



FILE NO. - 95/019

**REPORT WITH RESPECT TO THE APPLICATION FOR REVIEW OF
[REDACTED] WITH RESPECT TO INFORMATION REQUESTED FROM
SASKATCHEWAN ENVIRONMENT AND RESOURCE MANAGEMENT**

[REDACTED] applied to the Department for access under *The Freedom of Information and Protection of Privacy Act* (the Act) to certain records including an agreement between the Department, or the Government of Saskatchewan, and Consumer's Co-operative Refinery, which he described as:

"An agreement - drafted but perhaps not yet finalized - between Environment and the refinery regarding environmental affairs and operations at the refinery/upgrader. I believe it was dealt with this past spring. Include all redrafts, addendums and related correspondence."

By letter dated July 26, 1995, the applicant was informed by the Department that:

"The agreement you have requested cannot be released as it has not been signed. Section 18(1)(d) of *The Freedom of Information and Protection of Privacy Act* states, in part, "A head may refuse to give access to a record that could reasonably be expected to disclose: information, the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of the Government of Saskatchewan or a government institution"

The record in question will be made available to the public once the agreement has been signed by both parties."

The applicant then made a request for a review in the following terms:

"I requested a copy of an agreement between E & RM and Consumers Co-operative Refinery Partnership, plus all addendums, redrafts and related correspondence. I was turned down under 18(1)(d) of the FOI act, because the contract isn't final. I disagree that release of any relevant documents would interfere with negotiations. This is not a financial negotiation - the government's interests are not financial and disclosure is therefore not a risk to public interest. Given the subject matter, disclosure is, in fact, beneficial."

It is convenient to note at this point that the agreement in question was subsequently duly completed and executed by the parties and has been made public. It is, therefore, no longer an issue in this review.

However, there remains the matter of the other records which were included in the request made by the applicant to the Department, namely drafts, memoranda and correspondence relating to the negotiations leading to the final agreement between the parties.

It does not appear to me since negotiations have now been concluded that the exception contained in Section 18(1)(d) supports a refusal to disclose these documents.

They consist of inter-office memoranda, position papers, opinions and various preliminary drafts of the proposed agreement or parts of it, as well as correspondence between the Department and Co-op Refineries as they proceeded to reach agreement on various issues. Some of these records may be exempt if they come within the discretionary exemption contained in Section 17(1)(c) of the Act which oddly enough is also included as Section 18(1)(e) of the Act, and which provides:

"Subject to subsection 2, a head may refuse to give access to a record that could reasonably be expected to disclose: . . .

- (c) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations, by or on behalf of the Government of Saskatchewan, or a government institution, or considerations that relate to those negotiations."

At the time that the Department dealt with this request, it was treated as a request for the contract, and no mention was made of these additional records. The Department correctly pointed out that no contract had been completed and that it was still in a draft stage, and, accordingly, it was appropriate for the Department to rely on Section 18(1)(d), the parties being still in negotiation.

The Department did not deal specifically with the included request for "all redrafts, addendums and related correspondence."

Since the exception above mentioned is a discretionary one and has not been dealt with by the Department, my recommendation is that this matter should be reviewed by the Department in order that the head may determine whether or not the Department is prepared to release any or all of these additional documents, and to provide the applicant with written advice of its decision within 30 days.

Dated at Regina, Saskatchewan this day of October, 1996.

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