

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

By an Access to Information Request form, [REDACTED] requested of Saskatchewan Health copies of documentation regarding ministerial approvals for health districts. The request for copies of documentation was worded as follows:

“Please provide all records of all ministerial approvals provided pursuant to sections 27(2) and 28(c) of The Health Districts Act for all health districts since the coming into force of the Act to present.”

In a letter dated August 13, 1999, Mark Gossens, in his capacity as Assistant Freedom of Information Co-ordinator for Saskatchewan Health, wrote [REDACTED] as follows:

“Your application for access was received at this office on May 31, 1999. I note that your application requested the following:

“Please provide all records of all ministerial approvals provided pursuant to sections 27(2) and 28(c) of The Health Districts Act for all health districts since the coming into force of the Act to present.”

I further note that on June 30, 1999, Saskatchewan Health sent you a letter that detailed the estimated expenses of processing your application. The letter noted that if you wished to continue with your application, you were to forward a 50% deposit to the department. On July 22, 1999, the Department received a cheque for \$600 from [REDACTED] as your 50% deposit. (Note: [REDACTED] has also sent the Department a cheque for the remainder of the preparation cost.)

The Department has now finalized preparation of the record and is prepared to release it to you. The information you requested has been placed in one binder, with documents related to borrowing approvals being found in the front section and capital approvals in the back section.

I wish to note the following about the package you have received.

- 1) Portions of the record related to borrowing approvals have been severed. This severing was done pursuant to the following three

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 confidence of the Executive Council, including:

- (b) agendas or minutes of the Executive Council or any of its committees, or records that record deliberations or decisions of the Executive Council or any of its committees;

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;

19(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:

- (b) financial, commercial, scientific, technical or labour relations information that is supplied in confidence, implicitly or explicitly, to a government institution by a third party;

We have provided the record in this manner in order to release as much information to you as possible. This approach is consistent with section 8 of The Freedom of Information and Protection of Privacy Act, which states:

8 Where a record contains information to which an applicant is refused access, the head shall give access to as much of the record as can reasonably be severed without disclosing the information to which the applicant is refused access.

(2) The Health Districts Act requires districts to obtain ministerial approval for amounts borrowed in excess of a prescribed amount. In your package you will note that the Deputy Minister, or someone acting on behalf of the Deputy, signed off ministerial approvals for both borrowing and capital work. Section 23(1)(d) of The Interpretation Act states,

23(1) Words in an enactment directing or empowering a minister of the Crown to do something or otherwise applying to the minister by the minister's name of office include:

- (d) the minister's deputy minister or a person acting as deputy minister.

- (3) The process by which capital work is approved by the department is as follows:
- Each Health District is given the opportunity to submit proposals for capital work.
 - The Department then evaluates the proposals and recommends which ones should be given priority consideration.
 - Once the priority projects have been identified, the Department informs the host Health District that approval-in-principle has been provided and that funding for the project has been included in Saskatchewan Health's capital expenditure budget.
 - The Health District and the Department then finalize the project scope and total project cost.
 - Once these are finalized, the Minister and the District Health Board enter into a capital project agreement, which sets out in detail the scope of the project and the total provincial contribution.

Should you wish to request a review of this response, 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, SK, S4P 2B2.

Please contact Duane Mombourquette (787-3160) or myself (787-3145) should you wish to discuss issues concerning the FOI process. Questions pertaining to the information within the package should be directed towards Communications Branch – Saskatchewan Health."

In a formal Request for Review, dated August 31, 1999, ██████████ requested a Review of the above decision of Saskatchewan Health.

Along with a letter dated June 5, 2000, Duane Mombourquette, in his capacity as FOI Co-ordinator for Saskatchewan, provided me with a binder containing copies of some of the requested records where Saskatchewan Health had determined that additional disclosures could not be made to ██████████. It appears that ██████████ has not yet been provided with these newly available portions.

I have reviewed the documents provided by Saskatchewan Health to ██████████, including the numerous severed portions of the documents to which ██████████ was refused access. As outlined in the August 13, 1999 Goossens letter, Saskatchewan Health

relies on sections 16(1)(b), 17(1)(a) and 19(1)(b) of The Freedom of Information and Protection of Privacy Act in exempting the full production of this documentation.

