

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

[REDACTED] submitted a Request for Access to Information to Saskatchewan Power Corporation dated May 29, 1992. In these terms:

"I request any and all documents that would enable me to know about an investigation into an accident [REDACTED] [REDACTED], involving [REDACTED] and [REDACTED] at a transformer site, including the investigation report, recommendations, etc."

The request was received by SaskPower on June 1, 1992. By letter dated June 25, 1992, [REDACTED] was advised:

"Your application for access to all documents that would enable you to know about an investigation into an accident [REDACTED] [REDACTED] involving [REDACTED] [REDACTED] and [REDACTED] at a transformer site, including the investigation report, recommendations, etc., was received at SaskPower on [REDACTED]. All references to section and subsection numbers are references to The Freedom of Information and Protection of Privacy Act. A copy of the relevant provisions have been enclosed for your reference.

The documents requested fall within three categories:

- 1) Those prepared by SaskPower or others at the request of SaskPower in anticipation of litigation, the release of which could prejudice SaskPower. Access to those documents is denied on the basis of subsection 22(a) and subsections 15(1)(d) and (g).
- 2) Those which detail advice, recommendations, consultations and deliberations developed or undertaken by or for SaskPower. Access to those documents is being refused pursuant to subsections 17(1)(a) and (b).

- 3) Those which contain personal information, the disclosure of which is prohibited by subsection 29(1)."

█ █ then requested a review and the appropriate notices were given. In the course of the review, SaskPower produced 26 documents which I have been advised are all of the documents which they have in their custody or possession which are responsive to the request.

As to certain of these documents consisting of investigation reports and statements of witnesses, there appears to be little doubt that they come within Section 22(a) of the Act which provides:

"A head may refuse to give access to a record that:

- a) contains information that is subject to solicitor-client privilege;"

As a result of the accident on █ █ █, █  
█ suffered █ which proved to be fatal. █  
█ █ █ to his █ █ █, while █  
█ █ █.

Employees of SaskPower were at the scene of the accident very shortly after it happened. They submitted reports on what they observed and the steps which they and others took in the circumstances. Thereafter, not surprisingly, further investigations were carried out, and statements taken from

witnesses and the like by various employees of SaskPower. It is fair to say that in so doing they were concerned about considerations of public safety (including a concern for the potential for similar incidents at other transformer sites), and also about the likelihood that the accident would give rise to a claim for damage against SaskPower.

It was not until SaskPower received a letter dated July 14, 1992, from a firm of solicitors that it was put upon formal notice that an action for damages was being considered against the Corporation by the injured parties or their parents or guardians, but I am satisfied that SaskPower fully anticipated that such a probability existed, and that based on past experience, this is the almost invariable development when accidents happen involving injuries to members of the public. It is, therefore, the practise of SaskPower that the solicitors in their legal department receive copies of these reports as they are prepared with a view to considering the potential exposure of the Corporation to legal liability, and that these reports and statements of witnesses are therefore privileged and the Corporation cannot be required to disclose them.

This view of the Act is consistent with what appears to me to be the intention of the Act that the requirements for disclosure should not interfere with the orderly conduct of civil litigation which includes specific rules regarding the

disclosure of documents and evidence by the parties involved in the litigation.

This view is also consistent with the provisions of Section 15(1)(d) which provides that:

"A head may refuse to give access to a record, the release of which could:

- d) be injurious to the Government of Saskatchewan or a government institution in the conduct of existing or anticipated legal proceedings."

While in other sections of the Act such as Section 14 and Section 17, the Act refers to withholding the release of records which "could reasonably be expected" to have a particular result, it should be noted that in Section 15 the requirement is simply the release of information which "could" have the specified result. In the face of this language I must accept the submission of counsel for SaskPower that the mere possibility of an injurious effect would be sufficient to enable the head to withhold disclosure under Section 15(1)(d).

There are further documents which do not come within the foregoing provisions of the Act for which exemption is claimed under Sections 17(1)(a) and (b) which provides:

"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;

- (b) consultations or deliberations involving:
  - (i) officers or employees of a government institution ..."

It appears to me that some of the documents in question come within this exemption and that some do not. Some of the documents are clearly recommendations or records of consultations among employees of SaskPower, but there are a number of documents which are factual in nature that do not appear to me to be exempt. These documents are:

1. **Topic Summary: Public Electrical Accident and the Regina Science Centre Substation presented to Board of Directors' Meeting June 4, 1992.**

While this document is headed "Recommendation", it then reads "It is recommended that this item be accepted as information". In other words, the document is not a recommendation within the meaning of Section 17(1)(a), but is purely informational and does not contain any recommendation other than that it be accepted for information (1 page).

2. **Document headed "Response to Recommendations - Details/Backup.**

This document as it was submitted to me consists of 5 pages numbered 3-7 including a series of 6 photographs. This document does not appear to me to come within either Section 17(1)(a) or (b) as it is a factual account of the examination of Substations, other than the one involved in the accident, made after the accident happened. the exception set out in Section 17(2)(e) of the Act.

3. **Document headed "Substation/Switching Station Maintenance Guideline" consisting of 1 page numbered "8" which does not appear to come within Section 17(1)(a) or (b) and, in addition, appears to fall within the exception contained in Section 17(2)(f)(i).**

4. Report from J.R. Messer to Honourable Dwayne M. Lingenfelter dated March 24, 1992, re: public accident [REDACTED] [REDACTED] [REDACTED] Powerhouse Substation (2 pages).

This document is a factual report, and in my view, does not come within the exemption contained in Section 17(1)(a) of the Act since it does not include advice, proposals, recommendations, analyses, or policy options for a member of the Executive Council.

Exemption was also claimed by the Corporation on the basis that certain of the documents contain "personal information" as defined by the Act. The definition of "personal information" is a very broad definition and appears to include almost any information about an identifiable individual including under Section 24(1)(k) the name of the individual where: "(i) it appears with other personal information that relates to the individual..."

As to this aspect of this matter, however, it is only necessary for me to say that the documents which appear not to come within any other exemption, either do not contain any "personal information", or any such information which is not already publicly available within the meaning of Section 29(2)(p) of the Act.

In this respect, the Applicant has provided me with a copy of a [REDACTED] published in [REDACTED] on [REDACTED] [REDACTED], which identifies the persons who were injured, the nature of the accident, the age of the [REDACTED] and the fact

that they were [REDACTED].

It does not appear to me, therefore, that the disclosure of the documents which I have enumerated will constitute an invasion of privacy or a breach of the Act or that they are otherwise exempt from disclosure.

It is, accordingly, my recommendation that SaskPower disclose to the Applicant the documents enumerated as No. 1 - 4 above.

Dated at Regina, Saskatchewan this 2nd day of November, 1992.

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Derril G. McLeod, Q.C.,  
Commissioner of Information and  
Privacy for Saskatchewan