

FILE NO. - 93/021

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

The Applicant requested a review of the refusal by Saskatchewan Crop Insurance Corporation to provide him with access to personal information about himself with respect to his crop production and practices.

By letter dated August 17, 1993, the Chief Executive Officer of the Corporation advised the Applicant that:

"In response to your request of August 3, 1993 regarding what information was divulged to the Corporation with respect to crop production and practices.

We have consulted with our legal department and have been advised that the information will not be released under the Freedom of Information and Protection of Privacy Act under Section 15 subsection 1A and C."

Having received a Request for Review from the Applicant, I requested the Corporation to provide me with copies of the records for which they were claiming an exemption and as a result received copies of certain documents from them.

In a letter dated October 21, 1993 to the Corporation, I pointed out that under Section 61 of *The Freedom of Information and Protection of Privacy Act* (the "Act"), the burden of establishing that access to a record may be refused is, in the case of a prescribed Crown corporation, on the Chief Executive Officer of the corporation, and I invited them to make appropriate submissions to support their position.

Subsequently, it appeared to me that I had not been provided with all of the documents pertinent to this matter from the Corporation, and as a result of a further request, I received some additional documents.

Some background information is necessary. The Applicant is a farmer, who at all times material hereto was a party to a contract of crop insurance with the Corporation. The contract of insurance between the Corporation and the Applicant is in the form prescribed by regulations pursuant to *The Crop Insurance Act* and I am informed that the Corporation has in excess of 50,000 such contracts of insurance with other farmers in the Province at any given time.

It appears that on or about June 3, 1991, an informant advised [REDACTED], an officer of the Corporation, that the Applicant was concealing or falsifying his crop returns in order to claim insurance. She made a memorandum of these allegations which are in the Corporation's file.

A further memorandum dated September 10, 1992, reveals that the same informant came to the Corporation's office on that date and essentially repeated the previous allegations.

It also appears that the informant made a report or complaint to the RCMP at Yorkton, Saskatchewan but that no action was taken by them.

No action appears to have been taken until July 20, 1993, on which date a memo from [REDACTED] to one [REDACTED], a field auditor employed by the Corporation states:

"Please review the enclosed information. [REDACTED] and myself has (sic) interviewed (the informant)..."

and suggested that he should "look into" the Applicant's farming operation.

It then appears, from a memorandum dated August 3, 1993, signed by "[REDACTED]" that the Applicant:

"Made a Head Office visit at 8:20 a.m. He had stated that he received a telephone call from our adjusters saying that there has been a written complaint and that they would like to set up an appointment this afternoon to do an audit."

The Applicant enquired about the nature of the complaint, and according to the memo was told:

"That if the Corporation received a written complaint, or a telephone call from a concerned citizen reporting the customer's farming practices, it must be investigated."

The Corporation refused to disclose the nature of the so-called complaint, and at this point the Applicant made his request for information pursuant to the Act, and, as stated earlier, his request was refused. According to the Applicant, two employees of the Corporation came to his farm on August 3, 1993 to measure his bins and to examine his permit book. They apparently found no evidence of wrong doing.

As indicated earlier, the Corporation, in refusing to provide access to their records, relied on Section 15(1)(a) and 15(1)(c). They now also rely on 15(1)(f). These provisions of the Act are as follows:

"15(1) A head may refuse to give access to a record, the release of which could:

- (a) prejudice, interfere with or adversely affect the detection, investigation, prevention or prosecution of an offence, or the security of a centre of lawful detention;
- (c) interfere with a lawful investigation or disclose information with respect to a lawful investigation;

- (f) disclose the identity of a confidential source of information or disclose information furnished by that source with respect to a lawful investigation or a law enforcement matter."

In its initial submission to me, the Corporation suggested that since the allegations made by the informant amounted to allegations of criminal conduct, that therefore they would come within Section 15(1)(a) which deals with the investigation of "an offence". However, it is apparent that any investigation has been concluded and consequently could not be interfered with at this stage. The same observation appears to me to apply to Section 15(1)(c).

