

FILE NO. - 93/029

**REPORT WITH RESPECT TO THE APPLICATION  
FOR REVIEW OF ACCESS & PRIVACY CONCEPTS WITH RESPECT TO  
INFORMATION REQUESTED FROM SASKATCHEWAN HEALTH**

This Review arises from a refusal to provide information requested by [REDACTED] of Toronto, who is a member of [REDACTED] a firm carrying on business in Toronto. The Applicant requested:

"List of consultants used to review drug product submissions for inclusion on drug formulary (provincial funding for drugs for seniors & those on social assistance). Including names, address telephone & fax numbers."

By letter dated December 6, 1993, the Applicant was advised by the Department that:

"The Saskatchewan Formulary is compiled for the Minister of Health by the Saskatchewan Formulary Committee supported by the Drug Quality Assessment Committee. Names of committee members and the policy of adding products to the Formulary are published in the latest edition of the Formulary (37th Edition - July 1993). A copy of this information is attached.

Addresses, telephone and fax numbers of committee members are personal information and cannot be released because information of this nature is exempt from access according to Section 29 of *The Freedom of Information and Protection of Privacy Act*."

The information referred to consisted of a list of the members of the Saskatchewan Formulary Committee and the Saskatchewan Drug Quality Assessment Committee together with some further information about the individuals in question, as follows.

**SASKATCHEWAN  
FORMULARY  
COMMITTEE**

**Dr. B. R. Schnell,**  
Chairperson

**Ms. Joanne Allen,**  
Saskatchewan Registered Nurses  
Association

**Dr. R. G. Black,**  
Member at Large

**Mr. Clare Castonguay,**  
Saskatchewan Pharmaceutical  
Association

**Dr. Murray Davies,**  
Saskatchewan Medical Association

**Mr. George Peters,**  
Saskatchewan Health

**Dr. G. B. Pylypchuk,**  
College of Physicians  
and Surgeons

**Dr. Y. Shevchuk,**  
College of Pharmacy  
University of Saskatchewan

**Dr. Linda Strand,**  
Saskatchewan Health

**Dr. John Tucek,**  
College of Medicine

**Mr. Murray Wolfe,**  
Saskatchewan Health Care Association

**STAFF ASSISTANCE**

**Mr. J. W. (Bill) Campbell,**  
Drug Cost Control Unit,  
Prescription Drug Services Branch

**Dr. L. Davies,**  
Pharmacologist,  
Prescription Drug Services Branch

**Mr. Trevor J. Quinn,**  
Director, Professional Services Division,  
Prescription Drug Services Branch

**Mrs. Barbara J. Shea,**  
Executive Director,  
Prescription Drug Services Branch

**Mr. Kevin B. Wilson,** Secretary,  
Supervisor of Formulary and  
Education Unit  
Prescription and Drug Services Branch

**SASKATCHEWAN DRUG  
QUALITY ASSESSMENT  
COMMITTEE**

**Dr. John Tucek,** Chairperson

**Dr. B. R. Schnell,** Ex-officio

**Dr. D. K. J. Gorecki,**  
College of Pharmacy

**Dr. Ian Holmes,**  
College of Medicine

**Dr. Y. Shevchuk,**  
College of Pharmacy

**Dr. A. E. Somerville,**  
Internal Medicine

**Dr. Thomas W. Wilson,**  
Departments of Medicine and  
Pharmacology,  
College of Medicine

**Dr. Donald Zuck**  
College of Pharmacy

This response did not satisfy the Applicant, hence this Request for Review.

In the submission to me, the Applicant, by letter dated December 15, 1993 stated in part:

"The Ministry of Health has provided information which is already in the public domain by providing a photocopy of the relevant sections of the Prescription Drug Services Formulary (37th Edition). They have refused to disclose the address, telephone and fax number for each of these individuals pursuant to section 29 of the Freedom of Information and Protection of Privacy Act.

In a conversation with the Access Officer for the Ministry, Mr. Lynn McCaslin, it was made clear that access was **not** being sought to the **home** address, telephone and fax number, but rather, we were seeking access to the relevant "business" address for these individuals. For example, each individual is a physician and would therefore have a practice location. Some of these individuals sit on the Saskatchewan Drug Quality Assessment Committee representing regulatory bodies of the health professions, such as the Colleges of Pharmacy and the College of Medicine. In these cases, addresses for these bodies would have been sufficient in response to the request.

Mr. McCaslin indicated that the Ministry had given consideration to these possibilities, however, it was decided that this information would also be considered "personal information".

