

REPORT WITH RESPECT TO THE APPLICATION
FOR REVIEW OF [REDACTED] WITH RESPECT TO INFORMATION
REQUESTED FROM DEPARTMENT OF FINANCE

Separate requests for information were made by [REDACTED] [REDACTED] to the Department of Finance for "all allowances and/or other payments" paid to 17 named individuals, all of whom are former Members of the Legislative Assembly of Saskatchewan, from the Saskatchewan Legislative Members Superannuation Fund.

On June 25, 1992, [REDACTED] [REDACTED] was advised by the Access Officer, Department of Finance, that "we are unable to comply with your requests at the present time and are asking Cabinet to consider this matter. After discussion, we have agreed that you would withdraw your Applications and I will telephone you as soon as a decision has been reached on this item."

Apparently, consideration was given to the possibility of a regulation by Order in Council pursuant to Section 29(2)(u) of The Freedom of Information and Protection of Privacy Act the relevant portion of which provides:

"(2) Subject to any other act or regulation, personal information in the possession or under the control of a government institution may be disclosed:

(u) as prescribed in the regulations."

By letter dated August 18, 1992, [REDACTED] was advised by the Department of Finance that:

"Certain changes to regulations under The Freedom of Information and Protection of Privacy Act would have been necessary in order for us to respond to your request. I wish to thank you for your co-operation and formally withdraw your Application in order to give us time to have the matter considered.

I have taken the liberty of re-initiating your Application for Access effective today; however, I must now inform you that the records you have requested cannot be released because they are defined as personal information under The Freedom of Information and Protection of Privacy Act.

Section 24(1) of the Act defines personal information to include:

- (j) Information that describes an individual's finances, assets, liabilities, net worth, bank balance, financial history or activities or credit worthiness; or
- (k) The name of the individual where:
 - i) it appears that other personal information that relates to the individual; or
 - ii) the disclosure of the name itself would reveal personal information.

It is convenient to observe at this point that, in my view, the information requested by [REDACTED] is indeed "personal information" within the meaning of the Act and, accordingly, is subject to restrictions in the Act regarding disclosure.

The above mentioned letter then continued as follows:

"Section 24(2) excludes from the definition the salary or benefits of a legislative secretary or a member of the Executive Council. All the individuals you have named in your Application are retired from the Legislature. The individuals in question under

this Act are now private citizens and information respecting their current finances is protected from access."

It is quite true that Section 24(2) of the Act excludes from the definition of "personal information" under subsection (b) the salary or benefits of a Legislative Secretary or Member of the Executive Council, but this simply reinforces the view that salaries or benefits of an individual are included in the definition of personal information, as otherwise this exception would be unnecessary.

The response which [REDACTED] [REDACTED] received from the Department of Finance should have indicated that the Department were relying upon the operative provision of the Act which prohibits the disclosure of personal information, except under certain specified circumstances.

The relevant provisions of Section 29 are as follows:

- "29(1) No government institution shall disclose personal information in its possession or under its control without the consent given in the prescribed manner of the individual to whom the information relates except in accordance with this Section or Section 30.
- (2) Subject to any other Act or regulation personal information in the possession or under the control of a government institution may be disclosed:
- (o) for any purpose where in the opinion of the head:

- i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure; ...".

No consents by the affected individuals were provided by the Applicant to the Department of Finance, and in my view, where personal information within the meaning of the Act is sought (and unless the Applicant is relying upon some other exception) it is incumbent upon the person requesting the information to obtain and submit the necessary consents in the manner prescribed by Section 18 of the Regulations:

"18. Where the act requires the consent of an individual to be given the consent is to be in writing unless, in the opinion of the head, it is not reasonably practicable to obtain the written consent of the individual."

I should add that, in my view, once a consent has been properly obtained and presented to the head, and the head is satisfied that it is the consent of the individual in question, it would be incumbent upon the head to provide the information since the condition stipulated in the Act for disclosing such information would then have been fulfilled. In other words the prohibition against disclosure in Section 29(1) is subject to a specific exception when the consent of the individual is obtained.

The question remains as to whether the information should be disclosed having regard to the provisions of Section 29(2)(o)

on the footing that the public interest in disclosure clearly outweighs any invasion of privacy. It should be noted that this depends on the opinion of the head that it would hardly have been necessary to provide that disclosure subsection (o) depends upon the opinion of the head if the whole subsection was discretionary.

Since there was nothing in the material initially presented to me to indicate that this question had been addressed, I wrote to the Department on September 10th last bringing their attention to the provisions of Section 29(2)(o)(i) and in response I was advised by the Department by letter dated September 28, 1992, that:

"In considering this Application the head is of the opinion that the scrutiny of public spending on MLA Pensions is well served through the tabling of statements which report this spending in aggregate. It is not felt that public knowledge of an individual's pension allowance clearly outweighs any invasion of personal financial privacy."

In further discussions with the Department, I was assured that full and careful consideration had been given to this issue. Consequently, the head having formed a considered opinion, it is not open to me to question that opinion unless it appears that it was reached on a wrong principle or contrary to the provisions of the Act. There is no basis for such a conclusion, and accordingly, I must accept the decision of the head.

In the result, therefore, my recommendation must be that the information requested should not be disclosed unless the Applicant shall provide the Department with the consent of each individual to the disclosure of the specific information requested.

Dated at Regina, Saskatchewan this 21st day of October, 1992.

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