

**REPORT WITH RESPECT TO THE APPLICATION
FOR REVIEW OF [REDACTED] WITH
RESPECT TO INFORMATION REQUESTED FROM
SASKATCHEWAN PROPERTY MANAGEMENT CORPORATION**

On or about March 29, 1997 Saskatchewan Property Management Corporation ("SPMC") issued a request for proposals for professional engineering and architectural services for structural rehabilitation and building restoration of the Saskatchewan Legislative Building. It received proposals from five engineering firms which were considered and assessed by an Evaluation Committee of SPMC which assessed the proposals and reduced the proposals which it considered worthy of further consideration to a short list of three consisting of [REDACTED], [REDACTED] and [REDACTED]

These three short-listed firms were then invited to make further submissions and representations to the Committee. Following this procedure the Committee selected [REDACTED] to provide the requested services, and advised [REDACTED] that their proposals had not been accepted.

[REDACTED] then made an application for access to information pursuant to *The Freedom of Information and Protection of Privacy Act* (the "Act"). Their application requested access to:

- "1) Appointment/Selection of Evaluation Committee;
- 2) Dated Setup of Evaluation Criteria Items;

- 3) Short Listed Proponents Proposals ([REDACTED])
[REDACTED]
- 4) Tender Period Phone Conversation Memos with Proponents;
- 5) Evaluation Forms of Proponents with Memoranda completed by the Interview Panel;
- 6) Pre-Award Correspondence, Memoranda and Notes of Administration and Interview Panel with [REDACTED]
[REDACTED]
- 7) Letter of Intent to Award."

By letter dated December 10, 1997 SPMC advised [REDACTED] that only some of the categories of documents to which they were seeking access would be disclosed. The records to which access was refused were those numbered 3, 5 and 6 in the Request, as follows:

- "3. Short Listed Proponents Proposals [REDACTED]
[REDACTED]
- ...
5. Evaluation Forms of Proponents with memoranda completed by the interview panel;
6. Pre-Award correspondence, memoranda and notes of administration and interview panel with [REDACTED]
[REDACTED]

With respect to item #3 (Short Listed proposals) SPMC took the position that they contained financial, commercial, scientific, technical or labour relations information supplied in confidence, implicitly or explicitly, and were therefore exempt from disclosure pursuant to Section 19(1)(b) and 19(1)(c) of the Act.

In the course of the review I was advised that [REDACTED], as a third party, was claiming confidentiality and therefore nondisclosure but that [REDACTED] had specifically disclaimed confidentiality and had consented to the disclosure of their proposal.

I was also advised by [REDACTED] that they were not interested in the [REDACTED] proposal. Consequently I see no need to deal with this issue at any further length, since under these circumstances the duty not to disclose the proposal of [REDACTED] on the basis of Sections 19(1)(b) and (c) have been effectively eliminated. Since this is so it appears to me that the Applicant is entitled to have access to these records. The exemption in Sections 19(1)(b) and (c), and the duty which it imposes not to disclose a record, relates exclusively to the rights of third parties, and I can see no basis for refusing to disclose such records if the third party consents. I therefore recommend that these records be disclosed to the Applicant.

By their letter of December 10, 1997 SPMC also advised [REDACTED] that:

"I also regret to inform you that I cannot release the evaluation forms of proponents with memoranda completed by the interview panel in #5 of your list or the memoranda and notes of administration and interview panel with the [REDACTED] in #6. The records you have requested have been denied because they could reasonably be expected to disclose advise, proposals, recommendations, analyses or policy options developed by or for a government institution or a member of the Executive Council and they could reasonably be expected to disclose consultations or deliberations involving officers or employees of a government institution. Information of this nature is exempt from access according to subsections 17(1)(a) and 17(1)(b)(i) of *The Freedom of Information and Protection of Privacy Act*.

By letter dated June 25, 1998, SPMC advised [REDACTED] that the memoranda and notes comprised in item # 6 would be disclosed and that access to these records would be provided. Consequently only the records comprising in item #5 remain to be considered.

Sections of the Act relied upon by SPMC are:

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;
- (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;

I have examined the documents in question, and as a result I am satisfied that these documents do fall within the ambit of Section 17(1)(a) of the Act. In fact the only purpose in the preparation of these records was to provide SPMC with advice and recommendations with respect to the selection of a proponent. I have therefore concluded that SPMC was entitled to rely upon this exemption and to refuse disclosure of the evaluations and memoranda of the Evaluation Committee.

Dated at Regina, Saskatchewan this 21st day of January, 1999.

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