logically from the empirical evidence if they are to be regarded as ‘valid’ results or conclusions. Taking into account the views of the above-mentioned authors, the researcher used the spiral method of data analysis as described by Leedy and Ormrod (2005:150-151):

- Data was collected using different data-collection techniques (literature study, interviews and case dockets studies).
- The researcher compiled handwritten notes during the interviews, literature study and case dockets studies.
- These notes were then organised into similar topics by making use of index cards.

- The large amount of data was broken down into smaller manageable texts and grouped under topics developed.
- After the grouping of data under the topics, it was further divided into sub-categories in order to understand their meaning.
- Data was perused at least four times to prevent it from being overlooked and to ensure that all data was grouped under the correct topics.
- Irrelevant data was eliminated.
- Data was then categorised according to topics, themes and sub-themes, and analysis was performed.
- The conclusion and findings were then incorporated into a dissertation.

1.13 METHODS TO ENSURE VALIDITY

According to McNeill (1990:15), ‘validity’ refers to the problem of whether the data collected is a true picture of what is being studied. To validate is to *check* (for bias, for neglect, for lack of precision and so forth), to *question* (all procedures and decisions critically), to *theorise* (looking for and addressing theoretical questions that arise throughout process – not just towards the end) and to *discuss and share* research actions with peers as critical in-process reviewers (Henning, van Rensburg & Smit, 2004:148-149).

1.13.1 To ensure the validity of data in the interviews, the questions used in the interview schedule were derived from the research questions based on the identified research problem. The same interview schedule was used for all participants and the answers provided were from their own personal experience.

1.13.2 To ensure the validity of data in the literature, data was collected from international and national sources, including published books, journals, articles and internet sources. The researcher ensured that the authors of the material consulted were experts in the study field.

1.13.3 To ensure the validity of data in the case dockets analysis, the researcher drew the sample of 48 closed fraud case dockets from different stations, from the CAS system of the DPCI. The CAS is the only authorised case administration system of the SAPS.

1.14 METHODS TO ENSURE RELIABILITY

Suter (2011:257) defines 'reliability' as the ratio of the true score variance to obtained score variance (true score variance divided by obtained score variance). According to Leedy (1997:35) reliability of instruments refers to how well the instrument consistently yields similar results. Mason (2009:39) also argues that reliability involves the accuracy of research methods and techniques.

To ensure the reliability of data collected, the researcher designed the unstructured interview schedule, which was used as a measuring instrument to record the experiences of the participants as criminal investigators of the DPCI.

The researcher ensured that the same measuring instrument was used in all interviews throughout the research to gain accurate results that did not vary from interview to interview. The researcher was aware that reliability of the statements submitted during the interviews depended on the credibility of the participants.

To test the participants' credibility, the researcher took cognisance of the following questions asked by Neuman (2000:368):

- Did the person have a reason to lie?
- Was he or she in a position to know that?
- What were the person's values and how might that have shaped what he or she said?
- Was he or she just saying that just to please me?
- Was there anything that might have limited his or her spontaneity?

1.15 ETHICAL CONSIDERATIONS

To adhere to the ethical requirements of research, the researcher followed the key principles of research ethics as stipulated in Denscombe (2010:331-337):

- **Participants' interests should be protected:**
 - The researcher respected participants' privacy, protected them from harm, treated all information disclosed as confidential and guaranteed the anonymity of individuals;
- **Participation should be voluntary and based on informed consent:**

- The participants were requested to give informed consent by using a consent form. Before the participants signed the consent form, the researcher informed them of the nature of the research, the choice of participating in the research, the choice of withdrawing at any time and that participation was voluntary;
- **Researchers should operate in an open and honest manner with respect to the investigation:**
 - The researcher produced a brief summary of the aims of the research and the nature of data to be collected. He had not used other researchers' work and acknowledged all sources consulted;
- **Research should comply with the laws of the country:**
 - The researcher strictly complied with the legislation governing intellectual property rights and copyright matters. The researcher also complied with other legislation relevant to the research.

The researcher complied with the ethical principles as contained in Denscombe (2010), Leedy and Ormrod (2005) and the Unisa policy on ethics (2007).

1.16 RESEARCH STRUCTURE

To ensure that the research report is well structured and the research aims and questions addressed, the dissertation is divided into the following chapters.

Chapter 1: Orientation

In this chapter, the problem is outlined, the importance of the research is explained and the research aims and other methodological issues are discussed and explained.

Chapter 2: The meaning of bank records

This chapter focuses on financial investigation, the meaning of bank records, types of bank records, regulation of the banking industry and the South African legal framework relating to bank records.

Chapter 3: The significance of bank record analysis as a technique in tracing fraud suspects

This chapter focuses on the purpose of bank record analysis in relation to the tracing of a suspect's movements, identifying significant transactions in a bank account, identifying

income deposits in the bank account, identifying routine payments in the bank account, frequency of transactions in the bank account and the process of analysing bank statements.

Chapter 4: Findings and Recommendations

This chapter concludes the study and summarises the research findings. Some recommendations are made in respect of the outcome of the research.

CHAPTER TWO

BANK RECORDS

2.1 INTRODUCTION

Any person who earns and spends money needs to rely on a bank either to receive money or to pay someone else in a manner that is acceptable to the person on the other side of the transaction. According to Ogilvie (2007:1), banking is a method of financial intermediation in which surplus funds are transmitted from savers to borrowers, and banks are the institutions which effect that transmission. Ogilvie (2007:226) explains that, without the deposit of funds, banks would never have come into existence and would not be able to continue to provide the numerous financial intermediation services they offer in society and to the economy. Banks hold funds deposited by account holders, manage these funds on behalf of the account holders and make the funds available to the borrowers at a cost. For the purpose of banking and in meeting the conditions of opening a bank account, people are required to reveal their identities. According to the statistics provided by Deloitte (2010:1) the banked market in South Africa is 19.6 million strong. Accordingly, 19.6 million South African adults have access to formal financial services. With this information in mind, it is clear that most banking institutions are likely to be in possession of people's personal details and transactions on their bank accounts.

Financial crime investigation requires the analysis of bank records and the understanding of these records. This information is crucial to the investigators as it is likely that one or more financial institutions have a suspect's bank records, which might assist to trace his or her whereabouts. Osterburg and Ward (2010:143) urge that where the identity of a suspect, criminal or witness is known but they are absent from their usual places of abode, work and recreation, the investigator should use, amongst other techniques, the bank records of that person to trace and locate them.

The discussion to follow concentrates on the meaning of financial investigation, bank records, types of bank records, purpose of bank records analysis, regulation of the banking industry and the legal framework that relates to bank records. This discussion uses as sources, the literature review supplemented by the responses of the participants obtained during the interviews and the results of case dockets analysis.

2.2 FINANCIAL INVESTIGATION

Financial investigation is an investigative technique used by investigators to determine the accurate financial affairs of a subject, including ascertaining assets, locations and associates through the analysis of bank records. To determine the meaning of ‘financial investigation’ from the point of view of the sample, the participants were asked the question “What is financial investigation?” Their responses were recorded as follows:

- One participant stated that ‘financial investigation’ refers to the investigation of the source of money, the movement and how it is used, which often involves theft, money laundering and other illegal activities involving money.
- Three participants were of the view that financial investigation involves the movement of finances.
- One participant submitted that it is the investigation to verify problems in the handling of money.
- Three participants referred to ‘financial investigation’ as a method used by accountants to trace funds.
- One participant said that financial investigation is the tracing of funds to where they are coming and going (audit).
- Four participants defined financial investigation as the analysis of financial statements to determine the accurate standing of the account holder.

The responses provided indicated that the participants were of the view that financial investigation has to do with financial analysis. There was, however, a slight difference from the responses of three participants, whose responses were to the effect that financial investigation is conducted by the accountants to trace funds. Their submissions clearly suggest that it is not the responsibility of criminal investigators to conduct financial analysis or investigation, which is in contrast with the rest of the participants, who view financial investigation in the context of forensic investigation and not accountancy in particular.

Looking at how the literature reviewed describes financial investigation, Pasco (2013:57) submits that a financial investigation involves the connection of a series of unrelated financial transactions that, when presented in total, provide a complete picture of an individual’s financial activity over a set period of time. It can be argued that the picture referred to,

includes locations in which transactions are made which in turn may give an indication of the account holder's whereabouts. This view is supported by National Centre for Policing Excellence in the United Kingdom (2006:12), which states that 'financial investigation' refers to activity that uses financial investigation techniques to, amongst other things, trace people.

According to Mackenzie (1998:24), financial investigation comprises investigations in which, on behalf of law enforcement, financial expertise is used to gather, check, refine, process and analyse information. In agreement with the above statement, Van Duyne, Pheijffer, Kuijl, Van Dijk and Bakker (2003:77) define financial investigation as the gathering, selection, enrichment, verification, processing and analysis of financial or finance-related data on behalf of law enforcement. The abilities and skills needed during financial investigation can be used to clarify the nature of financial investigation. For instance, the Internal Revenue Service of the United States of America (1993:8) lists the skills and abilities required for financial investigation as:

- Understanding the laws relating to the crime(s) under investigation;
- Knowing the proper way to handle evidence;
- Employing investigative techniques, including surveillance, undercover operations and interviewing;
- Locating and obtaining all relevant financial records; and
- Using auditing, accounting and analytical techniques to review those records, and linking the financial data to other case information to prove the crime.

When the responses of the participants and literature are compared, it can be argued that to be able to conduct a financial investigation an investigator would need to have both legal and accounting skills. Tracing a suspect through bank records does not need a high level of mathematical methods; the emphasis is on the location in which transactions take place as opposed to the actual cashflow. Accordingly, DPCI Commercial Crime Unit investigators, by virtue of their conducting commercial crime investigations, can be considered financial investigators to a certain extent as they analyse bank statements. For the researcher, the submissions by Mackenzie (1998:24) and Van Duyne et al. (2003:77) do not adequately describe financial investigation; put differently, their definitions of financial investigation are not comprehensive. Both definitions omit the tracing factor as one of the benefits of financial investigation. The tracing factor is discussed by the National Centre for Policing Excellence (2006:12).

From the discussion above, it can be concluded that financial investigation is an investigative technique that requires a certain degree of competency in and knowledge of analysing bank records to determine, amongst other things, the financial status of a subject and location of the subject's transactions. Financial investigation is also used to trace the subject and the associates and relatives of the subject. The degree of competency required of investigators can be acquired by the development and delivery of comprehensive courses on investigative and analytic techniques that will serve the investigators of today and tomorrow. The next section looks at the meaning of 'bank records' as part of a financial investigation.

2.3 THE MEANING OF BANK RECORDS

Bank records are those documents that are generated and held by financial institutions which relate to the business relationship of these institutions with their clients. The following responses were recorded when the participants were asked "What is the meaning of bank records?"

- One participant referred to bank records as a record, usually sent to the account holder once a month, that summarises all transactions in an account during the time from the previous statement to the current statement.
- Seven participants submitted that bank records mean a history of activities in that bank account.
- Another participant stated that it is a bank statement of a certain period, which includes deposits, withdrawals and opening documents.
- Three participants defined bank records as any record that is in the possession of banks that can show the trail of money.
- One participant was of the view that it is the bank statements and other endorsements made during the ordinary course of business of the bank in respect of accounts held by the bank, including records of withdrawals and deposits from the Automated Teller Machine (ATM).

Most participants submitted that 'bank records' refers to the history of activities in a bank account while other participants refer to 'bank records' as 'bank statements'. Three participants were of the view that any document in possession of the bank that can show the trail of money of the account holder can be regarded as a bank record. Accordingly, the

participants appeared to differ in their understanding of the meaning of bank records. From the responses given, despite having different definitions of bank records, the participants appear to have an idea of what the term 'bank record' refers to. It is clear from their responses that bank records can only be generated by a bank and provides a summary of transactions for a specific period of a specific account.

A bank record is any document, paper, letter, book, map, photograph, sound or video recording, magnetic tape, electronic-storage medium, or other information-recording medium used in a bank's normal course of business (Montana Legislative Services, 2014). This also means that any transaction created by means of telephone banking, internet or ATM forms part of bank records. To support this argument, United States of America's Internal Revenue Service (1993:83) submits that banks handle two types of bank records: account and non-account transactions. Account transactions involve actions such as depositing and withdrawing money while non-account transactions involve bank loans. According to Barclays (2012:7), numerous institutions are registered as banking institutions and might be approached to open a bank account. These institutions are described by Deloitte (2012:1) as banks that use money deposited by customers for investment, pay it out when required, make loans at interest and exchange currency. In their definition of bank records and in support of the view expressed by Deloitte (2012:1), Kass-Shraibman and Sampath (2011:174) submit that bank records are a primary source of information about where money is flowing to and from. Therefore when the client makes an initial interaction with the bank, his details become part of bank's database that would in future be referred to as the 'bank record'. In support of this view, Rose and Hudgins (2013:695) point out that once the process of establishing a business relationship has been determined, the client can go ahead and transact in his account while the bank can use money deposited by client for investment, pay it out when required, make loans at interest and exchange currency. Accordingly, every time the clients transact into their account, documents are electronically generated from the bank system and stored in the database.