Saskatchewan Health provided the requested documents in a binder, divided into a number of sections which correspond with different health districts. As such, I shall provide my recommendations with respect to the severed portions of those documents in that same fashion.

1) East Central District Health Board

(a) Pages 1 to 5 inclusive of "1998-99 Capital Borrowing Approval":

In my opinion, the severed portions of these pages fall within the provisions of Section 19(1)(b) of the Act, in that the portions contain financial information that was supplied in confidence to a government institution (Saskatchewan Health) by a third party (the East Central District Health Board)

"Third party" is defined in Section 2(1)(j) of the Act as follows:

'third party' means a person, including an unincorporated entity, other than an applicant or a government institution."

Section 2(1)(a) of the Act states that: 'applicant' means a person who makes an application for access to a record pursuant to Section 6".

Section 2(1)(d) of the Act states that:

'government institution' means, subject to subsection (2):

- (i) the office of Executive Council or any department, secretariat or other similar agency of the executive government of Saskatchewan; or
- (ii) any prescribed board, commission, Crown corporation or other body, or any prescribed portion of a board, commission, Crown corporation or other body, whose members or directors are appointed, in whole or in part:
 - (A) by the Lieutenant Governor in Council;
 - (B) by a member of the Executive Council; or
 - (C) in the case of:
 - (I) a board, commission or other body, by a Crown corporation; or
 - (II) a Crown corporation, by another Crown corporation."

It is my view that the East Central District Health Board falls within the meaning of “third party”, since it is neither the applicant in these proceedings, nor is it a government institution within the meaning of section 2(1)(d) of the Act. The East Central District Health Board is not a government department or similar agency of the provincial government, and it is not a board prescribed by the Act’s regulations. In fact, district health boards, such as the East Central District Health Board, are “local authorities” within the meaning of The Local Authority Freedom of Information and Protection of Privacy Act.

██████████ contends that the exemption contained in section 19(1)(b) was not intended by the Legislature to cover this type of information, since the health district is a public agency. However, section 13(2) of The Freedom of Information and Protection of Privacy Act states that:

“A head may refuse to give access to information contained in a record that was obtained in confidence, implicitly or explicitly, from a local authority as defined in the regulations.”

According to the Regulations, district health boards within the meaning of The Health Districts Act fall within the definition of “local authority”.

As such, it appears that it was within the contemplation of the Legislature that access could be refused to local authority records confidentially provided to a government institution.

- (b) Pages 1 to 4 inclusive of “1998-99 Borrowing Approval” (dated October 12, 1998):

In my opinion, for the reasons noted above, the severed portions of these pages fall within the provisions of Section 19(1)(b) of the Act, in that the portions contain financial information that was supplied in confidence to a government institution (Saskatchewan Health) by a third party ██████████

- (c) Pages 1 to 4 inclusive of “1998-99 Borrowing Approval” (dated September 11, 1998):

In my opinion, for the reasons noted above, the severed portions of these pages fall within the provisions of Section 19(1)(b) of the Act, in that the portions contain financial information that was supplied in confidence to a government institution (Saskatchewan Health) by a third party ██████████

2. Greenhead District Health Board

No severing done to disclosed documents.

3. [REDACTED]

(a) Page 2 of "1998-99 Borrowing Approval":

In my opinion, for the reasons noted above, the severed portion of this page falls within the provisions of Section 19(1)(b) of the Act, in that the portion contains financial information that was supplied in confidence to a government institution (Saskatchewan Health) by a third party [REDACTED].

(b) Page 1 of "1997-98 Borrowing Approval":

In my opinion, the severed portion of this page falls within the provisions of Section 17(1)(a) of the Act, in that the portion discloses a recommendation developed by a government institution (Saskatchewan Health).

4. [REDACTED]

(a) Pages 1 to 3 inclusive of "1999-2000 Borrowing Request":

In my opinion, for the reasons noted above, the severed portions of these pages fall within the provisions of Section 19(1)(b) of the Act, in that the portions contain financial information that was supplied in confidence to a government institution (Saskatchewan Health) by a third party [REDACTED].

5. [REDACTED]

(a) Page 2 of March 23, 1999 letter from [REDACTED] to [REDACTED]:

In my opinion, for the reasons noted above, the severed portions of these pages fall within the provisions of Section 19(1)(b) of the Act, in that the portion contains financial information that was supplied in confidence to a government institution (Saskatchewan Health) by a third party [REDACTED].