In refusing to provide further information, the Department relied on section 29 of *The Freedom of Information and Protection of Privacy Act* (the Act) which provides, subject to the exceptions enumerated in subsection 29(2), that personal information in the control of a government department must not be disclosed, and on the definition of "personal information" in Section 24(1)(e) which provides:

"24(1). Subject to subsection (2), "personal information" means personal information about an identifiable individual that is recorded in any form, and includes:

- (e) the home or business address, home or business telephone number, fingerprints or blood type of the individual;

It is not disputed that the various individuals did provide the Department with addresses and telephone numbers and that the Department has a record of these addresses and telephone numbers. The question in issue here is whether these addresses and telephone numbers should be characterized as personal information within the meaning of the Act. It is a fair assumption that they may coincidentally be the home or business address or telephone number of some of the individuals concerned, but in the circumstances this information is provided to the Department and is recorded by them not with respect to the personal affairs of the individuals concerned, nor indeed with respect to the business or profession in which they are engaged. This information is recorded in connection with a government program administered by the Department in which the public has an interest.

The application and interpretation of clauses in statutes similar to Section 24(1) was commented on by Rinfret, J. of the Supreme Court of Canada in *Ricard v. Lord* 1941, 1 D.L.R. 536 at p. 543 quoting an earlier English decision dealing with an interpretation section which gave a word an extended meaning by inclusions:

"An interpretation clause of this kind is not meant to prevent the word receiving its ordinary, popular, and natural sense whenever that would be properly applicable; but to enable the word as used in the Act, when there is nothing in the context or the subject-matter to the contrary, to be applied to some things to which it would not ordinarily be applicable."

Similarly, in *Re: Stralendorff Estate* 1943, 1 W.W.R. 729, MacFarlane, J. (BCSC)

quoting another earlier English decision:

"But we apprehend that an interpretation clause is not to receive so rigid a construction; that it is not to be taken as substituting one set of words for another, nor as strictly defining what the meaning of the word shall be under all circumstances. We rather think that it merely declares what persons may be comprehended within that term, where circumstances require that they should."

The Saskatchewan Court of Appeal in a recent and as yet unreported decision, in *General Motors Acceptance Corporation of Canada Limited and Saskatchewan Government*

*Insurance* has observed that:

"One must take a practical approach when confronted with an issue of interpretation of this Act. It has endeavoured to provide a workable balance between the interests of public access and protection of legitimate personal privacy interests. One should look at the reasons for exemption from the disclosure requirements in determining whether the agency head has properly invoked a particular exemption."

If a record comes within a mandatory exception there is an absolute duty of confidentiality on the Department. If it is a discretionary exception the "Head" of the Department may decide whether it should be treated as confidential or not. In either

case, it must come squarely within the exception. If "personal information" is claimed as an exemption it should not be just any information about an individual, it must be **personal** in the sense that it is private and that it is or should be treated as confidential so that disclosure would amount to an invasion of privacy or a breach of confidence. This general principle should apply as well to information specifically enumerated in Section 24(1)(a) to (k) as to any other information about an individual.

The Act, in my view, should not be taken to say that the names, addresses and telephone numbers of individuals in government records must never be disclosed. Rather, it requires that such information must not be disclosed if the protection of privacy of an individual so requires. Individuals engaged in discharging public functions obviously do not have the same expectation of privacy when so doing as when they are going about their personal or private affairs.

Accordingly, while the addresses and telephone numbers in question may coincidentally be either a home or business address or telephone number of at least some of the individuals in question, they are, in the context and circumstances with which I am dealing, the address and telephone numbers of persons holding public offices, and as such should not be characterized as "personal information".

I have not overlooked Section 29(3) which provides:

"(3) A government institution that is a telephone utility may disclose names, addresses and telephone numbers in accordance with customary practices."

It would appear to me that this clause was inserted **ex abundans cautela** and should not be considered as supporting the notion that only SaskTel can disclose addresses and telephone numbers of individuals contained in government records.

Finally, the prohibition against disclosure in Section 29(1) is subject to the exception contained in Section 29(2)(a) which provides:


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

- (a) for the purpose for which the information was obtained or compiled by the government institution or for a use that is consistent with that purpose;"

It seems to me that this information might very well have been included in the Formulary as published, and that such disclosure of would be consistent with the purpose for which it is held.

Consequently, it is my recommendation that the Department should disclose its record of the addresses and telephone numbers of the individuals in question to the Applicant.

Dated at Regina, Saskatchewan this 11<sup>th</sup> day of February, 1994.

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