From the analysis of responses provided by the participants and the literature reviewed, it can be concluded that the most complete definition of bank records is that which includes document, paper, letter, book, map, photograph, sound or video recording, magnetic tape, electronic-storage medium, or other information-recording medium used in a bank's normal course of business. These are records which are generated by banks during initial business interactions with clients or potential account holders. These records are then maintained by

the banks throughout their business relationship with their clients, as pointed out by Madinger and Zalopany (1999:187), who state that the objective of the banker is to create a complete documented history of all money that passes through the doors of the institution.

According to their responses, some of the participants viewed bank records as bank statements. The researcher submits that such responses emanate from the fact that investigators generally consider bank records to be bank statements, even though some documents have nothing to do with bank statements; for example, account opening documents could not be regarded as bank statements but rather as bank records.

2.4 TYPES OF BANK RECORDS

It is important that types of bank records are examined. This section therefore analyses the participants' submissions and the views gleaned from the literature to determine whether bank records are different and can be classified into different types. Participants were requested to comment on the types of bank records that they were familiar with and the following responses were recorded:

- Five participants mentioned bank statements, account opening documents, and deposit and withdrawal slips as types of bank records.
- One participant stated that bank records include the opening application form, signature card, proof of identity and residence, proof of employment and salary, company registration, power of attorney, bank statements, deposit and withdrawal slips, company mandates, bond and loan application and Financial Intelligence Centre (FIC) reports.
- Another participant submitted opening documents, mandates, linked accounts, codes, bank statements and amendments.
- Two participants mentioned internet statements and electronic transfers as types of bank records.
- Another two participants were of the view that accounting records, departmental records, loan or credit files are types of bank records.
- One participant stated current, transmission and cheque accounts.
- One participant abstained from answering the question.

Case docket analysis was conducted to establish what type of bank records were requested from banks and the following was established:

- 21 case dockets contained bank statements.
- One case docket contained an ATM card and credit card transaction records.
- 14 case dockets contained account opening documents (account application, signature card, copy of identity document, withdrawal slips and cheque slips).
- 12 case dockets did not have bank records.

There were similarities in the responses submitted by the participants. It was clear that the participants were familiar with the different types of bank records. This appears to be because a bank record can be almost any document which relates to the relationship between the client and the bank. Accordingly, participants were entitled to mention any document that they thought of at that time.

There are numerous documents which are regarded as bank records. The Association of Certified Fraud Examiners (2011:11) sees bank records as comprising the following:

- All open or closed cheque, savings and money market accounts;
- Retained copies of all open and closed bank loan or mortgage documents;
- Certificates of deposits (purchased or redeemed);
- Open and closed investment or security custodian accounts;
- All open or closed retirement accounts;
- Safe deposit box information and plastic cards;
- All cashier's bank or traveller's and money orders purchased; and
- Customer correspondence files for each of the named parties and entities.

The National Centre for Policing Excellence (2006:20-21) lists, amongst others, three types of bank records of individuals which might be held by banks: bank account information, bank statements and ATM card transaction information. In addition, the Association of Certified Fraud Examiners (2012:1) specifies debit and credit cards and electronic funds transfer as part of bank records.

The list of bank records is lengthy; however, it is worth noting, from the above authors and participants' responses, that bank account application, bank statement, and ATM card and

credit card transactions are frequently referred to as types of bank records. Such inclusion clearly shows the importance of these records. For this reason these four types of bank records are discussed in more detail. For the researcher to obtain a detailed understanding of the participants' point of view and information retrieved from the literature about these types of bank records, follow-up questions were formulated as discussed below.

2.4.1 Bank Account Application

A bank account application form is a document that is completed by the potential account holder and that details personal information and acceptance of terms and conditions of the bank account. The participants were asked to explain their understanding of the bank account application form and gave the following answers:

- Four participants said it is an application to establish the relationship between the bank and client.
- Five participants stated that it is a document that allows the bank to assess the applicant's application based on the information provided and determine whether the applicant qualifies to obtain a bank account.
- Two participants defined the bank account application form as the document for establishing the financial behaviour of the applicant before opening a bank account.
- One participant submitted that it is a method used by the bank to collect the applicant's personal information that is stored in the bank's database.
- One participant said that it is a potential formal agreement between the applicant and the bank for the bank to have access to the applicant's confidential information.

There were similarities to the answers submitted by the participants. Their main view was that the bank account application form is an official bank document that is completed before an account can be opened. This means that there must be an initial interaction between the client and the bank concerned before an application form can be completed. Some participants went further to indicate that the bank account application form is used by the bank to determine whether a business relationship could be established with the applicant.

According to the Rates Worldwide website (Rates Worldwide, n.d.), the term 'bank account' refers to a financial arrangement between a depositor or debt holder and a bank. In other words, if the applicant wants to open a bank account, an application has to be completed.

South African financial institutions apply stringent rules for opening bank accounts. These rules, which are attached to the application form, are referred to as ‘account opening terms and conditions’. Examining these terms and conditions, the researcher established that the applicant needs to have an identity document, proof of residence and proof of income to open a bank account. The above requirements are a response to the Financial Intelligence Centre Act 38, 2001 (FICA) (South Africa, 2001), which compels banks to identify all clients, verify all information gathered in the identification process and keep records of all information and documentation. Cameron (2002:3) writes that a banker will present the client with an application form on which relevant personal information regarding the client has to be filled in for verification. On signing the application form, the client generally accepts the terms and conditions of the bank account selected. The application, together with identity document, proof of residence and proof of income, is then scanned and stored on the computerised database of the bank. These documents are thereafter referred to as the ‘bank account application’ and subsequently the client is issued with a unique account number, which identifies the account (Wells, 2004:128).

When the responses of the participants and information from the literature are compared, it can be concluded that the bank account application is the cornerstone of all bank records. Before applicants can be formally referred to as ‘clients’, the bank account application has to be completed and, on acceptance of the application by the bank, the clients are then able to transact on their accounts. Without the completion of a bank account application, there is no business relationship between the applicant and the financial institution concerned.

2.4.2 Bank Statements

The bank statement is one of the documents mentioned as a type of bank record. Although the terms ‘bank statements’ and ‘bank records’ are often used interchangeably, the researcher wanted to establish the exact meanings as well as the differences between bank statements and bank records. The participants were asked “What does the bank statement mean?” Their responses were recorded as follows:

- Four participants stated that it is a document from the bank that details all transactions of the account holder.
- Four participants submitted that it is a monthly list of transactions by the client.

- Three participants mentioned that it is a document of an individual account's document, which is posted or emailed to the account holder for all monies moved in or out of the account.
- Two participants said that the bank statement shows the debits and credits in the account.

From the participants' submissions, it was noted that the participants hold a similar view in terms of the meaning of bank statements. Although they expressed themselves differently, they were of the view that the bank statement comes from the bank, is sent to the account holder and notifies the account holder about the status of the transactions. It is worth noting that although this was expected, none of the participants indicated that the bank statement provides details about the location where each transaction was made. However, their responses were adequate in establishing that all transactions are normally recorded on a bank statement.

In describing bank statements, Goosen, Pampallis, Van der Merwe and Mdluli (1999:221) state that a bank owes a duty to its customers to keep accurate records of all the transactions effected against the account in question. For this reason a bank statement is an important part of the bank records used by a financial institution to account to its clients. Goosen et al. (1999:221) further state that the role of a bank account statement is that it serves as an audit trail showing in detail the various transactions effected against the account. Norton and Porter (2013:298) argue that a bank statement is a detailed list, provided by the bank, of all activity for a particular account during the month. These authors suggest that once the business relationship has been established between the account holder and the financial institution, the account holder would then have an opportunity to transact into the account. The financial institution concerned will periodically be required to reconcile the financial activities of the account. As a result, a record of the account's reconciliation is prepared and retained, which is then called a bank statement. The copy of this document is sent to the account holder in the form of a computer printout via email or post. The computer printouts mentioned here are copies of the original documents, which are stored in an electronic form (De Villiers, 2008:8). On the website Accounting Tools, Bragg defines a bank statement as a document that is issued by a bank once a month to its customers, detailing information for a bank account such as the beginning and the ending of cash balance in the account; total amount of each deposited batch of checks and cash; funds withdrawn and paid in the account; individual

checks paid; interest earned on the account; and service charges and penalties charged against the account (Bragg, 2011).

From the analysis of responses provided by the participants and information gleaned from the literature, it can be concluded that the main purpose of a bank statement is to advise the account holder about the activities in their account. From the researcher's experience as a bank client and an investigator in the banking industry, the location of banking transactions is also provided on the bank statement. This is important as a failure by the bank to submit such a monthly statement to the account holder may result in the account holder losing track of their financial standing and subsequently disputing transactions on their account. Of importance, as raised by both the literature and the participants, is that the details in the bank statement must reflect all activities and the historical information of a particular bank account. During the analysis of the case dockets, it was established that a bank statement was attached in some of the case dockets as a bank record. It was further established, when analysing the statements attached to the case dockets that the bank statements always identified the locations where transactions were made.

2.4.3 ATM Card Transaction Record

An ATM card transaction record is the type of bank record that details all withdrawals and enquiries made with an ATM card at an ATM. The following responses were recorded when the participants were asked "What is an ATM card transaction record"?

- Three participants submitted that the ATM card transaction record is the document which lists all transactions by the ATM card.
- Four participants said that it is a printout or a slip from the ATM after withdrawing money that indicates recent transactions.
- Six participants stated that they were unfamiliar with the ATM card transaction record.

The responses indicated that six participants had no idea what an ATM card transaction record was. However, four participants mentioned the ATM card transaction record as a printout or slip from the ATM, while three participants mentioned all transactions made using an ATM card. Looking at the responses of these seven participants, it is clear that these

participants differed sharply in their understanding of the meaning of an ATM card transaction record.

Describing the ATM card transaction record, Rose and Hudgins (2013:695) state that ATMs are machines through which a customer can access their deposit account, make loan payments or obtain information and other services. This view is supported by ASPIRA Financial Education Institute (2012:22), which adds that ATMs are a method of financial transactions in a public space without the need for a human clerk or bank teller. It is clear that to use an ATM, the client needs to have access to a bank account. Such an account should have a provision for the ATM card. In support of this view, Hayashi, Sullivan & Weiner (2003:5) confirm that the client can present an ATM card, which is issued by the bank holding account, at an ATM terminal, which may or may not be owned by the same bank. As a security feature, ATM cards are coded with security information that may not be visible. The security information may include the personal identification number (PIN) for the client's verification. When the client inserts the card into the ATM and keys in their PIN, the ATM will allow access to the account, provided that the PIN is authorised. Every transaction effected using the card is then recorded on the bank's database.

When the responses of the participants and information from the literature are compared, it can be argued that the client must have a bank account to utilise an ATM card. All the transactions carried out with an ATM card are recorded by the relevant bank. The ATM card transaction record is therefore part of the recorded account transactions; the only difference is that the ATM card transaction record is isolated from the other transactions and is recorded on its own unique database. From experience, the researcher understands that the ATM card transaction record generated from the bank system displays the following: transaction type, date and time of transaction and location of the ATM. It should be noted that this type of bank record is for investigative purpose only and an internal document which does not necessarily have to be accessed by the account holder. It was established during the case docket analysis that investigators did not frequently request this type of bank record from financial institutions, since investigators may not be familiar with these types of records or because the information they receive from other bank records may prove sufficient for a specific investigation.

2.4.4 Credit Card Transaction Record

The credit card transaction record is the document generated when the credit card holder utilises the credit account that has been established with the bank. The credit card, to a certain extent, replaces currency in that it is used to buy food and pay for travel, lodging, car rentals and other forms of service. The participants were asked the question “What do you understand about the credit card transaction record?” Their responses were recorded as follows:

- Three participants submitted that it is a statement produced by the bank in respect of the usage of a credit card.
- Six participants stated that it is a record detailing all transactions of the specific credit card.
- Three participants said that it is a bank statement which relates to the credit card.
- One participant stated that it is a statement detailing how the credit card was used from the previous month.

Although they expressed their answers differently, all the participants appeared to be in agreement with each other. The general view was that the credit card transaction record is a statement that details all transactions which were effected using the credit card. The general feeling of the participants was that the credit card transaction record was similar to the bank statement, in that it is generated by the bank, sent to the account holder and advises the account holder about the usage of the credit card.

