

FILE NO. - 97/006

██████████ and ██████████

**REPORT WITH RESPECT TO THE APPLICATION
FOR REVIEW OF ██████████ WITH RESPECT TO INFORMATION
REQUESTED FROM SASKATCHEWAN JUSTICE**

This report will deal with two Requests for Review from ██████████ with respect to requests for access to information made to the Department of Justice. The first request for access to information was in the following terms:

"Prepaid Funeral Services Act, drafting instructions, background information of any sort."

By letter dated April 17, 1996 this request was refused and the Applicant was advised that:

"This information cannot be released because the records are exempt from access according to the following sections of *The Freedom of Information and Protection of Privacy Act*:

"16(1) A head shall refuse to give access to a record that discloses a confidence of the Executive Council, including:

- (a) records created to present advice, proposals, recommendations, analyses or policy options to the Executive Council or any of its committees;

On June 24, 1997 the Applicant made a further request for access to information to the Department requesting:

"briefing notes, research memoranda prepared by John Hobbs Council to the Superintendent of Insurance pertaining to Memorial Gardens (Saskatchewan) Limited, prepaid cremation contracts, The Prepaid Funeral Services Act, or the Cemeteries Act."

By letter dated August 19, 1997 the Department advised the Applicant that his request was, in effect, refused. The Applicant was advised that:

"In accordance with subsection 7(4) of The Freedom of Information and Protection of Privacy Act, we cannot confirm or deny the existence of the record you have requested."

Section 7(4) provides:

7(4) Where an application is made with respect to a record that is exempt from access pursuant to this Act, the head may refuse to confirm or deny that the record exists or ever did exist."

The position of the Commissioner under these circumstances is governed by s. 46(4)(b) which provides that where the head in refusing to give access does not indicate whether the record exists the Commissioner shall not disclose any information as to whether a record does or does not exist.

In this case the Applicant's request for access by its term seems to come precisely within the provisions of s. 22(b) of the Act which provides:

"22 A head may refuse to give access to a record that:

- (b) was prepared by or for an agent of the Attorney General for Saskatchewan or legal counsel for a government institution in relation to a matter involving the provision of advice or other services by the agent or legal counsel;"

It is common ground that Mr. Hobbs is legal counsel directly engaged in this instance in providing advice or services to a government institution, and accordingly the request was properly refused. In the result I do not recommend any further action by the Department.

Dated at Regina, Saskatchewan this day of January, 1998.

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