

FILE NO. - 95/024

**REPORT WITH RESPECT TO THE APPLICATION
FOR REVIEW OF IPSCO INC. AS THIRD PARTY WITH RESPECT TO
RELEASE OF INFORMATION REQUESTED FROM
SASKATCHEWAN ENVIRONMENT AND RESOURCE MANAGEMENT**

██████████ applied under *The Freedom of Information and Protection of Privacy Act* to Saskatchewan Environment and Resource Management for:

"Reports on emissions from Ipsco Plant in Regina for years 1993/94/95. including reports filed by Ipsco as required by legislation."

The Department responded by advising the Applicant that the information requested would affect the interests of Ipsco Inc, a third party, and that the appropriate notice was being given to such third party pursuant to Section 34 of the Act.

Finally, by letter dated November 1, 1995, the Applicant was advised by the Department that:

"This is to inform you that the review of the third party concerns is complete and access to the requested record will be allowed.

Pursuant to Section 49 of *The Freedom of Information and Protection of Privacy Act* the third party is allowed 20 days to request a review of this decision before access can be granted.

Subsequently, within the time permitted by the Act, the third party, Ipsco Inc., requested a review in accordance with the Act.

For the purpose of investigating this matter I asked for and obtained from the Department the records in question which consist of reports prepared for Ipsco Inc. by Saskatchewan Research Council for each of the years 1993, 1994 and 1995 containing their "Sampling and

Analysis for Particulates, Carbon Monoxide, Carbon Dioxide, Metals." Each report is some 80 pages in length and contains a mass of technical data which generally may be said to be completely unintelligible to anyone except an expert in this field.

I also requested from Ipsco a written submission with respect to its objection to the disclosure of these records, and this was duly provided to me. The main objection from Ipsco was that if the reports in question were disclosed engineers competent in the field could, by examining the data, discover a great deal of confidential information about the methods and techniques used by Ipsco in the manufacture of steel, and thereby acquire the ability to create similar products with the same or greater efficiency and at similar or lower costs than Ipsco.

The submission by Ipsco was therefore that this information should not be disclosed having regard to Sections 19(1)(a), (b) and (c) which provide:

"19(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:

- (a) trade secrets of a third party;
- (b) financial, commercial, scientific, technical or labour relations information that is supplied in confidence, implicitly or explicitly, to a government institution by a third party;
- (c) information, the disclosure of which could reasonably be expected to:
 - (i) result in financial loss or gain to;
 - (ii) prejudice the competitive position of; or
 - (iii) interfere with the contractual or other negotiations of;a third party;"

Having received the submission of Ipsco, I forwarded a copy to the Department and asked them to provide me with their comments and assessment of Ipsco's position.

With respect to Ipsco's submission that disclosure of the reports was prohibited by Section 19(1)(a), (b) and (c), the Department commented that:

"The Company has referenced several pieces of information contained in the reports as well as an explanation of their confidential nature. We do not disagree that the information is contained in the reports. However, as stated above, an assessment of Ipsco's competitive environment is beyond the mandate and experience of the Industrial Branch. Therefore we cannot comment on the validity of the Company's arguments."

As I have pointed out in previous reports, the provisions of Section 19(1) are mandatory, and in the result create a duty upon the head of a department not to disclose any information that comes within the ambit of this section. In addition, with respect to Section 19(1)(c), if the information would result in financial loss or gain, prejudice the competitive position of, or interfere with contractual or other negotiations of a third party, disclosure is prohibited whether the information was supplied on a confidential basis to the Department or not. That being so, it is my view that the Head of the Department had a duty to determine this issue before reaching a decision to disclose the information.

It does not appear to me that the Head has, in fact, made such a determination, although this issue was presented to the Department by Ipsco prior to the decision to make disclosure having been made.

In their above mentioned submission to me commenting on Ipsco's position, the Department submitted:

"We believe that a distinction should be made as to the type of information in the reports. In general the reports contain emission results and the supporting technical information used to measure/derive the emission results. As a matter of policy we are of the opinion that the public has the right to access information, required by the Department, on industrial emissions and the effect these emissions may have on the environment. The policy does not typically extend to technical supporting information.

The company is cautious to refer only to the "reports". As such we cannot disagree with their comments as they relate to the technical portion of the reports. These arguments are not acceptable related to the release of emission data alone.

The FOI request clearly asked for the emission data and the reports which contained it. Our original decision to release the reports was based on the belief that adherence to the policy of access to emission data is paramount."

Section 19(3)(a) of the Act does provide that:

"(3) Subject to Part V, a head may give access to a record that contains information described in subsection (1) if:

- (a) disclosure of that information could reasonably be expected to be in the public interest as it relates to public health, public safety or protection of the environment...

This does not mean that the public interest is necessarily paramount, it simply means that disclosure may be permitted if there are legitimate reasons to conclude that public health, public safety or environmental concerns would justify disclosure.

It does not appear to me that the Head of the Department has properly considered or determined whether Ipsco's position should be protected by virtue of the mandatory provisions of Section 19(1)(a), (b) and (c), nor does it appear that the Head has, in fact, considered whether there are legitimate concerns with respect to public health, public safety or environmental matters which justify overriding the protection afforded by Section 19(1).

Under these circumstances it appears to me appropriate, and it is my recommendation that this matter be reconsidered by the Head, and a determination made as to whether there will, in fact, be harm or damage to Ipsco by disclosure of all or part of these reports, and if so whether there are, in fact, any overriding concerns with respect to public health, public safety or protection of the environment which would justify disclosure, and that in the meantime these records should not be disclosed.

Dated at Regina, Saskatchewan this day of January, 1997.

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