According to Ogilvie (2007:372), a credit card is any card, plate, coupon book or other device issued or distributed for the purpose of being used on presentation to obtain, on credit, money, goods, services, or any other thing of value or in an ATM, a remote service unit or a similar automated banking device to obtain any of the services offered through the machine, unit or device. In other words, a credit card permits a customer to obtain goods or services on credit by producing it at a retail outlet or anywhere else that has agreed to accept payments by means of the card. The customer may obtain cash either over the counter at a bank or, if issued with a PIN, from the ATM. This view is supported by Rapp (1991:120), who states that a credit card is a payment card that enables holders to make purchases and draw cash up to a pre-arranged credit limit. From the information above, it is clear that whenever clients utilise their credit cards, such utilisation is recorded. It then follows that the card-issuing bank

will subsequently issue a monthly credit card statement to the credit card holder, which is then referred to as the 'credit card transaction record'.

When the responses of the participants and information obtained from the literature are compared, it is clear that the credit card transaction record can only be generated once the credit card has been obtained by the applicant and that the accumulated use of the credit card is sent to the card holder in the form of a statement. This statement details, amongst other things, all purchases by the credit card, all locations where the credit card was used, and amounts, dates and time. The meaning derived from the responses of the participants and information gleaned from the literature is therefore that the movement of the card holder can be determined by the use of the credit card.

2.5 REGULATION OF THE BANKING INDUSTRY

According to the Global Competitiveness Report 2012/13 of the World Economic Forum (WEF) (2012), South Africa's banks rank second in the world in terms of a sound banking system. This is because South Africa has good bank legislation, which seeks to regularise banks effectively and proficiently. To maintain that effectiveness and proficiency, banks are required to be regulated. The banking industry is regulated by the South African Reserve Bank (SARB) Act 90 of 1989 (South Africa, 1989) and Banks Act 94 of 1990 (South Africa, 1990).

To determine any relationship between the tracing of a suspect using bank records and the regulation of the banking industry, it was imperative that the views of both the participants and the literature regarding this relationship were obtained. Similar questions which relate both to the SARB Act and to the Banks Act were posed to the participants. These questions were asked because the participants are criminal investigators, who, during the course of their careers, investigate offences relating to these Acts.

2.5.1 South African Reserve Bank Act 90 of 1989

The participants were asked to explain how the SARB Act regulates banks and the following responses were received:

- Seven participants stated that the SARB Act provides guidelines to the South African Reserve Bank (SARB) on how to issue trading licences to the banks.

- Three participants mentioned that the SARB supervises the conduct of the banks through the SARB Act.
- Three participants stated that they could not recall how the SARB or the SARB Act regulates banks.

The majority of the participants indicated that they understood how the SARB Act regulates banks. Seven participants stated that the SARB issues licences, while three participants were of the view that the SARB supervises the banks. These responses appear to be similar in nature as issuing licences can be regarded as part of supervision. The participants were of the view that the SARB is the regulator of banks and is guided by legislation, in this case the SARB Act, to supervise or regulate the banks. The other three participants did not recall how the SARB or the SARB Act regulates banks.

According to the SARB website, the SARB is an entity which was established in terms of Section 9 of the Currency and Banking Act 31 of 1920 (South Africa, 1920)). It opened its doors for business for the first time on 30 June 1921. The SARB is responsible for bank regulation and supervision with the purpose of achieving a sound, efficient banking system in the interest of the depositors of banks and the economy as a whole (SARB, n.d.). The functions of the SARB are performed by issuing banking licences for banking institutions and monitoring their activities in terms of the Banks Act. Goosen et al. (1999:143) add that the main function of the SARB is the implementation of monetary policy in South Africa – that is, influencing the quantity of money and thereby the interest rate to achieve stable prices, sufficient employment and economic growth. With respect to the banks, as defined in terms of section 1 (1) of the Banks Act (South Africa, 1990), the SARB is mandated in terms of section 10A (1) of the SARB Act to ensure that the banks maintain the minimum reserve balances in accounts with the SARB (South Africa, 1989:8). These banks can from time to time withdraw the required cash but must also keep the minimum balances.

When the responses of the participants and information from the literature are compared, it can be concluded that banks are supervised and regulated by the SARB. According to section 10A (1) of the SARB Act, the SARB seeks to ensure that the banks do not find themselves in the position where they are unable to meet their business obligations. In short, the objective of section 10A (1) of SARB Act is to keep the banks afloat and in business thereby keeping the customers' deposits secured. Keeping banks in business means that the clients are constantly able to transact in their accounts, in this way creating more bank records, which might be used to trace the account holder, in the case where the account holder is a suspect.

2.5.2 Banks Act 94 of 1990

To the question “How does the Banks Act regulate banks?” the participants’ responses were recorded as follows:

- Two participants stated that the Banks Act is an Act in which the SARB regulates the banks.
- Four participants submitted that sections of the Banks Act prohibit individuals from starting a banking business without authority.
- Seven participants stated that they could not recall the provisions of the Act off the tops of their heads but that they would normally refer to the Act’s provisions when required to do so during any investigation.

The responses of the participants differ from each other in that of the six participants who responded positively to the question, four participants were of the view that some of the sections of the Banks Act prohibit individuals from starting a banking business without authority. The other two participants submitted that this is the Act in which banks are regulated. It was noted that the majority of the participants indicated in their response that they could not recall the provision of the Act but would rather refer to a piece of legislation only when the case they dealt with required it.

The Banks Act provides for the regulation and supervision of the business of public companies taking deposits from the public and for matters connected with this. According to Goosen et al. (1999:156), the purpose of the Banks Act is to place all deposit-taking institutions such as banks and building societies on an equal footing and to ensure that they remain institutions in terms of the Act. Goosen et al. (1999:156) define the term ‘deposit’ as an amount of money that is given from one person to another, with the repayment taking place at a later date, either after a fixed period of time or on demand, irrespective of whether interest is paid on the money deposited. This means that any person or entity that takes deposits from the public should be registered and is therefore regulated by this Act. Within this Act, there are numerous sections which specifically deal with the relationship between the client or account holder and the bank:

- Section 12 of the Banks Act requires that an application for authorisation to establish a bank be made to the Registrar of Banks.
- Section 13 of the Banks Act relates to the granting or refusal of the application for authorisation.
- If the application for authorisation is granted in terms of section 12, the applicant is required in terms of section 16 of the Banks Act to register the institution as a bank within 12 months.

When comparing the responses of the participants with the literature, it can be argued that the Banks Act is also related to the tracing of suspects in that it compels companies that take deposits from the public to be registered. Without proper registration, any entity could practice as a banking institution and possibly disappear with deposits. It would be difficult for investigators to trace the financial institution concerned before making a request for bank records for the subject under investigation or to seek information which could assist to trace fraud suspects.

2.6 SOUTH AFRICAN LEGAL FRAMEWORK RELATING TO BANK RECORDS

There are a number of South African Acts that relate to bank records, which may have an impact on the privacy of individuals. If these Acts are not observed and respected, the acquiring and analysis of bank records may be rendered unlawful and investigators may be subjected to civil actions by the individuals concerned. To understand the participants' points of view with regard to the South African legislation that relates to bank records, the participants were asked "What are the legislative frameworks that you think relate to bank records?" Their responses were recorded as follows:

- Seven participants listed section 205 of the CPA and Section 14 of the Constitution.
- Four participants mentioned sections 21 and 22 of FICA in addition to section 205 of the CPA.
- Two participants mentioned section 14 and section 36 of the Constitution in addition to section 205 of the CPA.

The case docket analysis in relation to the legislative frameworks used in acquiring bank records from financial institutions revealed the following:

- All 48 case dockets analysed contained copies of section 205 subpoenas.

- All 48 case dockets analysed related to fraud investigation.
- None of the bank records requested was for the tracing of suspects.

The responses provided by the participants showed similarities in that all participants included section 205 of the CPA in addition to other legislation. All participants mentioned some sections of the Constitution. This was an indication that the participants had a general knowledge of both section 205 of the CPA and the Constitution. More significant was the response of the four participants who submitted that sections 21 and 22 of FICA should, in their opinion, form part of the legislative framework related to bank records.

According to Joubert (2001:2), the South African law mainly stems from the common law, statutory law, the Constitution and the case law. Joubert (2010:4) points out that the Constitution is not an ordinary Act of Parliament; it is the supreme law of the Republic. This means that any law or conduct inconsistent with it is invalid and any sanctions or obligations imposed by it must be fulfilled. Such supremacy also means that investigation must be conducted justly, fairly, and within the ambit of the law.

Chapter 2 of the Constitution makes provision for the Bill of Rights. Sections 7 and 8 of the Constitution guarantee the rights of all people living in the Republic, which must be respected, protected and promoted by the state. Section 9 of the Constitution stipulates that everyone is equal before the law and has a right to equal protection. In short, this Bill of Rights applies to law and is binding on all organs of the state, the executive and judiciary. Section 14 stipulates that everyone has a right to privacy, which includes, amongst others things, the right not to have their privacy of communication infringed. This right also applies to bank records, which may be viewed as client-bank private communication.

For the purpose of this research, when the investigators approach financial institutions with respect to acquiring bank records, they are indeed violating individual rights. According to Van Rooyen (2008:55), most banks will only supply official information on the strength of a court order. In support of this view, the Association of Certified Fraud Examiners (2010:3.085) states that investigators should recognise that in most instances bank records are not readily available and there should be a legal requirement that must be met before bank institutions release such documents. In terms of section 205 of the CPA, banks are compelled to furnish the relevant information to the prosecutor concerned or have an option to appear before the magistrate with regard to the information required.

Acquiring bank statements of an individual from a financial institution is a direct violation of privacy as contemplated in section 14 of the Constitution. However, according to Joubert (2010:22), the rights contained in the Bill of Rights may be subjected to limitation and no right is absolute. This means that access to bank records is possible provided that the required access is reasonable, as argued by Joubert (2001:23), who states that SAPS members are allowed to limit individuals' rights if this is deemed to be justifiable and reasonable. The limitation mentioned refers to section 36 of the Constitution, which provides for how and when the rights in the Bill of Rights should be subjected to limitation.

From this discussion, it is clear that banks can be legally approached to acquire bank records. The question that arises, however, is what would happen if these records were not available? The FIC is the body which seeks to establish and maintain an effective policy and compliance framework and operational capacity to oversee compliance and to provide high quality, timeous financial intelligence for use in the fight against crime, money laundering and terror financing for South Africa to protect the integrity and stability of its financial system, develop economically and be a responsible global citizen (Financial Intelligence Centre, 2008).

According to sections 21 and 22 of FICA, banks are required to verify the identities of their clients and keep accurate record of such verification. This means that banks should be able to verify the identity of the client and keep a copy of this identity as required by the law. If ever there is a violation or a failure to comply, sections 46 and 48 of the Act criminalise any deviation. These sections of FICA appear to assist investigators with the tracing of the suspects by utilising information kept by the banks while holding banks accountable to their clients.

When the responses of the participants and information from the literature are compared, it is apparent that section 14 of the Constitution prohibits investigators from accessing individuals' bank records, while on the other hand section 36 of the Constitution makes it possible for investigators to access such information provided that the required access is reasonable and justifiable, as specified by Joubert (2001:23). Investigators must provide a reason for requesting access to bank records of an individual. In this case a criminal case should be opened; a request for bank records should be justifiable in a sense that the case should be linked to financial crime related to fraudulent activities where there is a reasonable suspicion that an account holder was or is involved. If it is found that the request to have

access to bank records of an individual is justifiable and reasonable, the financial institution concerned should release such information. The investigator should not abuse their position and power by supplying these documents to a third party who is not part of the investigation team.

2.7 SUMMARY

The bank record is any document generated during the bank-client business relationship outlining services to be rendered by the bank. The most generally known bank records include bank statements, account opening documents, ATM card transaction records and credit card transaction records. For the investigators to request these records, they should comply with specific legislation that regulates the banks and the manner in which these records should be requested.

Investigators should have a basic understanding of what is expected from the banks when it comes to the handling and maintaining of bank records. FICA is one piece of legislation that highlights the procedure to be followed by the banks with respect to clients' identification.

It is equally important for investigators to understand section 205 of the CPA. It is not enough to complete a "Section 205 subpoena" proforma without a proper understanding of its contents. It should be noted that once the subpoena is signed by the court, it becomes a court order, in this way empowering the investigator to obtain the required documents. On the other hand, investigators should be aware that, once they are in possession of these documents, they are in possession of someone's confidential information. Therefore, the rights of the affected party, as enshrined in the Constitution, should be respected and observed.

