

**REPORT WITH RESPECT TO THE APPLICATION
FOR REVIEW OF ██████████ IN RELATION TO INFORMATION
REQUESTED FROM SASKATCHEWAN FINANCE**

[1] On February 19, 2002, ██████████ (the "Applicant") forwarded to Saskatchewan Finance (the "Respondent") an Access to Information Request Form requesting the following:

"Please provide all material related to the sale of shares of Greystone Capital Management by various pension funds of Saskatchewan to Donald Black, Robert Vanderhooft and others on or about July or August of 1999, including, but not limited to, the consideration provided to shareholders [the pension funds] in the sale, any financing assistance provided, and all materials prepared by or for or held by the department describing merits and demerits of the sale and the determination of the share price and sale price."

[2] The Respondent replied to the request for access by letter dated March 19, 2002 which stated, in part, as follows:

"Your request for information related to the sale of shares of Greystone Capital Management by various pension funds of Saskatchewan to Donald Black, Robert Vanderhooft and others on or about July or August of 1999 was received in this office on February 21, 2002.

Access to this information is refused for the reason that the records you have requested do not exist. No shares of Greystone Capital Management were sold by pension funds to any individuals.

If you wish to have this decision reviewed, you may do so within one year of this notice. To request a review, please complete a "Request for Review" form, which is available at the same location where you applied for access. Your request should be sent to the Information and Privacy Commissioner c/o 700 - 1914 Hamilton Street, Regina, SK, S4P 3N6."

[3] The Applicant responded to this reply by letter dated March 21, 2002 which reads as follows:

"Thank-you for your response to my request concerning shares in Greystone Capital.

I made the request because information at the corporations branch of Saskatchewan Justice indicates that, for a time, shares in Greystone were held by various pension plans of Saskatchewan. Then, after August of 1999, the corporations branch indicates that many of these shareholders were no longer shareholders.

I am attaching photocopies of this information, for your convenience.

Perhaps this additional information may be useful to you, in providing a response to my request. While I asked about the "sale" of shares, I would be happen [sic]

to receive all material related to the disposition of the shares, including how that disposition was determined and what consideration, if any, was provided to the shareholders and, if none, how that determination was made and how the disposition was examined for its merits and demerits.

I hope to hear from you, at your earliest convenience, but no later than thirty days from your receipt of this letter.”

[4] The Respondent replied by letter dated April 3, 2002 follows:

“Thank you for your follow-up letter of March 21, 2002 pertaining to the subject Request for Access. Your letter was received in this office on March 25, 2002.

The Public Employees Benefits Agency is currently pulling together and reviewing the documents pertaining to your request; however, the Public Employees Pension Plan (PEPP) Board of Trustees has requested that the Board review any of its material prior to its release. The Board next meets on April 24, 2002.

Material pertaining to other trustee boards that have not made a similar request will be released within 30 days of receipt of your letter. This is to advise you however that, pursuant to section 12(1)(b) of The Freedom of Information and Protection of Privacy Act, we are extending the period to respond to your request respecting PEPP Board documents for a period of no more than 7 calendar days past the date of the PEPP Board meeting.

We will nevertheless try to release any forthcoming information as soon as possible after the Board meets. Further Correspondence on this request should be directed to me at:

909 – 2350 Albert Street
Regina, SK. S4P 4A6

Yours truly,

Wm. R. Van Sickle
Access Officer
Freedom of Information”

[5] And a further letter was forwarded to the Applicant on April 22, 2002, the body of which reads as follows:

“Further to my letter of April 3, 2002, enclosed are certain documents pertaining to your Request for Information concerning the sale of shares in Greystone Capital Management Inc.

Section (17)(1)(1) of *The Freedom of Information and Protection of Privacy Act*, (the Act), states as follows:

“17(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose”

- (a) advice, proposals, recommendations, analyses or policy options developed by or for a government institution or a member of the Executive Council;”

Access is denied to certain documents that fall under this section of the Act.

Section 19(1)(b) and Section 19(2) of the Act state as follows:

“19(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:

- (b) financial, commercial, scientific technical or labour relations information that is supplied in confidence, implicitly or explicitly, to a government institution by a third party;

19(2) A head may give access to a record that contains information described in subsection (1) with the written consent of the third party to whom the information relates.”

