

REPORT WITH RESPECT TO APPLICATION OF  
██████████ FOR REVIEW OF REFUSAL OF  
INFORMATION BY DEPARTMENT OF FINANCE

The Applicant submitted a Request for Information to the Department of Finance which was received by the Department on April 6, 1992. He requested: "Access to any and all statistical or polling surveys conducted since November 1, 1991. In addition I request summaries, analysis or interpretation of any polling and details of any contractual arrangements with the individuals or firms involved."

By letter dated May 6, 1992, ██████████ was informed by an officer of the Department that: "The material you requested respecting summaries, analysis or interpretation of any polling was created for Treasury Board and Executive Council. Access to this information is therefore denied pursuant to Section 16(1)(a) of The Freedom of Information and Protection of Privacy Act".

With respect to this aspect of the request, I have reviewed the records produced to me by the Department of Finance, consisting of an analysis prepared by Viewpoints Research Ltd. dated March 26, 1992, and a further analysis dated April 2, 1992. I am advised that these two documents were prepared for and presented to the Executive Council and it appears to me that these documents come within the exception contained in Section

"16(1) A head shall refuse to give access to a record that discloses a confidence of the Executive Council including:

- a) records created to present advice, proposals, recommendations, analyses, or policy options to the Executive Council or any of its committees."

Since it appears to me that the documents in question clearly come within the description of records in sub-paragraph (a), it is mandatory that the documents shall not be disclosed.

With respect to the request for statistical or polling survey, [REDACTED] was advised by the said letter of May 6, 1992, that:

"... the Minister of Finance intends to make available to all media copies of the questions asked and the results and details of the costs of the market research conducted. This material will be published within 90 days of today's date."

I am now advised that this material was in fact released or published on or about July 31, 1992. However, I am not satisfied that the refusal to provide this information to [REDACTED] when it was requested was justified.

The Department relied upon Section 6(2)(c) which provides that:

"6(2) The head shall give written notice to the applicant within 30 days after the application is made:

(c) if the record is to be published within 90 days, informing the applicant of that fact and of the approximate date of publication."

It does not appear to me that information can be withheld merely because a government institution decides, having received a request for information under the Act, to publish the material within 90 days from the date of its response to the applicant. If this were the correct interpretation of paragraph 6(2)(c), then it is apparent that such delay could be applied to every request for information which the Department might otherwise be required to disclose sooner. It appears to me that this Section applies only when in the ordinary course of events, the information requested would be published within 90 days from the time it is created or received by the Department.

Accordingly, in my view, the Department of Finance was in error in refusing to supply this information in a timely fashion, and in particular, when it took the position that it was entitled to do so on the basis that: "This material will be published within 90 days of today's date." The date in question was May 6, 1992, the day on which the Department replied to the Application for the information, while it is apparent that the information was received by the Department sometime in April 1992.

It is my conclusion and recommendation that Section 6(2)(c) of the Act may not be used to delay disclosure of or access to records except in cases where, in the ordinary course of business the record would be published within 90 days from the time it was received by or created in the government institution. I also note that the expected date of publication is to be stated in the reply to the Application, which was not done in this case.

DATED at the City of Regina, in the Province of Saskatchewan this                      day of August, 1992.

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Commissioner of Information and  
Privacy for Saskatchewan