CHAPTER THREE

THE SIGNIFICANCE OF BANK RECORDS ANALYSIS AS A TECHNIQUE IN TRACING FRAUD SUSPECTS

3.1 INTRODUCTION

The South African banking system is complex in nature and record keeping changes rapidly due to improvements to the electronic processing system. Analysis of bank records requires highly trained investigators with specialised skills. These investigators are required to master the art of following banking audit trails for any financial investigation. The audit trails are described by Madinger and Zalopany (1999:130) as documents made in a set pattern and sequence, in which financial transactions are recorded, classified, summarised and reported. In order to come to an accurate conclusion about the subject matter they are investigating, investigators are required to apply certain skills of analysis when dealing with the audit trails. It is against this background that investigators should be trained to acquire and maintain a reasonable degree of understanding of financial institutions' responsibilities with respect to maintenance of information regarding financial transactions and retrieval of such information. Hawkins (1994:137) states that the successful investigator needs a variety of skills, but the most important skill is the ability to know how and where to find information that can become important evidence.

The aim of this chapter is to discuss the significance of bank records analysis as a technique in tracing fraud suspects. The chapter focuses on the tracing of the movements of the suspect through bank records, analysis of bank statements to establish movement of the suspect and the purpose of bank records analysis in relation to the tracing of the suspect. Since this is an empirical study, the findings from the literature are supplemented by the responses of the participants to arrive at the study's conclusions.

3.2 TRACING THE MOVEMENTS OF THE SUSPECT THROUGH BANK RECORDS

According to Peterson (1998:35), bank records can provide a wealth of information not just about the person whose records have been received but also about their sources of funds, and the people and places to which they forward funds. For instance, the identification of an

account holder who frequently makes deposits into the suspect's account or deposits a large amount of funds may suggest a strong relationship between the two individuals.

To determine the point of view of the participants with respect to tracing the movements of the suspect through bank records, this subtopic was further divided and specific questions were posed to the participants as discussed below.

3.2.1 The Bank's Surveillance Cameras

Bank surveillance cameras are devices that are installed in and around a bank's business area to record all activities and movements of individuals. These devices are sometimes part of closed circuit television (CCTV) systems. The participants were asked to explain how a bank's surveillance cameras could assist in tracing the movement of the suspect. Their responses were recorded as follows:

- Six participants stated that the bank's cameras installed in the entry or exit record motions of individuals entering and exiting the banking hall, in this way allowing the suspect to be identified.
- Four participants were of the view that the suspect and associates can be identified by the surveillance cameras in the banking hall while being assisted by the teller.
- Two participants submitted that the surveillance cameras installed on the ATM machines facing the client while transacting provide a clear footage of the client.
- One participant made the point that the surveillance cameras can only effectively for identify the suspect if they are properly maintained and their recordings are not automatically erased within a short period of time.

The participants were in agreement with each other with respect to the role of surveillance cameras. Their responses indicated that surveillance cameras can assist banks to identify certain activities that were recorded previously. One participant made a very crucial point with respect to the daily running and proper maintenance of these cameras. The view of this participant suggests that if these surveillance cameras are not properly looked after, they are useless. This participant pointed to the limitation on the recording time. This response suggests that these surveillance cameras can record to a specific maximum time. Once that specific time has been reached, the initial recording will begin to delete automatically.

In the literature, surveillance is defined by Gilbert (2007:382) as a secretive, close watch kept over people, objects and locations. This definition differs slightly from surveillance by cameras installed in banks, which are known to the public. It is generally known that banks' cameras are not secretive in nature; in fact, they are generally visible in all strategic areas of banking halls and ATMs. Although Gilbert (2007:382) is defining surveillance and not CCTV cameras per se, it is understood that cameras installed in banks are part of a surveillance system. It is therefore acknowledged that the surveillance referred to by Gilbert (2007:382) applies to covert other than the overt intelligence gathering. It appears that the visibility of bank surveillance cameras serves to minimise the occurrence of crime (providing a message to the prospective robber that their activities are being watched). Under normal circumstances, ordinary clients are not worried that they are being watched while in the vicinity of a bank. According to Sheptycki (2000:498), CCTV footage is obtained through using video cameras to transmit a signal to a specific place, on a limited set of monitors, employing point to point, point to multi point or mesh wireless links. In other words, these video cameras are primarily utilised for surveillance. The most appealing definition of surveillance which relates to bank cameras is provided by New English Usage Dictionary (2001:887), which states that surveillance is a close watch kept on someone or something. It is a well-known fact that the use of any bank's facilities for the purposes of banking is voluntary. Therefore, when clients use such resources, they subject themselves to the bank's surveillance. Accordingly, any use of the bank's facility by the suspect or associates is subject to monitoring by the bank's cameras.

When comparing the responses of the participants with the conclusions of the literature, it is clear that bank surveillance cameras play two significant roles in the operation of banks. They primarily provide footage of all activities recorded within the vicinity of the bank's business area and secondarily act as a crime-prevention measure, where potential criminals would be scared off by the presence of such cameras. Looking at the definition of bank records as defined in the previous chapter, it is further concluded that the bank's surveillance cameras are part of bank records. This means that investigators should endeavour to obtain such footage as soon as they become aware of the suspect's account transactions so that such footage can be preserved. Based on his experience and in agreement with the views of one participant, the researcher concludes that the availability and the extent of the footage that can be recorded and stored depend on the type of surveillance system used by each bank.

Most surveillance systems store footage for a certain period of time before it is automatically deleted.

3.2.2 The Location of Transactions

The 'location of transactions' refers to the specific sites in which transactions may take place. This means that the account holder would have to be at the specific area to access their bank account. Participants were asked to mention locations where transactions may take place. Their responses were as follows:

- All 13 participants mentioned ATMs and banks.
- In addition to the ATMs and banks, three participants stated all business areas with speed point facilities.
- In addition to ATMs and banks, two participants submitted petrol garages.
- In addition to ATMs and banks, another two participants mentioned retail stores and outlets.
- One participant mentioned the use of the internet to access and transact in the bank account, in addition to banks and ATMs.

All participants mentioned ATMs and banks as the locations in which most transactions take place. It was interesting to note that some participants submitted speed point facilities as one area where transactions may take place. The speed point facilities are generally known as points of sale (POS). Even though these participants referred to petrol garages and retail stores, it is a well-known fact that these businesses make use of POS terminals. It should be noted that bank card holders may use the POS, especially in supermarkets, to withdraw funds from their account. As a result of such acts, the supermarket involved becomes a transaction location. One striking submission was from the participant who referred to the use of the internet to access and transact in the account. Clients who have access to the internet may approach their banking institutions to create an internet banking profile. Such a facility allows the users to access their banking accounts anywhere provided that there is an internet connection available.

Defining the location of transactions, the Association of Certified Fraud Examiners (2010:3.814) states that debit cards allow access to accounts through POS terminals located at various areas or through ATMs. In the South African banking industry, debit cards are also known as ATM cards and can be used across a number of networks. Hayashi et al. (2003:14)

state that rather than being limited to using ATMs owned by the card-issuing bank, shared networks allow card holders to use all ATMs in the network. In most cases, ATMs are installed permanently at strategic positions as per individual bank requirement. These ATMs are then identified by specific unique numbers, which are matched with a specific geographical location. Peterson (1998: 54) makes the point that the location information on the ATM card transaction record might provide travel pattern information of a suspect. The method of tracing using ATM information could also be applied to POS terminals and banks, which are also identifiable by unique numbers. The use of ATMs, internet banking and POS is referred to as 'electronic banking'. According to the Office of the Comptroller of the Currency (2002:15), electronic banking encompasses delivery of information, products and services by electronic means such as personal computers, ATMs, telephone lines and automated clearing houses. The point about personal computers was previously raised by one of the participants, who mentioned the use of the internet to transact. Even though a person who has access to the internet may transact anywhere, it is remarkable that such transactions are still recorded and the location of the account holder may be traced via their Internet Protocol (IP) address. According to the ComputerHope website (2014), an IP address is an address of a computer or other network device on a network using IP. This means that the tracing of a suspect through an IP address would require the assistance of the service provider who administers the network. The use of electronic banking increases at a rapid pace because it is regarded as a quick and effective method of banking. However, it is noted that such a method also leaves a paper trail behind. This means that all transactions authorised by the account holders are recorded in their bank accounts. One of the details revealed on the bank account records would be the location of the transactions.

When comparing the responses provided by the participants with information gleaned from the literature, it can be concluded that any transaction effected by an account holder may still be traced back to them and the geographical location where the transactions are authorised can be identified. It is further concluded that the use of electronic facilities such as internet banking to transact in the account does not mean that such transactions may go undetected. The only additional requirement for taking the tracing process further would be the identification of the network service provider to provide the IP address of the suspect.

3.2.3 The Frequency of Visits

The 'frequency of visits' refers to a number of times that the account holder visits banking sites. These sites may include the branches of banks, ATMs and POS terminals. For the

purpose of this research, 'visits' means physical arrival at a banking site to access and transact in the account. Participants were requested to explain their understanding of the frequency of visits in the context of accessing the account; their responses were recorded as follows:

- Two participants explained that the frequency of visits means accessing of their account by the account holder numerous times.
- Three participants stated that it is a repeated number of times in which the suspect visits a specific bank.
- Two participants said that it refers to a specific number of withdrawals from one specific ATM.
- Four participants were unable to provide responses and stated that they have never traced a suspect using bank records.
- Two participants did not provide responses.

Participants differed in their responses regarding their understanding of the frequency of visits. Having realised that the participants were somehow confused or did not understand the question, the researcher explained to the participants the context in which the question was asked. Some of the participants mentioned visits to a bank, while some referred to ATMs. None of them mentioned POS terminals. There were six participants who did not even attempt to answer the question. The reason provided by four participants was that they had never used bank records to trace the movement of suspects. It appears from the responses that the participants were not familiar with the concept asked about. It should be noted that although the participants do sometimes request bank statements for analysis, such analysis may concern the funds withdrawn and deposited in the account rather than the movement of the account holder.

Peterson (1998:86) defines frequency distribution as the determination of a number of times something has occurred. When the investigator is analysing the bank statement for the purpose of determining the frequency of visits to specific areas, it is required that the dates and time are considered in addition to locations. These three components provide a clear picture of a suspect's banking tendency.

Singer (2012) refers to ‘frequency’ as the degree to which an experience is repetitive over time. Taking both definitions into consideration, ‘frequency of visits’ in this research refers to how often an account holder visits a bank for banking purposes. In this research, it is assumed that the real identity of the account holder would have been verified positively when the account holder was applying for the account, otherwise the whole process may mean that the wrong person is being traced. However, the investigators would need to satisfy themselves with the identity of the account holder by means of comparing bank footage with a copy of the account holder’s identity document, which was obtained by the bank when they applied to open the account.

In comparing the literature and the responses of the participants, it is clear that the analysis of frequency of visits to a specific banking site by an account holder has an important role to play when tracing the account holder. For instance, the number of visits to the bank may be matched with the footage of the bank’s surveillance cameras, which may provide an image of the account holder as well as the dates and times of visits. Such frequency may also assist investigators to understand the movement of the account holder by means of determining the time periods in which the account holder is likely to visit the bank. For example, it can be determined that the account holder tends to visit the bank every Monday. By predicting the time of visit and having photographs of the account holder, investigators can monitor the movement of the account holder and arrest them while in the vicinity of the bank.

3.3 ANALYSIS OF BANK STATEMENTS TO ESTABLISH MOVEMENT OF THE SUSPECT

Modern criminal investigations require the review and analysis of bank account records which detail the deposits, cheques, wire transfers, credit and debit memos, withdrawals, bank cheques and any other income or outflow from the bank account or bank accounts (Peterson, 1998:1).

To understand the process of analysing bank statements, the participants were asked the question “What process do you use to analyse the bank statements?” and the following responses were recorded:

- Three participants mentioned that they use Excel spreadsheets to analyse bank statements.
- One participant did not answer the question.

- One participant stated that he did not analyse bank records but referred the analysis to the forensic auditor.
- Eight participants stated that they manually analysed bank statements by tracing the movement of funds.

There are similarities in the responses of the majority of the participants in that they analyse bank statements manually as opposed to using computer programs such as Microsoft Excel. The method used by these participants meant that they would study the bank statement and identify where did the money come from and where was it transferred to. There were, however, three participants who mentioned an Excel spreadsheet. The use of the Excel spreadsheet did not come as a surprise to this researcher. As a former DPCI investigator, the researcher knows that there was, previously, a very limited downward training of investigative computer software provided to the investigators. The participants' responses revealed that such training has not yet been provided to all investigators. The last two participants' responses can be attributed to the fact that these participants had stated previously that they had never analysed bank records.

Describing the process of analysing the bank statement, Peterson (1998:35) states that, regardless of the method chosen to compile bank account records (manually, via database or spreadsheet), the key to the effective compilation of the records is accuracy and retrievability. Peterson (1998:8) further argues that there is a process that needs to be taken into account when analysing the bank statement, which includes the following:

- Plan for the collection of the records;
- Obtaining and itemising the records;
- Developing a schedule, database or spreadsheet template;
- Placing the records into the template;
- Reviewing the records of investigative leads;
- Analysing the records by dates, payees, deposit and in combination;
- Reviewing the records for patterns, unusual deposits and payments;
- Analysing flow among multiple accounts;
- Drawing flow charts where necessary;
- Preparing a summary of the financial activities;

- Drawing conclusions from the records;
- Making recommendations based on the records; and
- Collating material and presenting it to management.

