

FILE NO. - 93/012

REPORT WITH RESPECT TO AN APPLICATION FOR REVIEW  
BY AN APPLICANT WITH RESPECT TO INFORMATION  
REQUESTED FROM SASKATCHEWAN GAMING COMMISSION REGARDING

[REDACTED] [REDACTED] [REDACTED] [REDACTED] (" [REDACTED] ") is a private corporation the sole purpose of which, apparently, is to raise funds which are donated to the University of Saskatchewan to support the [REDACTED] Society Inc., and as such it is licenced by the Saskatchewan Gaming Commission (the "Commission") to conduct bingo games and lotteries as a recognized charitable organization.

The Applicant made a request for access to information under *The Freedom of Information and Protection of Privacy Act* (the "Act") to the Commission for "records and correspondence and applications of any licenced fund raising events, including final reports (profits, losses, disbursement of funds); also all financial reports, statements concerning staff salaries and benefits" with respect to "[REDACTED] Society Inc."

The Commission sought clarification of this request from the Applicant, and by letter from the Applicant were advised:

"I will confirm in writing that I seek any communications between you and [REDACTED]. To be perfectly blunt, all I want is as much information as possible on how much money was lost in a recent raffle and any concerns the Gaming Commission might have about how things were done."

The Commission determined that pursuant to this request it would release certain records and advised the Applicant of its intention to do so, subject however to the rights of the third party, [REDACTED]

In accordance with Section 34(1) of the Act, the Commission then gave notice to [REDACTED] in writing of its intention to give access to those records, as a result of which [REDACTED] indicated that they had no objection to the release of certain of the records but that it objected to release of the remainder of the records which I shall not identify in view of the provisions of Section 46 of the Act.

In considering this matter, regard must be had to Section 61 of the Act which provides:

"In any proceeding pursuant to this Act, the burden of establishing that access to the record applied for may or must be refused or granted is on the head concerned."

It is of significance that the burden is placed on the head even in cases where access is to be granted, although in such a case

the applicant is satisfied, and if no third parties are involved that is the end of the matter. If a third party is involved and raises an objection (as has happened here), the section appears to place the burden of justifying disclosure on the head, although surely the burden of establishing that there are facts and circumstances that militate against disclosure, and of invoking an appropriate exception under the Act should be on the third party. This appears to be the situation under comparable legislation in other jurisdictions.

In this case, [REDACTED], the third party, made its objections known to the Commission, and to me in the course of this review, including relevant facts and circumstances which it argues require the Commission to keep some of the information in question confidential.

The objections to disclosure of the third party are based on Section 19(1)(b) and 19(1)(c) of the Act which provides:

"19(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:

(b) financial, commercial, scientific, technical or labour relations information that is supplied in confidence implicitly or explicitly, to a government institution by a third party;

(c) information, the disclosure of which could reasonably be expected to:

(i) result in financial loss or gain to;

(ii) prejudice the competitive position of; or

(iii) interfere with the contractual or other negotiations of;

a third party;"

The records which the Commission has indicated it intends to disclose, while encompassed in the original request made by the Applicant, go beyond the request as limited by the subsequent letter, and in my view the Commission ought not to disclose information which, in effect, it has not been asked for, unless the Commission would disclose such information otherwise than pursuant to the provisions of the Act.

With respect to those records which come within the limits of, and which would be responsive to the amended request made by the Applicant it appears to me that those records come within the prohibition contained in Section 19(1)(c), that is to say, that the release of such information may reasonably be expected to result in financial loss to [REDACTED] or prejudice its competitive position. The mandatory provisions of Section 19(1)(c), in my view, impose a duty on the Commission to treat information which comes within the ambit of the section as confidential.

It is unnecessary, having reached the above conclusion, to consider whether the information in question was obtained by the Commission from [REDACTED] under circumstances which would imply confidentiality under Section 19(1)(b).

Accordingly, it is my recommendation that the Commission ought not disclose the information requested by the Applicant except those records to which the third party has indicated it has no objection to disclosure and which may be responsive to the Applicant's request.

Dated at Regina, Saskatchewan this                      day of December,  
1993.

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