(b) Pages 1 to 4 inclusive of "1998-99 Borrowing Approval" (dated March 23, 1999)

In my opinion, for the reasons noted above, the severed portions of these pages fall within the provisions of Section 19(1)(b) of the Act, in that the portions contain financial information that was supplied in confidence to a

government institution (Saskatchewan Health) by a third party [REDACTED]
[REDACTED]

- (c) Page 1 of "1998-99 Borrowing Approval" (dated July 24, 1998):

In my opinion, the second-last paragraph of that page (excepting the last sentence thereof) falls within the provisions of Section 17(1)(a) of the Act, in that that portion discloses analysis developed by a government institution (Saskatchewan Health). The last sentence of that paragraph falls within the provisions of Section 16(1)(b) of the Act, in that that portion discloses deliberations of the Executive Council.

The last paragraph of that page had originally been severed by Saskatchewan Health; however, the department has now deemed it discloseable.

- (d) Page 2 of "1998-99 Borrowing Approval" (dated July 24, 1998):

In my opinion, for the reasons noted above, the first paragraph of that page falls within the provisions of Section 19(1)(b) of the Act, in that the portion contains financial information that was supplied in confidence to a government institution (Saskatchewan Health) by a third party [REDACTED]
[REDACTED]

The second paragraph of that page falls within the provisions of Section 17(1)(a) of the Act, in that that portion discloses a recommendation developed by a government institution (Saskatchewan Health).

- (e) Page 3 of "1998-99 Borrowing Approval" (dated July 24, 1998):

In my opinion, for the reasons noted above, the severed portion of that page falls within the provisions of Section 19(1)(b) of the Act, in that that portion contains financial information that was supplied in confidence to a government institution (Saskatchewan Health) by a third party [REDACTED]
[REDACTED]

- (f) Page 4 of "1998-99 Borrowing Approval" (dated July 24, 1998):

In my opinion, the severed portion of that page falls within the provisions of Section 16(1)(b) of the Act, in that that portion discloses deliberations of the Executive Council.

- (g) Pages 1 to 3 inclusive of "1998-99 Borrowing Approval" (dated May 4, 1998):

In my opinion, for the reasons noted above, the severed portions of page 1 (excepting the last paragraph thereof) fall within the provisions of Section 19(1)(b) of the Act, in that those portions contain financial information that was supplied in confidence to a government institution (Saskatchewan Health) by a third party [REDACTED]

The last paragraph of page 1 falls within the provisions of Section 17(1)(a) of the Act, in that that portion discloses a recommendation developed by a government institution (Saskatchewan Health).

For the reasons noted above, the severed portions of page 2 and 3 fall within the provisions of Section 19(1)(b) of the Act, in that those portions contain financial information that was supplied in confidence to a government institution (Saskatchewan Health) by a third party [REDACTED]

6. [REDACTED]

- (a) Pages 1 and 2 of "1998-99 Borrowing Approval":

In my opinion, for the reasons noted above, the severed portions of these pages fall within the provisions of Section 19(1)(b) of the Act, in that the provisions contain financial information that was supplied in a confidence to a government institution (Saskatchewan Health) by a third party [REDACTED]

7. Swift Current District Health Board

No severing done to disclosed documents.

8. Touchwood Qu'Appelle District Health Board

No severing done to disclosed documents.

In closing, I wish to comment on [REDACTED] contention that for Saskatchewan Health to be allowed to rely on exemptions contained in the Act, the department must apply such exemptions consistently in the documents requested. In my opinion, choosing to rely on the Act's exemptions for some material yet disclosing other material which

could be considered exempt is an acceptable practice. In fact, this practice allows for a higher degree of disclosure, which should be encouraged.

In summary, I have concluded that Saskatchewan Health had correctly informed [REDACTED] that the severed portions of the requested documents are not discloseable by reason of the provisions of the Act referred to above.

In the result, other than providing [REDACTED] with the portions of documents that Saskatchewan Health has now deemed to be discloseable, I do not recommend any further steps be taken by Saskatchewan Health with respect to this request.

Dated at Regina, in the Province of Saskatchewan, this 6th day of July, 2000.

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