

FILE NO. 93/009

**REPORT WITH RESPECT TO THE APPLICATION
FOR REVIEW OF [REDACTED] WITH RESPECT TO INFORMATION
REQUESTED FROM SASKATCHEWAN WATER CORPORATION**

The applicant requested access to information from Saskatchewan Water Corporation. He requested a copy of the Agreements between the Corporation and [REDACTED] and [REDACTED]. By letter dated April 8, 1993 he was advised by the Corporation that:

"This information cannot be released because the record is a contract between Sask Water and a third party and is also considered personal information. Information of this nature is exempt from access according to Sections 19(1) and 24(1) of *The Freedom of Information and Protection of Privacy Act*."

In proceeding with this review, I requested the Corporation to provide me with a more explicit statement of its grounds for non-disclosure and as a result received from them a letter dated May 20, 1993 which sets out its position with greater particularity:

"In considering [REDACTED] request for release of information, the Corporation believes two sections of the Act apply that require us to deny the request.

s.19(1)(c)(iii) exempts the Corporation from releasing information, the disclosure of which would interfere with contractual or other negotiation of a third party.

The Corporation believes this exemption applied for two reasons. Currently, the Corporation is attempting to resolve outstanding claims with Poplar Developments Ltd. on lost oil well revenue. The compensation paid to the [REDACTED] could interfere with any settlement or court action brought about on this issue.

The [REDACTED] have given the Corporation the option to purchase any land required to operate the dam at the conclusion of five years. So as not to jeopardize the future negotiating relationship with the [REDACTED], the Corporation believes the exact settlement wording should remain confidential.

S. 29 has only one exemption. Access to any personal information is restricted by s. 29(1), subject to the specific limitations established by the Act. However, the definition of "personal information" is contained in s. 24. The information in the contract would be caught by:

- the general introductory wording of s. 24(1);
- s. 24(1)(b) - "information relating to financial transactions in which the individual has been involved";
- s. 24(1)(j) - "information that describes an individual's financial assets..."

S. 24(2) takes certain types of information that would otherwise be personal information outside of the definition (thereby making it accessible). Specifically, s. 24(2)(f) provides that "details of a discretionary benefit of a financial nature granted to an individual by a government institution" are not personal information. We take the position that benefits granted by the making of a contract are included here. For example, the details of a lease of Crown land to an individual would normally not be personal information because of s. 24(2)(f). The contents of the [REDACTED] agreement personal information is the non-discretionary nature of the benefits granted by the agreement. An agreement made to settle a suit against the government does not convey discretionary benefits. Rather, it merely reflects the benefits that the parties agree are due at law to the party making the claim."

The Corporation also supplied me with copies of the relevant documents consisting of a Settlement Agreement dated March 10, 1993 to which is attached Schedule "A" which is merely descriptive of the land in question and Schedule "B" which contains particulars of the financial aspects of the settlement. I was also provided with a copy of a document entitled "Panel Agreement" dated March 10, 1993 which provides for the appointment of an independent panel for the purpose of making recommendations as to the appropriate operating level of the Alameda Reservoir after a five year period which is provided for in the Settlement Agreement.

Notice of this review was given by the Corporation to [REDACTED] and [REDACTED] as they are interested third parties. As a result of the giving of this notice, the Corporation received, and provided me with a copy of a letter from the solicitor for the [REDACTED], in which he states:

"Please be advised that our clients do not approve of the release of the record (Settlement Agreement and Panel Agreement) because they agreed with Sask Water to keep the agreements confidential (subject, of course, to our clients' right to exercise their rights under the agreements.)"

The Corporation has confirmed that there was a verbal agreement between the Corporation and the [REDACTED] regarding confidentiality.

Having examined the documents, I have concluded:

1. That the Settlement Agreement, including Schedule "A" does not include any personal information within the meaning of s. 24(1) of the Act, or any information within the purview of s. 19(1)(b) of the Act except the amount of money agreed to be paid which appears in paragraph 2.01 of the Settlement Agreement. Subject to the deletion of this amount in accordance with s. 8 of the Act, I can see no valid reason why this document should not be disclosed to the applicant.

2. Schedule "B" contains particulars of the financial arrangements made or to be made between the parties, and accordingly I have concluded that Schedule "B" should not be disclosed since the information would qualify as personal information under s. 24(1)(j) of the Act and would also come within the purview of s. 19(1)(b) as confidential financial information.

With the foregoing limitations, disclosure of the Settlement Agreement would not interfere with the contractual or other negotiations with the third party, Poplar Developments Ltd. and would not therefore be exempt under s. 19(1)(c) of the Act.

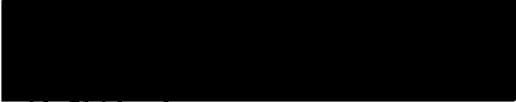
With respect to the Panel Agreement, I can find no basis for claiming an exemption, whether under s. 19(1)(b) or (c) or under s. 24(1) or under any other section of the Act.

The Corporation must disclose any records in its possession as required by the Act unless it comes within one or more of the specific exemptions in the Act. It is not therefore open to the Corporation to enter into an agreement with a third party to withhold such information on the basis that it will be treated as confidential, or on any other basis, unless it is authorized or permitted by the Act.

The documents in question relate to the settlement of a lawsuit between the Corporation and the third parties regarding the expropriation of land by the Corporation. This dispute has been before the courts for some time and is a matter of public knowledge. As I have indicated, any financial information is readily severable. The agreements do not, in my view, contain information which would come within the other kinds of information specified in Section 19(1)(b). In my view, commercial information within the meaning of this Section must refer to information that has some commercial significance. The resolution of this dispute over the expropriation of land (apart from the financial considerations) does not appear to me to be commercial information.

I therefore recommend that the Corporation disclose to the applicant the Settlement Agreement except the monetary amount stipulated in paragraph 2.01 thereof and except Schedule "B" thereof, and further that the Corporation disclose to the applicant the Panel Agreement.

Dated at Regina, Saskatchewan this 9th day of August, 1993.



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