

FILE NO. - 96/002

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

[REDACTED] applied under *The Freedom of Information and Protection of Privacy Act* (the "Act") to SaskTel for a "copy of all contracts currently in effect between Fred Van Parys and SaskTel/"

By letter dated February 28, 1996 from John Meldrum, Vice-President and Corporate Counsel of Regulatory Affairs for SaskTel [REDACTED] was advised in part:

"I have reviewed your request and access is refused pursuant to Section 19(1)(c) of the Act due to the fact I am of the view that the contract contains information, the disclosure of which could reasonably be expected to result in financial loss to, or prejudice the competitive position of Mr. Van Parys.

I am also of the view that the request would involve the disclosure of financial information that the parties explicitly agreed would be kept in confidence (Section 19(1)(b) of the Act prohibits such disclosure). In the absence of Mr. Van Parys consenting to the release of the agreement in question, I am not prepared to do so. I will be contacting Mr. Van Parys to confirm that he continues to want the agreement to remain confidential."

[REDACTED] applied for a review, and for such purpose I obtained from SaskTel a copy of a document entitled Consulting Services Agreement between it and Frederick

Charles Van Parys dated January 24, 1996 which was entered into between the parties in contemplation of the resignation of Mr. Van Parys as President and CEO of SaskTel effective March 1, 1996. It sets out the terms and conditions under which Mr. Van Parys will be retained by SaskTel to provide consulting services effective from March 1, 1996 including provision for payment of a monthly fee during the term of the Contract.

Following the request for this review by [REDACTED], SaskTel gave notice of the review to Mr. Van Parys pursuant to Section 52 of the Act.

The Agreement contains a Non-disclosure Clause in the following terms:

"SaskTel and the Consultant (Van Parys) agree that neither party shall divulge the terms of this Contract except with the permission of the other or except as may be requested or required by any governmental authority within its legal jurisdiction."

The provisions of the Act upon which SaskTel based its refusal to disclose this contract are:

"19 (1) Subject to Part 5 and this section, a head shall refuse to give access to a record that contains:

(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."

With respect to Section 19(1)(b), I am of the view that this Section applies to confidential information supplied to a government institution such as SaskTel by a third party such as Mr. Van Parys, but the Agreement does not, as it appears to me, contain any such information. It is true that the Agreement contains some financial information, namely the amount to be paid to Mr. Van Parys during the term of the Agreement, but this can hardly be described as "information supplied in confidence" by Mr. Van Parys to SaskTel. Rather it is a negotiated term of the Contract. Accordingly, in my opinion, subsection 19(1)(b) does not operate to prohibit disclosure of this information.

Insofar as the clause in the Contract dealing with non-disclosure is concerned, in my opinion such a clause, to the extent that it is contrary to the provisions of the Act, can be of no effect. It is not competent for a government institution, in my view, to enter into a contract of non-disclosure with respect to records or information which it would otherwise be required to disclose pursuant to the provisions of the Act. Indeed, the wording of the non disclosure clause seems to recognize this.

However, Section 19(1)(c) is a different matter. Its application does not depend on confidentiality. It is sufficient to show that disclosure of the record could reasonably be expected to result in financial loss, prejudice the competitive position, or interfere with contractual or other negotiations of a third party, in this case Mr. Van Parys.

As a result of submissions made to me by Mr. Van Parys, I am satisfied that under his present circumstances there is a reasonable expectation that loss or prejudice may occur if disclosure is made. Section 19 is mandatory. It requires the Head of SaskTel under appropriate circumstances to refuse disclosure. Consequently, I find that disclosure was properly refused. I refrain from a discussion of the submissions made to me by Mr. Van Parys having regard to Section 53 of the Act.

I recommend that the record should not be disclosed.

Dated at Regina, Saskatchewan this 8<sup>th</sup> day of July, 1996.

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