

FILE NO. - 93/024

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

The Applicant sought access to a report made to the Minister of Health by [REDACTED] [REDACTED] as a member of a committee known as the Labour Relations Review Committee. This Committee was established by the Minister of Health to consider, review and report on the impact on labour relations of proposed changes in the health delivery system in Saskatchewan. There were two other members of this Committee who made a joint report. Their report was released to the public.

As a result of her request, the applicant was permitted to read a copy of the [REDACTED] Report, which runs to some 40 odd pages, but was denied a copy of it; hence this request for a review.

The Department claims that this report comes within the discretionary exemption provided for in the Act as follows:

"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;"

I have no doubt that the report comes within the said Section. The Committee was established for the express purpose of providing information and advice to the Minister of Health. The report comes squarely within the exception.

The unusual feature in this review is that in her discretion, the head has in fact disclosed the record (but has not provided copies) to the Applicant and to a number of other interested parties, including a reporter from the Saskatoon Star Phoenix. The question is therefore whether the head having disclosed the report, albeit in a limited fashion, can refuse to provide a copy to the Applicant.

Dealing firstly with the question of whether, in exercising her discretion to disclose the record, the discretion extends to making a limited disclosure as was done here. I am of the view that it does not. In my view, the discretion envisaged by Section 17 relates to disclosure or non-disclosure subject only to questions of severance under Section 8. That is, the head may decide that the record must be treated as a confidential record and therefore not to be disclosed, or may, in her discretion, decide that confidentiality is not necessary or desirable and that the record will be disclosed. It seems to me that once disclosure has occurred the head has exercised the

discretion, and accordingly such decision be regarded as final, and that the right to claim confidentiality has been lost once the record has been made public by disclosure or publication to one or more third parties.

The purpose and intent of the Act is that government records are to be disclosed on request to any member of the public subject only to the specific exceptions specified in the Act. The discretionary exemptions are not designed to discriminate between one member of the public and another, or as to the manner or method of disclosure, but to enable the head, in appropriate circumstances, to maintain confidentiality if it appears necessary or advisable to do so. Once she has decided that disclosure is appropriate, the exemption is gone and public access becomes an entitlement under the Act.

One must then have regard to the provisions in the Act dealing with the manner of disclosure, which provide in part:

"10(1) Where an applicant is entitled to access pursuant to subsection 9(1), the head shall provide the applicant with access to the record in accordance with this section.

(2) A head may give access to a record:

- (a) by providing the applicant with a copy of the record; or
- (b) where it is not reasonable to reproduce the record, by giving the applicant an opportunity to examine the record."

With respect to the provisions of Section 10, it appears to me that once entitlement to access has been established, the head has an unconditional duty to provide access, which would include providing the Applicant with a copy of the record unless "it is not reasonable to reproduce the record."

There is no suggestion in this case that it would be unreasonable to reproduce the record, and accordingly I have concluded that the Applicant should be provided with a copy of the report and I recommend that the head should do so.

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

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