Peterson (1998) provides investigators with the methodology that needs to be followed when acquiring the bank records. The most important step he highlights is planning for collecting the records: there must be a reason why such records need to be acquired. This study deals with the topic of investigating fraud cases and acquiring such records will assist investigators to trace the suspect. It is clear that once the bank records are obtained, they should be itemised in a proper manner for ease of reference and analysis. Nossen and Norvelle (1993:49) describe the process of creating an inventory for bank records as:

- A reconciliation of all deposit and withdrawal data to the bank statements;
- Summaries for all bank statements for each month, showing beginning and ending balances, total deposits and withdrawals;
- Detailed analysis of all deposits, including the identification of makers of all deposited cheques;
- A cheque spread of all cheque withdrawals in several formats; and
- Identification of all wire transfers of funds.

The Association of Certified Fraud Examiners (2011:43) makes the point that, once a bank statement has been obtained, there are generally four steps of extracting leads:

- Review the records for information.
- Establish the format in which to compile data.
- Extract and prioritise leads from the data.
- Follow the leads.

It is evident from the four steps above that extracting leads can only follow once the bank records have been obtained. Extracting leads means identifying clues which may yield positive outcome (Association of Certified Fraud Examiners, 2011:43). In support of this view, Nossen and Norvelle (1993:49) further describe the process of bank statement analysis as follows:

- Analysis of the sources of deposited funds;
- Comparison of the deposit patterns;
- Identification of the pertinent leads to the acquisition of assets;
- Uncovering of the patterns of standards of living that are not commensurate with known sources of available funds; and
- Development of the audit trails, which may lead to sources of evidence.

None of the authors above emphasise that the analysis of bank records may be used to determine not only the transaction but the location as well. Based on the researcher's experience, it is argued that bank records can also be used as a method of tracing suspects. Therefore, these records should be regarded as such, even though sometimes this extra function is overlooked by the investigators.

When comparing the responses provided by the participants and information from the literature, it can be concluded that the bank statement is the most integral part of bank records that can provide answers regarding the movement of a suspect. It is clear that once the bank statement has been acquired by an investigator, analysis should be conducted in a specific way regardless of the tools used. This is explained by the Association for Certified Fraud Examiners (2011:43), which states that extracting clues is a methodical task and the trick is to avoid missing anything. However, the arguments by Nossen and Norvelle (1993:49) and Peterson (1998:8) indicate that, although leads can be identified through the physical analysis of the documents, there is a need for a computer programming to speed up the process. The emphasis should be on the transaction patterns, with a specific focus on the transaction fields that involve debits and credits in the bank statement.

The researcher conducted a literature review to find a possible methodology for analysing bank records which could be used by SAPS investigators. However, an extensive search revealed no existing methodology.

The typical bank statement is illustrated in Figure 1 below.

DATE (1)	TRANSACTION DESCRIPTION (2)	DEBIT AMOUNT (3)	CREDIT AMOUNT (4)	BALANCE (5)
01/08/13				-15,400.10
01/08/13	POS Purchase Chq Card - City View Salon 486512*7234 02 Aug	1,400.00		-16,800.10
03/08/13	Internet Pmt to- Monthly salary- June- Nosipho	5,000.00		-21,800.10
03/08/13	Internet Pmt to- Monthly salary- June- Blessing	5,000.00		-26,800.10
03/08/13	Monthly debit- Xweb- internet 350345234	1,619.10		-28,419.20
04/08/13	POS Purchase Chq Card- Pnp City View 486512*7234 04 Aug	350.00		-28,769.20
09/08/13	POS Purchase Chq Card - City View Salon 486512*7234 05 Aug	500.00		-29,269.20
10/08/13	Debit Btracker monthly subscription	176.70		-29,445.90
13/08/13	Express Pmt to- transportation UP rent a car	3,230.89		-32,676.79
14/08/13	POS Purchase Chq Card- Pnp City View 486512*7234 04 Aug	2,876.10		-35,552.89
16/08/13	POS Purchase Chq Card - City View Salon 486512*7234 09 Aug	660.00		-36,212.89
16/08/13	ATM withdrawal- 486512*7234	3,400.00		-39,612.89
17/08/13	Real time debit 1Bank Card78456098345107396458	1,000.00		-40,612.89
19/08/13	POS Purchase Chq Card- Pnp City View 486512*7234 04 Aug	600.15		-41,213.04
21/08/13	Express Pmt to- transportation UP rent a car	3,050.23		-44,263.27
21/08/13	Cash deposit		45,761.89	1,498.62
23/08/13	POS Purchase Chq Card - City View Salon	550.78		947.84

	486512*7234 16 Aug			
25/08/13	Internet Pmt from- Metlink		25,560.18	26,508.03
26/08/13	Express Pmt to- transportation UP rent a car	4,730.00		21,778.03
27/08/13	POS Purchase Chq Card- Pnp City View 486512*7234 04 Aug	3,452.21		18,325.82
28/08/13	Internet Pmt from- Metlink		14,568.11	32,893.93
29/08/13	Express Pmt to- transportation UP rent a car	4,143.56		28,750.37
30/08/13	POS Purchase Chq Card - City View Salon 486512*7234 30 Aug	435.18		28,315.19

Figure 1: Information on a typical bank statement

The bank statement above demonstrates the transactions effected on the bank account from 01 August 2013 to 30 August 2013. It should be noted that this bank statement is fictitious; therefore, the names of the entities and places are not real. No bank charges were included in the bank statement as they are not considered to be significant for this research. It should further be noted that the numbers inserted in headings of the columns merely serve to identify the transactions and do not form part of the bank statement.

The columns of the bank statement represent the following:

1. Date in which transaction was recorded by the bank
2. Description of the transactions, POS and withdrawal locations
3. Debited amount
4. Credited amount
5. The total balance on the account

3.3.1 Section 205 Subpoena

A Section 205 subpoena is a legal document or a court order which compels any person, whether a natural or a juristic person who is likely to be in possession of relevant information regarding the alleged offence, to appear before the judicial officer or, if such a person can provide the required information, they may be excused from such appearance.

To the question “What is the Section 205 subpoena?” the following responses were recorded:

- Eight participants stated that a Section 205 subpoena is a court order which is served to relevant institutions to provide certain information.
- Four participants were of the view that a Section 205 subpoena can be served to anyone who is likely to provide information regarding a crime.
- One participant submitted that a Section 205 subpoena is an application by the prosecutor, authorised by the magistrate or a judge to compel someone or the institution to provide relevant information about a crime.

Case dockets analysis was conducted to determine how many case dockets had copies of Section 205 subpoenas and the following was established:

- 31 case dockets had copies of a Section 205 subpoena.
- Only 22 case dockets had bank statements after Section 205 subpoenas had been served on financial institutions.

The views expressed by the participants regarding the Section 205 subpoena indicated that they were familiar with it; however, the majority of them appeared to be under the impression that the Section 205 subpoena is only served to institutions. One participant provided a detailed explanation of the Section 205 subpoena and pointed out who applies for it and who authorises it. What was noteworthy about this submission was that it concurs with four other submissions that the Section 205 subpoena can be served on anyone who is in possession of the relevant information regarding a crime under investigation. From the case dockets that contained copies of served Section 205 subpoenas but did not have the bank statements which were requested, it appears that these case dockets were filed before such documents could be obtained or the investigators did not file them in the case dockets before archiving them.

The Association of Certified Fraud Examiners (2010:3.415) submits that the relationship between the banks and their customers is usually confidential; generally, information from banks can be obtained only by subpoena or court order. Section 205 of CPA (South Africa, 1977) deals with the manner in which relevant material in possession of a third party should be acquired. Most importantly, this legislation highlights the following key points:

- That an application must be made by the public prosecutor to the judge or magistrate to request the attendance of any person who is likely to give relevant material about any alleged offence;
- That provided that such a person furnishes the relevant information to the satisfaction of the public prosecutor concerned prior to the date on which he is required to appear before the judge or magistrate, he shall not be further obliged to appear before a judge or magistrate.

In general, the SAPS and other government investigative arms use this piece of legislation to compel financial institutions to release certain information that relates to their investigations. In certain instances, such information may be requested from cellphone companies. When SAPS investigators approach banks with respect to the bank records of individuals or entities, they use what is termed a 'Section 205 subpoena proforma'. This document highlights information required and issued in terms of the provisions of section 205 of the CPA.

The proforma document consists of the following sections:

- **An application by the public prosecutor addressed to the magistrate**
 - This application generally lists the name of the person whose attendance is required, the institution involved, date required, SAPS case number, investigating officer's name, alleged offence and suspect's name.
- **Affidavit in support of the application by the investigating officer**
 - In their affidavit, the investigating officer highlights certain facts that they have established during the course of the investigation and that certain important facts which are in the possession of the above-mentioned person are still outstanding.
- **Subpoena with annexure/s**
 - A subpoena is a court order signed by the judge/magistrate instructing a police officer to serve the said document to the person whose particulars are reflected in the document, to appear before a magistrate on a specific date and time to be examined by the public prosecutor.
- **Annexure/s – schedule of information requested**

- The schedule of information lists what documents are required, including the bank records.
- **Notice of service**
- The notice of service is the certificate by the police officer or investigating officer who has served the subpoena, highlighting how the subpoena was served.
- **Affidavit in terms of section 236 (1) of CPA**
- A bank employee would have to complete this affidavit on handing over the requested documents. The employee also needs to add that the copies of the said documents are correct copies of the documents.

Case dockets analysis further confirmed that all investigators who used the proforma were complying with the requirements as stipulated in the Section 205 subpoena proforma.

From the responses of the participants and information from the literature, the researcher concluded that section 205 of the CPA is the only legislation which appears to be acceptable and widely used by the members of the SAPS to compel financial institutions to disclose any information in their possession which may relate to the case under investigation. The researcher further concluded that the Section 205 subpoena proforma, which is used by the SAPS investigators, meets the requirements of section 205 of the CPA in terms of who is supposed to apply for the subpoena and who is supposed to authorise it.

3.3.2 Identifying Significant Transactions in the Bank Account

According to Madinger (2012:148), monthly account statements are designed to be simple enough for the layperson to read and understand. Taking this into consideration, it follows that an investigator should be able to identify certain significant transactions in a bank statement which may assist during the tracing of a suspect.

To understand the participants' point of view regarding the significant transactions in a bank statement, the participants were asked the question "Which transactions do you consider significant in the bank records when tracing the suspect?" and the following responses were recorded:

- Six participants stated that debit and credit transactions are significant in their analysis.

- Three participants mentioned that debits, credits and purchases by the debit card linked to the account are significant in that they may indicate the location of the transactions.
- Three participants submitted that in addition to debits and credits, the subscriptions and ATM withdrawals by the card linked to the account should be analysed.
- One participant mentioned cash deposits in ATMs as significant transactions in addition to debits and credits.

Case docket analysis was conducted to identify the significant transactions in the bank statements included in these case dockets and the following was established:

- There were 22 case dockets which were found to have bank statements and all bank statements displayed deposits and withdrawals.

There was a general agreement among the participants that debits and credits are the most significant transactions in bank statements when tracing a suspect. Some participants mentioned withdrawals and purchases by the debit card in addition to the credits and debits. Although these submissions cannot be regarded as incorrect, it should be noted that withdrawals and purchases by a debit card also form part of the debits in the account. This was further confirmed by the case docket analysis, which clearly showed that the main categories of transactions that can be significant in tracing suspects are debits and credits.

Madinger and Zalopany (1999:187) state that the objective of the banker is to create a complete documented history of all money that passes through the doors of the institution. This means that every transaction by the client or on behalf of the client is recorded by the financial institution concerned and a monthly activity statement is posted to the account holder. According to Madinger (2012:148), in a monthly account statement, transactions are listed as both debits and credits to the account, where a debit means any withdrawal or subtraction of funds and credits indicate a deposit or addition to the account. In support of this argument, Peterson (1998:16) points out that the bank statement is the most common bank record that lists each transaction cleared in the account since the date of the last statement. It is therefore clear that the bank statement reflects debits and credits. Accordingly, for the purpose of this research, debits mean withdrawals while credits mean deposits. Various significant types of debits and credits are found in the bank statement, which could

assist in the tracing of a suspect. Peterson (1998:17) argues that, in addition to credits and debits, the following are significant:

- Type of transfer and type of the account used in the transfer.
- In reference to the location of the transaction, the address, street number, and name of the location.
- Name of the place of business.
- The name of the other person if funds are being transferred to a third party, and the account number for the statement issued.
- Balance of the statement at the beginning and end of the statement period.

