



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

[REDACTED] applied to Saskatchewan Health, (the "Department") for access to:

"All briefing notes provided to Health Minister Pat Atkinson to acquaint her with her new portfolio".

By a letter dated November 30, 1998 he was advised that his application for access had been denied. The Department relied upon Sections 17(1)(a) and 17(1) (b) of *The Freedom of Information and Protection of Privacy Act* (the "Act"):

"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;"

[REDACTED] then requested a review which I have now completed.

There are several hundred documents which appear from the records of the Department to be responsive to [REDACTED] request. I have examined a sufficient number of these records to determine that they cover a wide variety of topics, and that some contain information that may be exempt for reasons other than those asserted by the Department.

The position of the Department however is that briefing notes as a category of records are exempt under Section 17(1)(a) and (b) and that all of these records are exempt regardless of their contents, the sole test being whether they were prepared for the purpose of briefing the Minister.

On discussing this matter with the Deputy Minister, it is apparent that the Department relies chiefly on Section 17(1)(a) and indeed my examination of these records did not reveal any that would be classified as consultations or deliberations within the meaning of Section 17(1)(b). The Department argues persuasively that these briefing notes constitute advice to the Minister and are therefore exempt in the discretion of the head under Section 17(1)(a) and I concede that a broad interpretation of the word "advice" includes simply conveying information to another person or party.

However, reference must be made to Section 16 of the Act which provides in part:

"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;
- (d) records that contain briefings to members of the Executive Council in relation to matters that:

- (i) are before, or are proposed to be brought before, the Executive Council or any of its committees; or
- (ii) are the subject of consultations described in clause (c)."

It will be noticed that Section 16(1)(a) and 17(1)(a) both deal expressly with "advice, proposals, recommendations, analyses or policy options". Where the same words are used in a statute, the same meaning should be given to them unless the context otherwise requires. Consequently, if the word "advice" as it appears in Section 16 and 17 is to be construed as including briefings then it would appear that Section 16(1)(d) is completely redundant.

Effect must be given to all the words of a statutory enactment and it must be read as a whole. Furthermore, the specific excludes or overrides the general and consequently since the Act deals specifically with the status of briefings to members of the Executive Council the specific provisions of the Act should be applied. Consequently only those briefings to members of the Executive Council that are specified in Section 16(1)(d) should be considered exempt from disclosure.

Section 16(1)(d) refers to members of the Executive Council in the plural while Section 17(1)(a) refers to a member of the Executive Council in the singular. However, *The Interpretation Act* of Saskatchewan c. I-11.2 provides:

"26(3) words in an enactment in the singular include the plural and words in the plural include the singular".

Accordingly I have concluded that the only briefing notes that are exempt from disclosure are those which come within the purview of Section 16(1)(d) and that all other of the briefing notes should be disclosed to the Applicant excepting only briefing notes which may be otherwise exempt in whole or in part for some other reason, i.e.

notes which contain personal information. Accordingly, the briefing notes should be examined and any portions which are exempt from disclosure should be severed. It is therefore my recommendation that the briefing notes be disclosed to the Applicant excepting only those briefing notes which are exempt under Section 16(1)(d). Portions of other briefing notes as may be exempt from disclosure should be severed in compliance with Section 8 of the Act.

Dated at Regina, Saskatchewan this day of August, 1999.

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