Furthermore, if the Corporation was, in fact, investigating an offence, a serious problem would arise with respect to compliance with Section 8 of *The Charter of Rights and Freedoms*, since if an offence was being investigated, the actions of the employees of the Corporation in entering upon the premises of the Applicant would amount to a search within the meaning of Section 8 of *The Charter*.

Faced with this dilemma, the Corporation took the position that this was an administrative investigation which they were entitled to pursue under the contract of insurance which provides inter alia:

- "15(2) The Corporation may, at any time, require the insured to produce the records mentioned in Section 1, and any persons designated by the Corporation shall have access to those records mentioned in subsection 1, and any persons designated by the Corporation shall

have access to those records and to the insured's farm at any reasonable time for the purpose of determining any matters arising out of this contract."

I was also referred to Section 12 of the "Revenue Insurance Contract" which states:

"The farmer shall keep and maintain all records pertaining to the farmer's farming operation that the Corporation may from time to time request. The farmer shall make available to the Corporation, or any person designated by the Corporation, such farm records at all reasonable times upon request by the Corporation. The farmer shall file with the Corporation personal information of the farmer and information relating to the farm operations of the farmer in the form and at the times requested by the Corporation for the purpose of administering the plan. The Corporation and the agents of the Corporation shall have the right to inspect all lands and facilities pertaining to the farm operations of the farmer at all reasonable times."

Treated as an administrative investigation, it would appear that the Corporation was within its rights in conducting the investigation that it did, but is such an investigation a "lawful investigation" or a "law enforcement matter" within the meaning of Section 15(1)(f)?

It was suggested to me by the Corporation that "lawful investigation" should mean any investigation that is not contrary to or prohibited by law. However, if this were so, it would encompass any and every investigation of any matter whatsoever not prohibited by some specific law. I am unable to conclude that such a broad interpretation is intended or warranted. In my view, the expression "lawful investigation" means an investigation that is authorized or required and permitted by law.

So also, the expression "law enforcement" must, in my view, be considered to pertain to enforcement of laws of general or particular application by appropriate law enforcement agencies, and not to the determination of private issues or rights between parties to a contract as appears to be the case here.

I find support for this view in the provisions of Section 29(2) which permits disclosure of information to:

"29(1)(g) to a prescribed law enforcement agency or a prescribed investigative body."

Regulations made pursuant to the Act provide that the prescribed law enforcement agencies or investigative bodies are the RCMP, CSIS, local police forces and the Department of Parks and Renewable Resources and the Department of Highways, the two latter presumably because they employ officers to enforce provisions of, for example, *The Highway Traffic Act* and *The Wildlife Act*.

Finally, I am not satisfied that the information in question was obtained from a "confidential source" within the meaning of Section 15(1)(f). The information in question was unsolicited and it is recorded that the informant stated that he was prepared to testify in court about these matters. It has not been suggested to me that

the Corporation gave the informant any assurance or undertaking of confidentiality, or that any such assurance was requested. I am therefore unable to conclude that the informant was a confidential source.

The records in question are "personal information" about the Applicant. He is entitled to access under Section 31(1) of the Act which provides:

"31(1) Subject to Part III and subsection (2), an individual whose personal information is contained in a record in the possession or under the control of a government institution has a right to, and:

- (a) on an application made in accordance with Part II; and
- (b) on giving sufficient proof of his or her identity;

shall be given access to the record."

He would then be entitled to the benefit of Section 32(1) and (2):

"32(1) An individual who is given access to a record that contains personal information with respect to himself or herself is entitled:

- (a) to request correction of the personal information contained in the record if the person believes that there is an error or omission in it; or
- (b) to require that a notation be made that a correction was requested but not made.

(2) Within 30 days after a request pursuant to clause (1)(a) is received, the head shall advise the individual in writing that:

- (a) the correction has been made; or
- (b) a notation pursuant to clause (1)(b) has been made.

I therefore conclude that the records in question are not exempt as claimed by the Corporation and it is my recommendation that the records be disclosed to the Applicant.

Dated at Regina, Saskatchewan this day of February, 1994.

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