

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

By Access to Information Request form, ██████████ requested of Saskatchewan Justice copies of documentation respecting a prosecution of himself. The request for copies of documentation was worded as follows:

“Re: Assault Causing Bodily Harm. I request a copy of the entire file.”

In a letter dated August 11, 1999, John D. Whyte, in his capacity as Access Officer Freedom of Information for Saskatchewan Justice, wrote ██████████, as follows:

“Your application for access was received at the office of the Coordinator of Freedom of Information applications on July 28, 1999.

A review of the Public Prosecutions files indicate that a large portion of the records you requested are exempt from release. The documents would have originated with a lawful investigation by a local authority and the release of any record could disclose information respecting a law enforcement matter. As well, the Crown Prosecutor would have been providing advice and participating in consultations with other government employees. These exemptions are outlined in section 15(1)(c), (k), 17(1)(a), (b) and 122 (b) and (c) of The Freedom of Information and Protection of Privacy Act.

Of the remaining documents, it was noted that some records are a matter of public record and The Freedom of Information and Protection of Privacy Act is not required for access. Other portions of the file are correspondence to and from your legal counsel and would be available from your own files or your file at that law firm.

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 500 Bank of Canada Building, Box 1037, Regina, Saskatchewan, S4P 3B2.

If you require additional information, please contact Debby Castle, Freedom of Information, at (306) 787-5473.”

The position of Saskatchewan Justice was clarified by further letter addressed to ██████████, dated August 16, 1999, which letter reads as follows:

"Further to my correspondence to you dated August 11, 1999, please be advised that the second paragraph contains a typographical error.

The original letter states "These exemptions are outlined in section 15(1)(c), (k), 17(1)(a), (b) and 122 (b) and (c) of The Freedom of Information and Protection of Privacy Act." The corrected sections should read "...and 22(b) and (c) of The Freedom of Information and Protection of Privacy Act."

I apologize for any inconvenience this may have caused you."

In a formal Request for Review, dated August 19, 1999, ██████████ requested a Review of the above decision of Saskatchewan Justice.

I have reviewed the file of ██████████ maintained by Saskatchewan Justice. The file reveals that events occurred during the first half of 1997 which resulted in an investigation being carried out by the Royal Canadian Mounted Police. As a result of that investigation, a charge of assault was laid against ██████████. A trial of the charge proceeded on February 19<sup>th</sup> and April 23<sup>rd</sup>, 1998. ██████████ was convicted of assault by His Honour ██████████, in a Judgment rendered ██████████. A Notice of Appeal of Conviction was filed ██████████. The Appeal was dismissed ██████████.

The file contains a number of documents that can and should be produced pursuant to the provisions of Section 5 of *The Freedom of Information and Protection of Privacy Act* (the Act). These documents include the transcript of proceedings of ██████████, 1999, the form of charge of assault against ██████████ dated ██████████, the Judgment of the trial Judge dated ██████████, Notice of Appeal of Conviction dated ██████████ and related Court documents and correspondence between the Crown Prosecutor and Counsel for the Defence.

All of the documents referred to above are a matter of public record and available to any member of the public at the office of The Local Registrar, at the Courthouse in Yorkton. The correspondence between Crown Counsel and Defence Counsel is deemed to be in the possession of ██████████ once it is in the possession of his counsel.

The remainder of the documents that I observed in the file fall into the category of investigative communications, counsel's memoranda and briefs of evidence. Saskatchewan Justice relies on several sections exempting the production of this documentation. In my view, these exemptions properly apply to a significant portion of the file in question.

Section 15(1)(c) of the Act provides as follows:

- 15(1) A head may refuse to give access to a record, the release of which could:
  - (c) interfere with a lawful investigation or disclose information with respect to a lawful investigation;

Further, Section 15(1)(k) provides:

- (k) interfere with a law enforcement matter or disclose information respecting a law enforcement matter;

In my opinion, a portion of the file clearly relates to information that was being sought and obtained by way of a lawful investigation being carried out at the time by the R.C.M.P. Further the production of copies of a portion of the file would, in my view, interfere with a “law enforcement matter”, or, “disclose information respecting a law enforcement matter” as contemplated by the aforementioned sections of the Act.

The notes, counsel’s brief and memoranda for trial prepared by the Crown Prosecutor would, in my opinion, fall within the provisions of both Section 17(1)(a) and (b) of 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;

The working notes of Counsel are also exempt, in my opinion, pursuant to the provisions of Section 22(b) and (c) of the Act.

- 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; or
  - (c) contains correspondence between an agent of the Attorney General for Saskatchewan or legal counsel for a government institution and any other person in relation to a matter involving the provision of advice or other services by the agent or legal counsel.

In summary, I have concluded that Saskatchewan Justice has correctly informed [REDACTED] [REDACTED] that the disclosable portions of his file are either a matter of public record or have been provided to his counsel and that the remaining portion of his file are not discloseable by reason of the provisions of the Act referred to above.

In the result, I therefore do not recommend any further steps be taken by Saskatchewan Justice with respect to this request.

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

GERALD L. GERRAND, Q.C.  
Acting Commissioner of Information  
And Privacy for Saskatchewan