From the responses of the participants and information from the literature, it can be argued that there are specific transactions that investigators should focus on when analysing the bank statement for the purpose of tracing a suspect. The transactions mentioned by both the literature and the participants are credit and debit transactions. It should be noted that when a credit (deposit) is effected in an account, the description of that credit is displayed in the bank statement and the balance. For instance, if a deposit is made to the account, the identity of the depositor and the location of the branch where the deposit was made can be traced. In this way the depositor can be associated with the account holder. Equally, when a debit (withdrawal) is effected, the information recorded in the bank statement will be the location, if the withdrawal was made from the ATM, the unique ATM number, the date and time. The debit transaction will obviously reduce the balance; however, the change in balance should not be of concern to the investigators as this tracing technique is not about the amount deposited or withdrawn but about determining the geographical location of the account holder. The main goal or objective is therefore to trace the account holder as pointed out by Peterson (1994:33), who states that products of bank record analysis are generally determined by the type of the investigation under way and the purpose of the analysis.

3.3.2.1 The use of credits to determine location

Credits are regarded as transactions that increase the balance on the bank account. This means that any deposit made to the bank account is referred to as a 'credit'.

The participants were requested to mention types of credits which may assist in determining the location of a suspect and their responses were recorded as follows:

- Five participants mentioned salary deposits from an employer.
- Two participants mentioned cash and cheque deposits.
- Three participants mentioned ATM deposits.
- Two participants stated internet transfers from one account to the suspect's account.
- One participant submitted that the suspect may transfer funds from a hidden account to the known account.

Case docket analysis was conducted to identify the credits in the bank statements and the following was established:

- Three case dockets indicated salary deposits.
- Two case dockets showed inter-account transfers and cash deposits made in a bank.
- One case docket showed an internet transfer.

There was a sharp difference in the responses of the participants, in that five of the responses mentioned salary deposits from an employer while the rest provided different types of deposits. Although all responses related to deposits, it was surprising that the participants failed to find common ground with each other in terms of providing similar responses. It should be noted that the participants are investigators who sometimes analyse bank statements specifically to analyse cashflow. The cashflow analysis generally includes determination of how certain deposits were made, as confirmed by the bank statement analysis retrieved from the case dockets. More significant was the submission of one participant, who stated that the suspect may transfer funds from one hidden account to the known bank account. This submission clearly reveals the possibility that the suspect may open an investment account using false personal information and deposit huge funds for future use. The suspect may, whenever the need arises, make a notice of withdrawal electronically and transfer such funds to the legitimate account.

Regarding the use of credits to determine location, Peterson (1998:39) argues that deposit items provide leads on an individual's places of employment, salary, other sources of income and cash income. When analysing a bank statement, the investigator may come across deposit items such as a deposited salary. Further analysis of the deposited salary may reveal that the account holder is working for a specific entity. This process may result in the successful

tracing of the account holder by contacting the Human Resource office of the said entity to confirm the employment of the account holder. This method allows investigators to take the tracing process to another level. Peterson (1998:39) further states that these deposit items generally have information on the account holder's sources. For instance, a cash deposit made in a bank would result in the deposit slip being stored by the bank where the deposit was made. When the investigator requests such a deposit slip from the bank, the information retrieved is likely to include the name of the depositor, signature of the depositor, contact cellular phone number, amount deposited and the date on which it was deposited. The date stamp on the deposit slip would further confirm the deposit made and the exact branch of the bank where it was made. In this way, the depositor may be traced and interviewed about the whereabouts of the account holder. In support of this view, the Association of Certified Fraud Examiners (2010:3.415) submits that records of account deposit slips may assist in identifying the account holder's financial associates. It is further noted that a deposit item such as a cheque can directly link the cheque depositor with the account holder, as specified by the Commercial Crime Investigation Level 1 Learners Guide (Learners Guide, 2000:23), which states that a cheque is an unconditional order in writing addressed by one person to a banker, signed by the person giving it, requiring the banker to pay, on demand, a certain sum of money to a specific person or their order bearer. In other words, this means there would be a transfer made from the account of the person who gives the instruction, to the account of the person specified by the instructor.

When comparing information from the literature with the responses of the participants, it can be argued that the use of credits has an important role in determining the location of the suspect. It should be noted that credits in the bank statement can only identify individuals or entities that have made deposits to the account of the suspect. It is then up to the investigator to follow up with the depositors to trace the suspect. For instance, in some of the case dockets analysed, it was established through the bank statements and through page 5 of the case dockets, which contains details of the accused, that the accused were in fact working for companies. Should the accused fail to attend court proceedings, the information found on page 5 of the case dockets and bank statements could have been used to trace them.

3.3.2.2 The use of debits to determine location

The payment of living expenses is regarded as part of modern life. A number of people do not necessarily carry cash anymore and prefer to make use of the alternative arrangements at their disposal. Some of these alternatives include stop/debit order arrangements and the use of card

transactions, including credit cards. The information provided when transactions are made using these alternative arrangements always includes the location of the transactions, especially in cases of purchases or swiping of cards. The participants were requested to mention types of debits in the bank statement which they consider to be routine. They responded as follows:

- Five participants mentioned food purchase, bond or rent, vehicle repayment, personal loans, credit cards, petrol card and accounts payments.
- Three participants submitted daily withdrawals, cellphone, telephone and internet data in addition to home loan and vehicle repayments, and food purchase.
- Three participants stated bond and vehicle repayment, food purchase, rates, insurance and accounts.
- Two participants identified vehicle payment, rent, rates, food and retail accounts.

Case docket analysis was conducted to identify the routine payments in the bank statements contained in the case dockets and the following was established:

- Eight case dockets indicated debits of cellphone subscriptions, retail accounts and vehicle finances in their bank statements.
- Four case dockets indicated home loan debits in their bank statements.
- Eight case dockets depicted debits ranging from rentals and insurances to personal loans in their bank statements.
- Two case dockets indicated study loan debits in their bank statements.

The responses provided clearly indicate that the participants share the same experiences with regard to identifying routine debits. There were similarities among the responses with respect to payments such as a bond or rent, food purchase, and vehicle repayment. Such similarities might be attributed to the fact that the participants are employed themselves and are likely to be making payments towards their personal needs. The analysis of the case dockets showed that debits were clearly described in the bank statements. A clear description of debits gives investigators clues as to where to look for information. For instance, two case dockets that displayed study loan debits fully described the financial institutions that provided these loans. In this instance, an investigator needs to apply to the financial institution to obtain the

application documents which were made by the account holders. Further investigation will lead the investigator to determine exactly when the account holder attends lectures, if the loan was taken out to pay university fees.

Peterson (1998:54) identifies the following as routine and usual payments:

- Mortgage or rent or car payment
- Insurance payments (life, auto, home, health)
- Food (may be paid by ATM card, cheque or cash)
- Petrol cards and general credit cards
- Utilities (gas, electricity, telephone, water, TV)
- Medical and dental bills (as incurred or monthly payments "on account")
- Donations to church or non-governmental organisation
- Personal loan repayments

Peterson (1998) mentions interesting items to which most people are likely to relate. For instance, it is a well-known fact that some people rely on personal loans and credits cards to make ends meet. At the same time, these people are compelled to repay their debts and other living expenses. It is therefore possible that people, in pursuit of further loans, would move from one financial institution to another, thereby leaving a trail of their updated personal information. The Association of Certified Fraud Examiners (2010:3.825) provides a similar list of items as that provided by Peterson (1998:54) and adds instalment purchases as part of the usual payments. The instalment purchases mentioned by the Association of Certified Fraud Examiners (2010) include retail accounts and subscription accounts. In the case of bank statement analysis and having identified the description of a suspect's retail account, an investigator may go further and approach the retailer to obtain the personal information of the suspect which may assist in tracing them.

There is a general agreement between the responses of the participants and information from the literature with respect to the items likely to fall within the category of routine debits. Peterson's (1998:54) list appears to be broad and includes almost everything. Most important to the investigators is the fact that the account holders may use their debit/stop orders or debit/credit cards to effect payments daily, weekly or monthly. It is therefore concluded that there are different types of debit items that may assist investigators to trace a suspect. Among

these is the identification of the retail account from the bank statement of the suspect. Further investigation will result in the investigator approaching the retailer concerned and obtaining additional information regarding the suspect; for example, additional cellphone numbers, next of kin and additional addresses. All these sources form a means of tracing the suspect.

3.3.3 Information to be solicited from the Analysis

To use information solicited from a bank statement effectively, investigators should be able to identify such information through the analysis of records. ‘Information’ refers to the knowledge that has been gathered by means of observation and analysis that could assist in tracing a suspect. In this case, information gathering means analysing the bank statement of the suspect.

To the question “What type of information could be solicited from the analysis of bank statements in relation to tracing of suspects?” the participants provided the following answers:

- Five participants submitted the use of an ATM card at different locations as well as purchases at different outlets using the same card.
- Three participants stated that if the account holder has a petrol card, the petrol garage that is generally used by him may be identified.
- Three participants identified transfers and deposits in the bank statements of the account holder as indicating a relationship between the account holder and the depositor of funds.
- Two participants mentioned that payments for flights by credit card may show the movement of the account holder.

The submissions by the participants indicated that they are in agreement with each other regarding the information which could be solicited from the analysis of bank statements in relation to tracing of suspects. It was noted from the responses that, although the given responses slightly differ, all were linked to the financial activities of the account holder at different locations, thereby revealing the account holder’s movement. Such differences may emanate from the fact that the participants were at liberty to mention any information they could think of; therefore, there was no limitation in this regard.

Osterburg and Ward (2000:173-174) point out that the analysis of documentary records may assist the investigator with the following information:

- Linking a person to a place or a time period;
- Discovering something about an individual's lifestyle, personal behaviour or movements;
- Linking one person to another, showing an association; and
- Linking a person to an object through purchase and ownership.

It should be noted that the documentary records mentioned by these authors also include bank statements as defined in the previous chapter. Accordingly, the views expressed by the above authors suggest that the information to be solicited in the analysis of the bank statement may provide the information referred to in the above-mentioned list. These views appear to be in agreement with the views of the participants as all information suggested by them can be solicited from the bank statement analysis. Soliciting information from the analysis of the bank statement means drawing inferences. According to Peterson (1998:66), drawing inferences from bank records analysis may be easier than drawing them from other, more descriptive, analytical methods because there are so many direct, or deductive inferences that can be drawn, on which one can then base more expansive, or inductive inferences. Peterson (1998:66) further explains that the inductive inferences draw the meaning from the dollars, cents and date of the financial activities and totals, while deductive inferences determine associations. When considering this explanation, it is clear that, in the bank statement, the inductive inferences may be drawn from the dates, amounts withdrawn or deposited into or from the account, while deductive inferences may determine the account holder's associations through the identification of frequent deposits and transfers. In other words, this is another method of identifying the associations which may lead to the possible location of the account holder.

When comparing the responses of the participants with information from the literature, it can be concluded that soliciting information from the analysis requires the identification of specific transactions which may assist investigators in tracing the account holder. For instance, the purchases made at different retail stores by means of debits could provide the information that the account holder visited certain retail stores during a certain time. Equally, the usage of a petrol card could provide the account holder's vehicle details and the names of

the petrol garages visited. The responses of the participants clearly showed that there are a number of bank records that can be used to solicit information; the secret is how that information is identified and solicited.

3.3.4 Frequency of Transactions in the Bank Account

Frequency of transactions is the number of times in which a transaction has been repeatedly effected on the bank account during a period of time. Frequency at certain points is very important because it is likely to reveal that the suspect who is being traced resides in the area. To understand the views of the participants with regard to the meaning of frequency of transactions in a bank account, participants were asked to mention examples of frequent transactions that they had come across during the course of bank statement analysis. Their responses were recorded as follows:

- Four participants mentioned daily or weekly withdrawals.
- Three participants mentioned monthly salary deposits in addition to daily withdrawals.
- Two stated withdrawals and deposits.
- Four participants identified stop orders and debit orders.

The analysis of case dockets with the intention of identifying frequent transactions in the bank accounts contained in the case dockets revealed the following:

- Twenty two case dockets with bank statements indicated an average number of daily withdrawals.
- Fifteen case dockets indicated monthly deposited salaries on their bank statements.
- Five case dockets contained bank statements which indicated weekly salaries or wages.
- Twenty two case dockets depicted an average number of monthly stop orders or debit orders on their bank statements.

The responses of the participants clearly show an understanding of the meaning of ‘frequent transactions’. Although the participants submitted different examples, it was noted that all examples were consistent with the case dockets analysis; therefore, none of the examples could be identified as incorrect. It was also encouraging to note that the participants who had

earlier indicated that they had never analysed bank records or bank statements were able to provide examples. Case docket analysis concurs with the views expressed by the participants in that a number of the transactions identified were withdrawals and deposits.

