

REPORT WITH RESPECT TO THE APPLICATION FOR
REVIEW WITH RESPECT TO THE REFUSAL OF
INFORMATION BY THE DEPARTMENT OF FINANCE
TO THE REQUEST OF [REDACTED]

On June 1, 1992, [REDACTED] [REDACTED] made a request to the Department of Finance for the following information: "I request records which would enable me to know the effect of increasing (or decreasing) the education and health tax on jobs and/or economic growth in Saskatchewan."

By letter dated June 9, 1992, [REDACTED] [REDACTED] was advised by the Department that: "... the records you have requested cannot be released." Exemption was claimed under Sections 17(1)(a) and (b) of The Freedom of Information and Protection of Privacy Act.

The letter stated in part:

"The information which you have requested respecting the effect of increasing the Education and Health Tax on Jobs and/or economic growth, is material which falls under the exemptions outlined above. This information cannot be released because the documents were created as background analysis with respect to budgetary policy options.

These documents are therefore exempt from access according to Sections 17 of The Freedom of Information and Protection of Privacy Act."

At a meeting with officials of the Department on July 23, 1992, I was advised by Mr. John Wright, the Deputy Minister of Finance, and Mr. Van Sickle, the Freedom of Information Access Officer, that in fact, and notwithstanding the language of the

of increasing or decreasing the Education and Health Tax on jobs and/or economic growth in Saskatchewan had been prepared by the Department of Finance, and that accordingly, no record of any such study existed in the Department. I was advised by Mr. Wright that it was the intention of the Department in replying to [REDACTED] [REDACTED] request to neither admit nor deny the existence of any such record, but it would not appear to me that the reply by the Department as set out in their letter to [REDACTED] [REDACTED] of June 9, 1992, conveys such an intention. To the contrary, the letter clearly indicates to me that such a record was in fact in the possession of the Department but that it would not be disclosed having regard to Sections 17(1)(a) and (b) of the Act.

Since it now appears that no such record exists it is not necessary to determine whether such a record would or would not be exempt from disclosure. The fact that no such record exists is a complete answer to the request under Section 7(2)(e) of the Act.

It seems appropriate, however, to observe that if the Head of a government institution does not wish to disclose the existence or non-existence of a record for which an exemption is claimed, the appropriate response is provided for in Section 6(2)(f) of the Act which provides that:

The head shall give written notice to the applicant within thirty days after the application is made:

...(f) stating that confirmation or denial of the existence of the record is refused pursuant to subsection (4)."

Subsection 6(4) provides:

"Where an application is made with respect to a record that is exempt from access pursuant to this Act the head may refuse to confirm or deny that the record exists or ever did exist."

This would operate to bring into play Section 46 of the Act which prohibits the Commissioner from disclosing any information acquired in the performance of the duties or functions except to the extent necessary to facilitate the review and to establish grounds for findings and recommendations in a report, and to take reasonable precautions to avoid disclosure of any information as to whether a record exists if the head, in refusing to give access, does not indicate whether the record exists.

It would seem that these provisions were intended to provide for situations where the mere disclosure of the existence or non-existence of a document would, of itself, constitute the disclosure of information, but as I have indicated, they were not brought into operation in this case.

DATED at the City of Regina, in the Province of
Saskatchewan, this *24* day of August, 1992.

Commissioner of Information and
Privacy for Saskatchewan