

REPORT WITH RESPECT TO THE APPLICATION FOR REVIEW  
OF ██████████ IN RELATION TO INFORMATION  
REQUESTED FROM SASKATCHEWAN EXECUTIVE COUNCIL

During the Spring months of 1998, a committee of the Legislature of Saskatchewan conducted hearings into what was described as the "Channel Lake Inquiry". Following the formal proceedings on June 2<sup>nd</sup>, 1998, one of the committee members, ██████████, was interviewed by media personnel respecting the proceedings. The interview was recorded on an audio tape, a copy of which came into the possession of the Saskatchewan Executive Council.

In an Access to Information Request form, dated July 31<sup>st</sup>, 1998, ██████████ requested from the office of the Government House Leader:

"Transcript and/or audio tape of "scrum" in Legislative Building outside Crown Corporations Committee meeting on June 2, 1998, interviewing ██████████ regarding alleged "Russian Mafia" connections with Channel Lake Petroleum Inc."

The Access to Information Request form was initially responded to on August 21<sup>st</sup>, 1998 by Bonita Heidt, Access Officer, Freedom of Information, on behalf of Saskatchewan Executive Council. In her initial response to ██████████, Bonita Heidt indicated that the formal response to request for information could not be responded to within the 30 day period provided for under Section 7 of the *Freedom of Information and Protection of Privacy Act* (the Act). ██████████, as she was entitled to under the provisions of the Act, filed a Request for Review, dated August 31<sup>st</sup>, 1998, with the Commissioner.

On September 18<sup>th</sup>, 1998 the Saskatchewan Executive Council formally outlined its response to the Application for Access and declined access to the audio tape in question. The letter written by the Access Officer, Freedom of Information of the Saskatchewan Executive Council, outlined the basis for the refusal in the following words:

"We received your application for access under The Freedom of Information and Protection of Privacy Act on July 23, 1998. This is to advise you that the record you have requested cannot be released.

The transcript and/or audio tape of the June 2, 1998 media scrum interview of ██████████ cannot be released as it contains personal information. Information of this nature is exempt from access according to Sections 24 and 29 of *The Freedom of Information and Protection of Privacy Act*.

It is also possible that Section 3 of *The Freedom of Information and Protection of Privacy Act* may apply if the transcript and/or audio tape of the June 2, 1998 interview is available through members of the media who participated in the media scrum.

If you wish to request a review of this decision, you may do so within one year of this notice. To request a review, please complete a "Request for Review" form, which is available at the same location where you applied for access. Your request should be sent to the Information and Privacy Commissioner at Box 1037, Regina, Saskatchewan, S4P 3B2.

Please contact me at 787-6351 should you wish to discuss this matter further."

Having received the formal refusal to produce the audio tape in question, [REDACTED] filed a further Request for Review, dated May 3<sup>rd</sup>, 1999. The reasons outlined by [REDACTED] in support of her Request for Review were detailed as follows:

"The letter received from Executive Council (a copy of which is attached) states that the record I have requested cannot be released because the record contains personal information that cannot be released under sections 24 and 29 of the Act. The letter also suggests that Executive Council may be relying on section 3 of the Act.

I request a review of this decision for the following reasons:

1. The record requested contains no personal information, as that term is defined in section 24 of the Act and therefore should be released;
2. Even if the record contains personal information, the record may be disclosed by virtue of subclause 29(2)(o)(i) and clause 29(2)(p); and
3. Subsection 3(1) of the Act is not applicable to the record requested because:
  - (a) the record has not been published nor is it available for purchase;
  - (b) the record is not a matter or public record, although it consists of words spoken in a public venue; and

- (c) the record is not placed in the custody of the Saskatchewan Archives Board.

On June 30<sup>th</sup>, 1999, the Saskatchewan Executive Council provided the actual audio tape to the former Commissioner, D.G. McLeod, Q.C., for his consideration. Nothing was done respecting the Request for Review from that date until the appointment of myself as Acting Commissioner in February of 2000.