Peterson (1998:43) explains that, in the average bank records analysis, summaries are accompanied by frequency distributions. These frequency distributions are arrived at by counting all the records, using one of the columns in the records. For example, using the description of the transaction column in the bank statement and assuming that “Express Pmt to- transportation UP rent a car” is the description of the transaction; the investigator could count all transactions bearing the same description and add them up. In this way, the number of times the account holder rents a car in a day or a month could be established. Peterson (1998:43) further points out that bank statement analysis will include at least the following frequency distributions:

- The records sorted by dates
- The records sorted by the payee
- The records sorted by deposit source

Taking frequency distributions into account, it is evident that, when sorting data by dates, the end result would be the identification of the similar transactions re-arranged by date, starting with the first transaction. This method would also apply to the second and the third frequency distributions. What investigators should note here is that data can be arranged and re-arranged depending on what investigators intend to achieve. By using the frequency distributions as advised by Peterson (1998:43), investigators will be in a better position to understand the pattern of financial transactions of the suspect. Investigations can determine, among others, date and time of transactions, the specific location of transactions (specific branches frequented), and types of transactions. Once investigators understand the financial situation of the suspect, they could probably determine the future transactions of the suspect. For example, through the frequency distribution analysis, investigators can pick up that every Friday the suspect goes to a specific branch of the bank to transfer funds from the suspect’s account to different accounts. It can be further determined that such transfers are of similar amounts, which may mean that the suspect is paying their employees for some service. It is worth noting that this method works effectively with a computer programme.

When comparing information from the literature with the responses of the participants, it is concluded that the transactions in the bank statement can be analysed using the frequency distribution method. If this method is applied correctly, investigators can determine the frequency of activities by date, deposit source and payee. For instance, this method allows investigators to establish how many times in a month transfers have been made from the suspect's account to another account. Such determination may indicate a relationship between the suspect and the account holder concerned.

3.4 PURPOSE OF BANK RECORDS ANALYSIS IN RELATION TO THE TRACING OF SUSPECTS' MOVEMENTS

Bank records are a source of information, which, if analysed thoroughly, could lead to determining and understanding the behaviour of people involved. The behaviour mentioned here is not limited to financial behaviour but can also be personal behaviour regarding specific places of interest.

To the question "What is the purpose of bank records analysis in relation to the tracing of suspects' movements?" the participants responded as follows:

- Four participants stated that the purpose is to establish the frequency of visits by the suspect to the specific banks or ATMs in order to apprehend him.
- Four participants stated that it is to determine places of interest which are frequented by the suspect.
- Two participants submitted that it is to link the suspect with other individuals and their locations.
- Three participants said that, in addition to identifying the suspect's location, bank records analysis can be used to identify the defrauded money and where it has been transferred.

The responses provided by the participants indicated that the majority of the participants clearly understood the purpose of bank records analysis in relation to the tracing of suspects' movements. Their submissions were to the effect that the purpose of bank records analysis is to establish the location of the suspect. However, three participants added that bank records analysis could also assist in determining the whereabouts of the defrauded funds. This response cannot be disregarded as usually fraud cases involve defrauded funds; therefore,

when the investigator follows the defrauded funds he, in the process, follows the suspect's movements.

Looking at the purpose of bank records analysis in relation to the tracing of a fraud suspect's movements, the Association of Certified Fraud Examiners (2012:2) submits that tracing transactions through a bank is like any other asset-tracing procedure; one searches for the ultimate source of the funds coming into the bank and for the ultimate disposition of funds leaving the bank. This submission can also mean that tracing the ultimate source of funds would result in establishing the identity of the person behind the transactions. Peterson (1994:32) states that bank records analysis is the review of bank account deposits, withdrawals and monetary instruments to determine the amount of money received and disbursed by a suspect. The submission by this author demonstrates that there is a need to uncover the pieces of information that will give investigators more information about the suspect and allow them to investigate with a purpose. In this case, the purpose is to locate and apprehend the suspect. The pieces of information may include identity numbers, account numbers, location of transactions or other areas that money is sent to or is received from (Association of Certified Fraud Examiners, 2011:42). The retrieval of the information could also lead to previously unknown locations of the suspect. According to the Internal Revenue Service (1993:86), the financial investigator should retrieve all bank statements related to the time frame under investigative consideration, keeping in mind that some criminal activities are well underway prior to detection; therefore, bank statements must be retrieved for a period of time prior to the detection of the criminal activity and used to provide further investigative leads. For instance, if the fraud suspect is sought for offence/s committed two months ago, it would be wise to retrieve the suspect's bank statement starting from the two months prior to the date of the commission of the offence. According to Peterson (1998:35), reviewing the records for investigative leads is a critical part of the analysis of records and is often done, at least in a cursory manner, at the onset of the records' review. The Association of Certified Fraud Examiners (2012:11) concurs and suggests that a bank statement can provide leads to payments that relate to assets such utilities at a vacation home, rental of a boat slip for a yacht, or rental of storage space. All these leads are crucial in determining the whereabouts of the suspects in fraud cases. When the suspect makes payments in one place to another, using a debit card, such transactions may determine their movement as specified by Rapp (1991:21), who states that a debit card is a payment card linked to a bank or building society account and is used to pay for goods and services by debiting the card holder's

account. In this case, the suspect presents the card at a POS facility where the transaction is processed through an authorisation and clearing system in which the suspect's account is debited immediately for the services rendered.

When comparing the responses of the participants with the information from the literature, it can be argued that bank record analysis is an effective investigative tool for tracing the movement of a suspect. The frequency of transactions made by the suspect at one ATM and the visits to certain branches of the bank can be found on the bank statement. If such a bank statement is analysed correctly, positive information regarding the suspect could be established. For instance, the analysis could reveal that the suspect is living in the vicinity or that the branch or ATM concerned is the nearest banking point to the suspect's home. The identification of assets through the analysis of bank records is equally important in tracing the suspect as they could lead to the suspect's whereabouts. The payments mentioned by the Association of Certified Fraud Examiners (2012:11) may mean that the suspect was at a particular location at a specific time. For example, the use of a specific ATM may be matched with the geographical area of the suspect's vacation home and, as result, it can be established that the suspect was at a vacation home, boat or storage space on a specific date. This view is confirmed by Westphal (2005:1), who states that whether people are writing cheques, depositing cash, wiring money or using ATMs, their transactions are logged and recorded. Accordingly, it is concluded that all financial transactions that occur in a particular account are recorded.

3.5 SUMMARY

According to Peterson (1998:30), bank records are a combination of numbers (account numbers, dates and transaction amounts) and names (company and individual names, signatories and endorsers). With proper authority, investigators involved in financial investigation can analyse a suspect's bank accounts and be in a better position to identify the associates, family members and financial matters of the suspect. The ability to identify bank records such as a bank's surveillance cameras at banking sites cannot be overemphasised. However, identifying such sites may mean nothing if the investigator is unable to understand how the account holder conducts their financial affairs. Such understanding may assist the investigator to determine the movements of the suspect.

CHAPTER FOUR

FINDINGS AND RECOMMENDATIONS

4.1 INTRODUCTION

The ultimate aim of this study was to establish the significance of bank records analysis as a technique in tracing fraud suspects. According to Denscombe (2002:14), the methods of scientific investigation involve precise observation of the real world using explicit and systematic methods to produce theories that have verifiable results. Using Denscombe (2002) methodology, the researcher attempted to achieve the aim of this study by utilising data gathered from national and international literature, case dockets analysis and interviews with the sampled participants. The study realised its purpose by:

- Establishing the current approach followed by investigators of the SAPS in tracing fraud suspects through bank records analysis;
- Exploring national and international literature with the intention of recommending best practices for using bank records analysis as a tracing technique; and
- Compiling the results of this research and making them available to law enforcement agencies and investigation agencies for inclusion in their training curricula.

This chapter reports on and discusses the findings of this research and makes recommendations that arise from the findings. A comprehensive conclusion, which summarises the whole study, is presented at the end of the chapter.

4.2 FINDINGS

To address the aim, objectives and purpose of this study, research questions were used to guide the collection of the data. The responses of study participants, information gleaned from literature and the results of case dockets analysis were used to arrive at certain conclusions. The findings are discussed below according to the sequence of the research questions.

4.2.1 The meaning of bank records

In this study, the researcher established that ‘bank records’ refers to the specific items that are used in a bank’s normal course of business. These items are: documents, papers, letters, books, maps, photographs, sound or video recordings, magnetic tapes and electronic-storage medium or other information-recording media. These bank records are generated by banks during the initial business interaction with clients or potential account holders. They are then maintained by the banks throughout their business relationship with these clients.

During the interviews with participants and in the data gathered from the literature, items such as bank statements, bank account applications, ATM card transaction records and credit card transaction records were mentioned frequently as types of bank records used by banks during the normal course of business. It was further evident that the participants understood the meaning of the term ‘bank records’. However, some of the participants responded in a way that suggested that bank records referred only to bank statements. This supposed knowledge was confirmed by a literature review, which revealed that a ‘bank record’ refers to a myriad of things, including a bank statement. In certain instances, some participants had doubts about whether ATM card transaction records are examples of bank records. This can be attributed to the fact that there was a lack of knowledge among the investigators as far as the banking systems are concerned.

4.2.2 The significance of bank records analysis in tracing fraud suspects

Tracing suspects using bank records analysis is an investigative technique that does not need highly specialised investigative skills. This technique can be executed by any investigator who possesses sufficient training and knowledge. Acquiring the bank records of a private person from a financial institution can be seen as a violation of the individual’s privacy in terms of section 14 of the Constitution. Since acquiring such documents is a violation of privacy, such a violation would have to be justifiable. This violation can only be justified if it meets the requirement of section 36 of the Constitution.

The proper application of the law when acquiring bank records from financial institutions requires that a subpoena in terms of section 205 of the CPA be applied for. On the other hand, the financial institutions are regarded as accountable institutions and are required to verify and keep accurate records of their clients in terms of sections 21 and 22 of FICA. Any deviation from these two sections is criminalised in terms of sections 46 and 48 of FICA.

These financial institutions are further regulated by the SARB Act and the Banks Act, which seek to keep banks afloat and in business, in this way keeping the customers' deposits secured. These regulations further provide for the regulation of the business of public companies that take deposits from the public.

Owing to the relationship between bank records and the investigation process, it is the finding of this researcher that the significance of bank records analysis is that it allows for the:

- Location of the geographical area of the suspect;
- Identification of the associates of the suspect, which may lead to the location of the suspect; and
- Identification of assets of the suspect, which may lead to the suspect's location.

4.2.3 The meaning of financial investigation

Financial investigation involves the application of legal and accounting skills to analyse the financial affairs of the subject, including cashflow analysis and ascertaining assets, locations and associates. While the majority of the participants were of the view that financial investigation has to do with financial analysis, there were some participants who suggested that financial investigation is conducted by accountants to trace funds. It is the finding of this research that financial investigation can be conducted by investigators, especially those who are posted at the commercial crime branches of the SAPS. Although it is true that some complex accounting issues may require the assistance of an accountant, the investigation still remains the responsibility of investigators.

4.2.4 The process of analysing bank records

Both the literature and participants confirmed that a bank statement is an integral part of bank records, which could provide answers regarding the movement of the suspect. Data collected indicated that there is no uniform methodology used by SAPS investigators to analyse bank records. This researcher is of the view that, in the absence of such a methodology, a model of collecting and analysing bank records should be developed and should include the following steps:

- Review the records for information.
- Establish the format in which to compile data.

- Provide summaries of all the bank statements for each month, showing beginning and ending balances, total deposits and withdrawals.
- Reconcile all deposit and withdrawal data to the bank statements.
- Conduct a detailed analysis of all deposits, including the identification of the makers of all deposits.
- Identify all EFTs.
- Extract and prioritise clues from data.
- Follow clues by identifying the location of transactions.
- Determine the frequency of all transactions.
- Draw conclusions from the analysis.
- Compile the findings as a report.

It should be emphasised that the outcome of the analysis will provide investigators with clues as to where the suspect is likely to be. The findings report can be shared amongst the members of the investigation team during briefing meetings. Accordingly, this technique is an investigative tool and is not intended to be used as evidence in court to prove or disapprove certain allegation regarding financial affairs of the suspect.

4.3 RECOMMENDATIONS

The following section concentrates on the recommendations made by the researcher. These recommendations emanate from the research findings. According to Rao (2008:301), the verifiable conclusions must then be followed by suggestions and recommendations, which are practical and implementable.