Access is denied to certain documents that fall under this section of the Act and for which the third party has not given consent for release.

If you wish to request a review of this decision, you may do so within one year of this notice. To request a review, you may complete a “Request for Review” form, which is available at the same location where you applied for access. Your request should be sent to the Information and Privacy Commissioner, Mr. Gerald Gerrand, Q.C. at 700 – 1914 Hamilton Street, Regina, S4P 3N6.”

[6] A Request for Review was filed by the Applicant with Mr Frank MacBean, Q.C., the Acting Freedom of Information and Privacy Commissioner on June 3, 2002. Mr. MacBean forwarded a copy of this request and attachments to the Respondent who replied by letter dated July 8, 2002 as follows:

“Thank you for your letter of June 25, 2002 in which you advised me of a review requested by [REDACTED] of [REDACTED].

It is the position of the Department of Finance that we have released to [REDACTED] all documents in our possession that are not exempt under the *Freedom of Information and Protection of Privacy Act* (the Act).

Documents in our possession at the time of the request that were not released to [REDACTED] include the following:

1. Letter of May 12, 1999 from Greystone Capital Management Inc. (Greystone) to [REDACTED] and Appendices attached thereto.
Subject: Introduction of Employee Ownership;

2. Letter of May 12, 1999 from Greystone to Shareholders of Greystone. Subject: Audited Consolidated Financial Statements December 31, 1998;
3. Consolidated Financial Statements of Greystone as at December 31, 1998;
4. Letter of May 20, 1999 from Greystone to [REDACTED] and appendices attached thereto. Subject: Pricing of Common Shares – Treasury Issue to Employee Group;
5. Memorandum of June 7, 1999 from [REDACTED] to W. Davern Jones, Deputy Minister of Finance, transmitting a memorandum and briefing note to Honourable Eric Cline, Minister of Finance. Subject: Greystone Capital Management Inc.

This memorandum contains substantially the same information as the memorandum to the Minister of Finance.

6. Memorandum of June 8, 1999 from W. Davern Jones to Honourable Eric Cline. Subject: Greystone Capital Management Inc.;
7. Briefing note to the Minister of Finance dated June 7, 1999. Subject: Greystone Capital Management Inc.'s Common Share Issue.

Copies of these documents are enclosed for your information. Also enclosed is a letter from Greystone dated April 15, 2002 that clearly does not consent to the release of documents 1 – 4 (above) pursuant to clause 19(1)(b) of the Act.

The Department is of the view that indeed, documents 1 – 4 contain financial information of a third party (Greystone) that was supplied in confidence by the third party. In view of the fact that the third party has not consented to their release, a mandatory exemption was claimed under Section 19 of the Act and the documents were withheld.

Documents 5 – 7 are documents developed by the Department of Finance to provide advice, proposals and recommendations to the Minister of Finance. Release of these documents would disclose such advice, proposals and recommendations; therefore the Department has chosen to exempt these documents under section 17 of the Act.

With respect to the documents that were released to [REDACTED], certain information was severed from these documents either because the information was exempt under Section 19 of the Act (share price offering) or because the information did not at all relate to the request (other items from the various board minutes). Although minutes of boards and commissions may be exempted under section 17(1)(f) of the Act, the department chose to release these documents to [REDACTED]. I will be happy to provide you with a complete copy of the various board minutes, should you desire to see the unrelated items which were blanked from those documents.

I trust this is satisfactory. Please contact me, should you require any additional information for your review.”

[7] A copy of this letter was forwarded by Mr. MacBean to the Applicant who replied by letter dated August 6th as follows:

“Thank-you for your letter of July 19th, 2002. I have read the letter of July 8th, 2002 of Mr. Van Sickle.

Please consider the following:

The materials requested pre-date the existence of the third party to which Mr. Van Sickle is referring. The corporate entity that is claiming a third party interest in the documents sought did not exist until after the transaction [at the heart of the request] was concluded. As such, the third party is not entitled to interfere with the release of the material.

