

REPORT WITH RESPECT TO THE APPLICATION FOR REVIEW  
OF ██████████ IN RELATION TO INFORMATION  
REQUESTED FROM SASKENERGY

This is an on-going dispute between ██████████, presently of Regina, Saskatchewan, and ██████████, SaskEnergy. An Access To Information Request Form was completed by ██████████ in early 1995 and there has been no final resolution of this matter during the ensuing years.

My review of the file does not indicate that a formal Request For Review was filed with the Office of the Commissioner by ██████████, as required by the Act. However, in view of the extensive communications that were entered into between the previous Commissioner, SaskEnergy and ██████████, I will deal with this matter as if a formal Request for Review was duly filed by ██████████.

The initial Access to Information Request Form asked that SaskEnergy produce to ██████████ "ALL DOCUMENTATION RELATING TO THE INVESTIGATIONS AND RECOMMENDATIONS MADE BY THE COMPANY (SASKENERGY); ANY OUTSIDE AGENCIES BROUGHT IN BY THE COMPANY, NAMELY RICK LEBELL (LEBELL & ASSOCIATES), HUMAN RESOURCES SERVICES (HRS), ██████████; THE CEP UNION; AND THE EMPLOYMENT EQUITY COMMITTEE."

Over a period of time the requested contents of file were supplied by SaskEnergy to ██████████ with the exception of a memorandum dated September 6, 1994 prepared by ██████████, who at time was ██████████ of SaskEnergy. The corporation took the position that ██████████ "should be refused access to this record pursuant to Section 17 of the *Freedom of Information and Protection of Privacy Act* as it constitutes advice from officials as contemplated under subsections 17.1(a) and (d) of the Act." A copy of the memorandum was made available to the previous Commissioner by SaskEnergy under letter dated August 27, 1999. I, of course, have had the opportunity of inspecting the document and considering the applicability of the exemption sections of the Act relied on by SaskEnergy.

In the course of the Review, I have met with ██████████ and discussed with him his concerns respecting the production to him of file contents by SaskEnergy and his employment relationships. I, of course, as Information and Privacy Commissioner, can deal only with the production of documents in the possession of SaskEnergy.

Sections 17(1)(a) and (d) of the *Freedom of Information and Protection of Privacy Act* (the Act) read 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;
  - (d) plans that relate to the management of personnel or the administration of a government institution and that have not yet been implemented;

The document in question has the word "draft" clearly stamped in large letters on the upper right hand corner of its single page. Several hand-written notes appear on the document. One hand-written note indicates that the document was prepared by an individual other than [REDACTED], although the name [REDACTED] appears on the memo. A further hand-written note appearing on the memo appears to be a direction to refer the memorandum to two individuals for approval before the memorandum is sent out.

The document appears to be a draft proposal or conclusion prepared by an officer or an employee of SaskEnergy, and as such would be exempted from production pursuant to the provisions of Sections 17(1)(b) of the Act which provides for exemption for:

- 17(1) (b) consultations or deliberations involving:
- (i) officers or employees of a government institution;
  - (ii) a member of the Executive Council; or
  - (iii) the staff of a member of the Executive Council;

The memorandum would appear as well to fall within the exemption of Section 17(1)(a) as it constituted either advice, proposal or a recommendation developed for a government institution as contemplated by Section 17(1)(a) or a plan that relates to the management of personnel which has not yet been implemented as contemplated Section 17(1)(b).

In the circumstances, I have concluded that SaskEnergy is not obliged to produce the document in question pursuant to the terms of the Act.

Dated at Regina, in the Province of Saskatchewan, this \_\_\_ day of June, 2000.

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GERALD L. GERRAND, Q.C.  
Information and Privacy Commissioner  
for Saskatchewan