4.3.1 Recommendations relating to the meaning of bank records

This researcher established that investigators use the term ‘bank statements’ when referring to bank records. This shows that there is a lack of knowledge regarding the term ‘bank records’. It is therefore recommended that investigators should be made aware of the fact that bank statements are not necessarily bank records but that bank statements are one type of bank records. This awareness could be created through workshops that incorporate the subject. It is also recommended that the wording on the Section 205 subpoena, which only refers to ‘bank statements’, should be changed to ‘bank records’, which will be inclusive of any information that the banking institution may share with the law enforcement agencies.

4.3.2 Recommendations relating to the significance of bank records analysis in tracing fraud suspects

Although investigators are not necessarily lawyers, the nature and extent of bank records analysis in tracing fraud suspects require some understanding of the law. Investigators should understand legislation such as the Constitution, criminal law, law of evidence and some statutory laws, which include FICA, the SARB Act and the Bank Act. The researcher recommends that these laws should be incorporated into the DPCI training curriculum, short courses and workshops, which the investigators are often exposed to. Although the main intention of this training should not be to produce lawyers, investigators should be made aware that evidence obtained outside the ambit of any law will not be admissible. Some cases are lost in court merely because the laws of the country were not observed when a particular investigation was being conducted.

4.3.3 Recommendation relating to the meaning of financial investigation

Although the majority of the participants understood the meaning of ‘financial investigation’, it was noted that some participants believed that ‘financial investigation’ refers to an investigation by accountants to trace funds. Their understanding of this term might have negative consequences for their investigations as it appears that whenever financial analysis is required in a specific investigation, an accountant would have to be sourced. Since their understanding of the term is incorrect, it is recommended that a module on ‘financial investigation’ should also be included in the DPCI training curriculum. It is further recommended that the following definition be adopted as a standard one throughout the law enforcement agencies: “Financial investigation is an investigative technique used by investigators to determine the accurate financial affairs of the subject, including ascertaining assets, locations and associates through the analysis of bank records.”

4.3.4 Recommendations relating to the process of analysing bank records

Since this is where a wealth of information can be found, investigators are expected to master the art of following banking audit trails. Analysing bank records requires patience and the ability to know how and where to find information. These are the skills that have to be acquired through extensive training. For any investigator who is involved in commercial or financial investigation, there is always a need for training on these aspects and on the ability to pay attention to detail. It is therefore recommended that the process of analysis in the

context of bank records should form part of the curriculum for the DPCI training. It is further recommended that, due to continuous improvement in technology and electronic processing systems, investigators should be updated continuously to keep up with the technology. This can be achieved through conducting workshops or refresher courses.

4.3.5 Additional research

This researcher recognises the fact that there is a shortage of research conducted by South African researchers related to the use of bank records for investigative purposes. In addition, the subject of bank records and how they can be used by law enforcement agencies is so complex and huge that it cannot be exhausted with a single research project. Even after answering the research questions in this study, there are still knowledge gaps that will need to be closed through further research. For instance, the impact of section 205 of the CPA on the constitutional rights of suspects, such as the right to privacy, will need to be investigated. It is therefore recommended that further research be conducted on the following themes:

- The role of the banking industry in providing suspicious information to the law enforcement agencies;
- The loopholes in the legislation regulating the banking industry; and
- A universal bank record analysis technique.

4.4 CONCLUSION

This study was centred on the significance of bank records analysis, with particular emphasis on the tracing of suspects. To address the problem identified in this research, two research questions were posed to guide the process of data collection and analysis. The first question sought to establish the meaning of bank records. The meaning in this instance had to be understood in the context of forensic investigations. The second question sought to establish the significance of bank records analysis in tracing fraud suspects. In addition to the research questions, the following research objectives were set for this research:

- To provide a comprehensive description of bank records;
- To explore the significance of bank records analysis in tracing fraud suspects;
- To provide a comprehensive meaning of financial investigation; and
- To determine the process to be followed in analysing bank records.

Although the findings of this research may be generalised, the researcher conducted this research in the Durban DPCI office. The researcher had envisaged that this identified office would provide required information as many cases of fraud were being investigated in that office. It is this researcher's submission that the overall goal of this research has been reached.

The researcher used an empirical design to answer research questions by embarking on the fieldwork whose focus was on the personal experience of the study participants. An empirical design was used to look for relevant information about using bank records analysis to trace fraud suspects which might be already available to answer the research questions. In addition to this, the researcher used a qualitative research approach to explore attitudes, behaviour and experiences of the participants. Data was further gathered from literature and the analysis of case dockets, which were obtained from five SAPS police stations in Durban.

The research established that many fraud cases had been closed or filed because the suspect had not been found or the accused could not be traced. Further analysis on the case dockets found that most of the suspects or accused had bank records but the investigator responsible for the case had not attempted to trace the suspect by utilising these bank records. It is the opinion of this researcher that these cases were closed prematurely. The researcher holds the view that investigators should optimally exploit the information found in bank records rather than relying on basic tracing techniques such as recruiting informers to trace the suspects.

Bank records analysis is an effective investigative technique for tracing suspects. The researcher proved, through the analysis of case dockets, that this technique is underutilised by investigators. Many reasons contribute to this problem. Significantly, the understanding of legislation that relates to bank records was identified as one area that was lacking among the participants. For example, some of the participants were unable to explain how legislation such as the Banks Act regulates the banks as well as the responsibilities it places on banking institutions to release information for law enforcement purposes.

It is therefore concluded that investigators tasked with financial investigation are required to have a certain degree of specialised knowledge to investigate such cases effectively. This research reveals that there are gaps as far as these critical skills are concerned and it remains

imperative that investigators should enhance their investigative skills and utilise available effective methods and techniques in the investigation of fraud cases.

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ANNEXURE A

INTERVIEW SCHEDULE

M-TECH RESEARCH DISSERTATION

INTERVIEW SCHEDULE FORM:

THE SIGNIFICANCE OF BANK RECORDS ANALYSIS AS A

TECHNIQUE IN TRACING FRAUD SUSPECTS

UNIVERSITY OF SOUTH AFRICA (UNISA)

THE SIGNIFICANCE OF BANK RECORDS ANALYSIS AS A TECHNIQUE IN TRACING FRAUD SUSPECTS

1. INTRODUCTION

I am a registered student of UNISA doing my Master of Technology: Forensic Investigation degree. The interview schedule forms part of my research dissertation to understand the role of bank records analysis in tracing fraud suspects. Authorization for the research has been granted by the SAPS National Commissioner in terms of National Instruction 1/2006.

2. OBJECTIVE OF THE STUDY

The objective of this research is to determine the significance of bank records analysis as a technique in tracing fraud suspects.

3. INSTRUCTIONS

- Please note that the participation in this study is voluntary.
- Your name and identity are not required and all information will be treated confidentially.
- It should take approximately one hour to answer the questions in the schedule.
- Kindly provide answers to the questions as much as you can and to the best of your knowledge.
- When answering the questions it is important to give your own opinion.
- Additional questions to clarify answers will be used where applicable.
- Further note that you have a right to refuse answering a question if you are not comfortable with it.
- Your contribution will be of significant value and highly appreciated.

SECTION A

1. BIOGRAPHICAL INFORMATION

1.1 What is your rank?

.....
.....

1.2 What is your age?

.....
.....

1.3 How many years of service do you have as an investigator?

.....
.....

1.4 Do you have any qualification in forensic investigation or financial analysis related course? If yes, please elaborate

.....
.....

1.5 Have you received internal training or attended seminars relating to bank records analysis? If yes, please elaborate

.....
.....

1.6 How many cases have you investigated that involved bank records analysis?

.....
.....

SECTION B

2. BANK RECORDS

2.1 What is financial investigation?

.....
.....

2.2 What is the meaning of bank records?

.....
.....

2.3 What are the types of bank records?

.....
.....

2.4 Can you explain your understanding of bank account application?

.....
.....

2.5 What does the bank statement mean?

.....
.....

2.6 What do you understand about credit card transactions record?

.....
.....

2.7 Can you explain how the South African Reserve Bank or the South African Reserve Bank Act 90 of 1989 regulates banks?

.....
.....

2.8 How does Banks Act 94 of 1990 regulate banks?

.....
.....

2.9 What are legislative frameworks that you think relate to the bank records?

.....
.....

3. THE SIGNIFICANCE OF BANK RECORDS ANALYSIS AS A TECHNIQUE IN TRACING FRAUD SUSPECTS

3.1 What is the purpose of bank records analysis in relation to the tracing of suspects' movements?

.....
.....

3.2 Which transactions do you consider significant in the bank statement when tracing the suspect?

.....
.....

3.3 Can you mention types of deposits which can be regarded as income?

.....
.....

3.4 Can you mention payments in the bank statement which you consider to be routine?

.....
.....

3.5 Can you mention examples of frequent transactions that you have come across during the course of bank statement analysis?

.....
.....

3.6 What process do you use to analyse the bank statements?

.....
.....

ANNEXURE B

DOCKET ANALYSIS CHECKLIST

DOCKET UNIQUE NUMBER	DATE OF ANALYSIS	ANALYSIS CONDUCTED	FINDINGS
		In which period of time did the crime take place?	
		In which area did the crime take place?	
		Was the suspect arrested?	
		Did the suspect appear in the Durban Magistrate court or SCCU?	
		What tracing techniques were used to trace the suspect?	
		Was the bank account of the suspect ever analysed to trace the suspect?	
		Was there any information from the bank records indicative of the possible geographical location of the suspect?	
		What was the outcome of the case?	
		What type of bank records is available in the case docket?	
		What are the legal frameworks pertaining to the bank records are available in the case dockets?	
		What are the significant transactions	

		that are found in the bank records?	
		What are the income deposits that are found in the bank records?	
		Are there any routine payments in the bank records?	
		Are there any frequent transactions in the bank records?	

ANNEXURE C

LETTERS OF PERMISSION TO CONDUCT RESEARCH

G.P.-S. 002-0222

SAP 21

SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

Privaatsak/Private Bag X94

Reference Nr Verwysing	3/342
Navrae Enquiries	Lt-Col GJ Joubert W/D MB Chakoe
Telefoon Telephone	012-393 3118 012-393 4525
Faksnommer Fax number	012-393 3176

STRATEGIC MANAGEMENT COMPONENT
HEAD OFFICE
PRETORIA

The Deputy National Commissioner
DIRECTORATE OF PRIORITY CRIME INVESTIGATION

(Attention: Maj-Gen Meiring)

RE: RESEARCH REQUEST: THE SIGNIFICANCE OF BANK RECORDS ANALYSIS AS A TECHNIQUE IN TRACING FRAUD SUSPECTS: MASTER OF TECHNOLOGY: FORENSIC INVESTIGATION (UNISA): RESEARCHER: NW MYEZA

- 1 The research proposal of NW Myeza pertaining to the above-mentioned topic refers (see attached).
- 2 The aim of the research is to determine the significance of bank records analysis in tracing fraud suspects.
- 3 The researcher will use the simple random sampling technique in order to select 20 DPCI investigators attached to the Commercial Crime Unit in Durban (from a total of 65). Interviews will be conducted with these investigators. Five police stations with the highest total of reported fraud cases, will be identified. From these five stations, the researcher will randomly select a total of 15 closed fraud docket, which will be studied to obtain specific information.
- 4 This office recommends the research in terms of National Instruction 1 of 2006 Research in the Service provided the confidentiality undertakings and permission from the convicted persons cited in the dockets is granted, subject to the approval of the Deputy National Commissioner: DPCI.

With kind regards,


MAJOR GENERAL
HEAD: STRATEGIC MANAGEMENT
M MENZIWA

Date 2013.03.04

SOUTH AFRICAN POLICE SERVICE



SOUTH AFRICAN POLICE SERVICE

Private Bag X1500 SILVERTON 0127

Reference	3/34/2
Enquiries	Major General Meiring
Telephone	012 846 4101
Fax number	012 846 4404

The Head

Directorate for Priority Crime Investigation

The Head
 Strategic Management
 South African Police Service
 Head Office
 Private Bag X94
 PRETORIA
 0001

RESEARCH REQUEST: THE SIGNIFICANCE OF BANK RECORD ANALYSIS AS A TECHNIQUE IN TRACING FRAUD SUSPECTS: MASTER OF TECHNOLOGY: FORENSIC INVESTIGATION: UNISA: RESEARCHER – NW MYEZA

1. Your even-numbered letter dated 2013-02-04 has bearing.
2. This serves to inform you that the application is approved on condition that the researcher may gain access to closed case dockets only, and that all information obtained from the SAPS is treated as confidential and is used for research purposes only.

J. Meiring
 F/HEAD: DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

Date: 2013/2/7.

ANNEXURE D

EDITOR'S CERTIFICATE

I, Susan van Tonder, MA Linguistics, ID 6009160072083, hereby declare that I have edited the master's thesis "The Significance of Bank Records Analysis as a Technique in Tracing Fraud Suspects" by NW Myeza.

A light blue rectangular box containing a handwritten signature in black ink that reads "Susan van Tonder".

Susan van Tonder

12 November 2014