By letter dated April 17<sup>th</sup>, 2000, addressed to the Saskatchewan Executive Council, I recommended that the Executive Council provide written notice to [REDACTED] pursuant to Section 52 of the Act by reason of the fact that [REDACTED] was clearly a third party contemplated by that provision. I am informed by Bonita Heidt that the third party notice was provided to [REDACTED] and he has confirmed in discussion with me that such notice was given to him.

I have carried out a Review of this matter as contemplated by Section 50(1) of the Act. In the carrying out of that review, I have reviewed all of the documentation that has been filed with the former Commissioner and myself and I have spoken with the parties involved, including [REDACTED]. I formally extended an opportunity to [REDACTED] make representations to me as a third party, and no representations have been received by me from [REDACTED]. Further, in carrying out my review, I have listened carefully to the words spoken by the persons who engaged in the media scrum, and particularly, the words uttered by [REDACTED], as reflected by the audio tape.

The Saskatchewan Executive Council relies on the provisions of Sections 24 and 29 of the Act and asserts that the audio tape of the media scrum interview of [REDACTED] contains personal information, which cannot be released by reason of the provisions of the two sections referred to.

Section 29 of the Act is a lengthy section. A relevant portion of that section is Section 29(1), which provides as follows:

- 29(1) No government institution shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 30.

Personal information is defined lengthily by Section 24(1) of the Act. I set out hereunder in its entirety the provisions of that definition section:

- 24(1) Subject to subsection (2), **“personal information”** means personal information about an identifiable individual that is recorded in any form, and includes:
- (a) information that relates to the race, creed, religion, colour, sex, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;
  - (b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;
  - (c) information that relates to health care that has been received by the individual or to the health history of the individual;
  - (d) any identifying number, symbol or other particular assigned to the individual;
  - (e) the home or business address, home or business telephone number, fingerprints or blood type of the individual;
  - (f) the personal opinions or views of the individual except where they are about another individual;
  - (g) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to the correspondence that would reveal the content of the original correspondence, except where the correspondence contains the views or opinions of the individual with respect to another individual;
  - (h) the views or opinions of another individual with respect to the individual;
  - (i) information that was obtained on a tax return or gathered for the purpose of collecting a tax;

- (j) information that describes an individual's finances, assets, liabilities, net worth, bank balance, financial history or activities or credit worthiness; or
- (k) the name of the individual where:
  - (i) it appears with other personal information that relates to the individual; or
  - (ii) the disclosure of the name itself would reveal personal information about the individual.

As previously observed, Section 29 of the Act contains numerous subsections. Subsection (1) quoted above is relevant to the consideration of this issue. Also Subsection 2(o) and (p) may have some relevance and reads as follows:

29(2) Subject to any other Act or regulation, personal information in the possession or under the control of a government institution may be disclosed:

- (o) for any purpose where, in the opinion of the head:
  - (i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure; or
  - (ii) disclosure would clearly benefit the individual to whom the information relates;
- (p) where the information is publicly available.

This Review should be determined largely by the contents of the audio tape. The questions asked of [REDACTED] and the answers given to those questions do not indicate to me that there was any discussion of personal information in any area as contemplated by the provisions of Section 24 of the Act. [REDACTED] was repeatedly asked of his views respecting certain individuals and in the providing of the answers he repeatedly referred to news stories appearing in national or international publications and declined to express any personal views respecting any individual. I did not discern any assertion by [REDACTED] of the commission of any crime or civil wrong by any individual, or group of individuals, during the course of the exchange with the media representatives. I, therefore, conclude that the release of the audio tape would not disclose personal information in the

possession of the Saskatchewan Executive Council as contemplated by the provisions of the Act.

There is no indication from the materials provided to me that the audio tape is a matter of public record or is available for purchase by the public as contemplated by Section 3 of the Act. None of the parties to the proceedings with whom I have spoken has indicated that they have knowledge that the audio tape is available for purchase by the public, or is a matter of public record. [REDACTED] has specifically indicated to me that she has no knowledge that would support that possibility.

I recommend that the Saskatchewan Executive Council release the audio tape to [REDACTED] [REDACTED] for her inspection, or provide her with a copy of the audio tape.

Dated at Regina, in the Province of Saskatchewan, this \_\_\_ day of June, 2000.

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GERALD L. GERRAND, Q.C.  
Information and Privacy Commissioner  
for Saskatchewan