

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

By a Request For Review dated July 24, 2000, executed by [REDACTED], I was asked to consider the undertaking of a Review of a refusal by Saskatchewan Justice to provide to [REDACTED] and his principal a copy of what is described as the Henderson Enquiry Report of 1989.

The Request For Review relates to an Access to Information Request Form executed on May 31, 2000 by one [REDACTED] (The "Applicant"). The Request executed by [REDACTED] was directed to the Department of Justice and couched in the following words:

"I want the contents of the 49 page Henderson Enquiry done in 1988-89"

It appears that [REDACTED] is an assistant to a [REDACTED] and completed the Access to Information Request Form on behalf of [REDACTED]. In the circumstances, I have concluded that [REDACTED] falls within the definition of third party as set forth in Section 2(1)(j) of *The Freedom of Information and Protection of Privacy Act* (the Act).

By letter dated June 29, 2000, John D. Whyte, Access Officer of Saskatchewan Justice wrote the Applicant providing her with a portion of the requested report that he had cleared for access, but declining the production of the body of the report. The response of Whyte to the Applicant is set out in its entirety hereunder:

"Your freedom of information application was received in our office on May 31, 2000. Your request for access has been partially granted.

The portion of the record that has been cleared for access regarding the Henderson Inquiry is attached. The report to the Police Commission cannot be released in accordance with the following sections of *The Freedom of Information and Protection of Privacy Act* (copy attached):

- a) Section 15 (1) (c), (e), (f), (i), and (k);
- b) Section 17(1);
- c) Section 19(1);
- d) Section 22;
- e) Section 24(1).

If you wish to have this decision reviewed, you may do so within one year of this notice. To request a review, you must complete a "Request for Review" form which is available at the same location where you applied for access.

You request should be sent to the Information and Privacy Commissioner at #700-1914 Hamilton Street, Regina, Saskatchewan, S4P 3N6.

If you require further information, please contact Debby Castle, Freedom of Information Administrative Coordinator at 306-787-5473."

The Third Party was duly invited to provide representations to me respecting the position taken by Saskatchewan Justice regarding the release of the Inquiry Report. A response from the Third Party, received September 26, 2000, reads as follows:

- "1. John Whyte's letter of June 29, 2000
Mr. Whyte is part of a cover up regarding the Henderson affair. The Sask. Justice under both the PC Gov't of Grant Devine and the NDP Gov't of Roy Rommano [sic] orcastrated [sic] a cover up. The NDP aiding and abetting [sic] the PC's. The law firm of Rommano [sic] Mitchel [sic] Taylor & Ching were also involved in a cover up of Henderson's true misconduct against me. Mr. Whyte will use all means possible not to reviel [sic] the truth about Henderson and his associates.
2. The relevance of the statement of Claim is my alligations [sic] of wrong doing by Henderson and others and describes the cover conspiracy [sic] they ingaged [sic] against me."

I requested of Saskatchewan Justice, and obtained, a copy of the subject report pursuant to the provisions of Section 54(1) of the Act. For purposes of conducting my Review, I have examined the entirety of the report.

The report, which is in excess of 40 pages in length, details the investigatory efforts of a number of members of the Saskatoon City Police Service and the Royal Canadian Mounted Police carried out in the late 1980's. The report outlines in considerable detail the methods and procedures used by the members of the two Police Forces to acquire the information set forth in the report.

In my view, a refusal of the release of the report was properly determined by Saskatchewan Justice on the basis of the provisions of Section 15(1)(c), (e), (f), (i) and (k) of the Act, which provisions are 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;
- (e) ...
reveal investigative techniques or procedures currently in use or likely to be used;

- (f) disclose the identity of a confidential source of information or disclose information furnished by that source with respect to a lawful investigation or a law enforcement matter;
- ...
(i) reveal law enforcement intelligence information;
- ...
(k) interfere with a law enforcement matter or disclose information respecting a law enforcement matter."

The Inquiry in question was directed by the then Minister of Justice pursuant to the provisions of Section 53 of *The Police Act* Revised Statutes of Saskatchewan 1978, Chapter P15. The provisions of Section 53 are as follows:

"53. - (1) The Attorney General may, if he considers it advisable, order a special inquiry to be made respecting the operation and administration of any police force, or the conduct of any member or special constable and a person appointed by the Attorney General to conduct such inquiry shall have all the powers conferred upon a commissioner under *The Public Inquiries Act*.

(2) At the conclusion of an inquiry under subsection (1), the Attorney General may direct the board, or where there is no board, the council of the city, town, village or rural municipality which is responsible for the policing service or which employed the member or special constable, to take any action the Attorney General considers necessary. 1973-74, c.77, s. 53."

The release of the report would "disclose information with respect to a lawful investigation". The report is replete with detail of information that was obtained by reason of the investigation and this information would be disclosed if the report were released in pursuance with the provision of the Act.

The release of the report would further "reveal investigative techniques or procedures currently in use, or likely to be used". Although the report is over a decade old, it is reasonable to presume that the investigative techniques and procedures used at that time, as reflected by the report, are still employed by police forces in the Province of Saskatchewan. Further, the release of the report would "disclose the identity of a confidential source of information". My review of the report indicates that information was provided to the preparer of the report on a confidential basis.

Intelligence information is set forth in the report and the release of the report would result in such information being revealed. Although I am not satisfied that the release of the report would "interfere with a law enforcement matter", I am satisfied that the release of the report would "disclose information respecting a law enforcement matter". Section 17 of the Act entitles a head to refuse access to a record that "could reasonably be expected to disclose advice, proposals,

recommendations, analysis or policy options developed by or for a government institution or a member of the Executive Council". The report in question does include proposals and recommendations by its preparer to the Minister of Justice, who requested the report. In my opinion, the provisions of Section 17 are a further ground for the head refusing the release of the report in question.

I am not satisfied that the release of the report can be refused by reason of the provisions of Section 19 or Section 22 of the Act. Section 19 relates to third party information and Section 22 deals with solicitor/client privilege. In my view, the facts do not support a refusal to provide access to the report in question on the basis of those provisions.

By reason of the conclusions that I have come to, there is no need, in my opinion, to deal with the submissions of Saskatchewan Justice as they relate to Section 24 of the Act.

For the reasons outlined, I recommend that Saskatchewan Justice do not release the report of the Henderson Inquiry pursuant to the provisions of the Act.

Dated at Regina, in the Province of Saskatchewan, this 24th day of April, 2001.

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