Material or documents prepared after the creation of the third party are properly covered. However, my request was for materials or documents created *in advance* of the conclusion of the transaction that ultimately led to the existence of the third party.

This can only be what the legislators intended when they drafted the Access to Information law. If it were otherwise, government would be able to allow third party entities to assume government services and have that transaction fo ‘un-noted’ – due to the third party rules of the Act.”

[8] On August 19th Mr. MacBean forwarded this file to me as [REDACTED] and felt he could not complete this matter.

[9] I then forwarded the Respondent a copy of the Applicant’s reply of August 6th and they responded by letter dated August 23rd as follows:

“This letter is in response to your request of August 21, 2002 for representation respecting [REDACTED]’s letter of August 6, 2002.

In his letter, [REDACTED] states, “*The materials requested pre-date the existence of the third party to which Mr. Van Sickle is referring. The corporate entity that is claiming a third party interest in the documents sought did not exist until after the transaction [at the heart of the request] was concluded.*”

The documents sought by [REDACTED] are dated 1999, as itemized in my letter of July 8, 2002 to Mr. MacBean. Greystone Capital Management, Inc., the third party to which I was referring, was in existence prior to 1999. Evidence of this fact, in the form of audited financial statements for the year ended December 31, 1998 and signed by Ernst & Young, is included in the material I provided to Mr. MacBean. In fact, this corporation has been in existence since 1988.

The transaction in question involved the sale of the company’s shares by the various pension plans back to the company. No entity came into existence as a result of these transactions; shares only changed ownership.

I therefore believe that [REDACTED] is mistaken in his assertion that the materials requested pre-date the existence of the third party.

Thank you for your consideration of this matter.”

[10] The letter from the Respondent dated July 8, 2002 sets out the seven documents in their possession that they have declined to disclose and their reasons therefore.

[11] I have now reviewed all of these documents and in addition a letter dated April 15, 2002 from a third party (Greystone Capital Management Inc.) wherein they do not consent to the release of the first four documents on the grounds that they contain financial information of a third party that it supplied in confidence and accordingly they are exempt from production pursuant to Section 19 of the *Freedom of Information and Protection of Privacy Act*.

[12] The language of Section 19(1) is mandatory and states that “a head shall refuse to give access to a record that contains:

“(b) financial, commercial, scientific, technical or labour relations information that is supplied in confidence, implicitly or explicitly, to a government institution by a third party;”

[13] My review of these documents indicates that they clearly fall within the purview of Section 19(1)(b) and accordingly, failing the providing of consent by the third party pursuant to subsection (2) the Respondent was obligated to decline access.

[14] As to the remaining three documents, the Respondent takes the position that it can refuse disclosure under Section 17 of the Act and specifically, pursuant to subsection (1)(a) which reads as follows:

“17(1)(a) advice, proposals, recommendations, analyses or policy options developed by or for a government institution or a member of Executive Council.”

[15] Document number five is a memorandum dated June 7, 1999 from the Executive Director of the Public Employees Benefits Agency to the Deputy Minister of Finance.

The letter outlines three different options that the Minister has with respect to the issue of common shares for purchase by Greystone employees together with a recommendation as to which option the Minister should exercise.

Clearly this falls within the scope of Section 17(1)(a).

[16] Document number six is merely a repeat of the above options and recommendations from the Deputy Minister to the Minister and again can be exempted from disclosure.

[17] The final document (number 7) is a Briefing Note dated June 7, 1999 to the Minister of Finance regarding the third party's Common Share Issue.

This Briefing Note outlines the background of the issue, and again outlines the three options or alternatives together with their relative advantages or disadvantages and a recommendation as to which alternative the Minister should adopt.

Again, Section 17(1)(a) is applicable.

[18] The Applicant also raised the issue in his letter of August 6, 2002 to Mr. MacBean that the materials requested pre-date the existence of the third party but the Respondent's letter of August 23, 2002 establishes that this contention is invalid.

[19] For the above reasons I would recommend that the Respondent continue to decline access to the records sought by the Applicant.

[20] Dated at Regina, in the Province of Saskatchewan, this 16th day of September, 2002.

RICHARD P. RENDEK, Q.C.
Acting Commissioner of Information
and Privacy for Saskatchewan