

**REPORT WITH RESPECT TO THE APPLICATION  
FOR REVIEW OF ██████████ IN RELATION TO INFORMATION  
REQUESTED FROM SASKATCHEWAN LIQUOR AND GAMING AUTHORITY**

A Request for Review dated August 28, 2000 was filed with me by ██████████ (“the Applicant”) respecting the refusal of the Saskatchewan Liquor and Gaming Authority (“the Respondent”) to provide access to ██████████ to certain information requested of it by him. The Applicant had filed with the Respondent an Access to Information Request Form. The details of the information requested of the Respondent by the Applicant were outlined in an accompanying letter dated July 7, 2000. The particulars of the information requested were set forth as follows:

- “1. Flowcharts of Business Relationships
2. Budgets vs. Actual Expenditures
3. SGC Sponsorship Policy and Procedures
4. Outstanding issues

The above items are listed as being APPENDICES to an EXCERPT FROM THE 1997-1998 INTERIM AUDIT REPORT of the Saskatchewan Indian Gaming

I request copies of any and all of the above documents, letters, or other forms of correspondence related to them re: the Saskatchewan Indian Gaming Authority covering all the years since the incorporation of SIGA to the present.

I also request copies of all notes or any other material that is attached or accompanies this request during processing.”

The Respondent formally conveyed to the Applicant its denial of access to the requested information by letter dated August 10, 2000. The portion of the letter outlining the basis for refusal to grant access to the information reads as follows:

“The mandatory provisions set out in sections 17 and 19 and the prohibitions set forth in section 20 of the Act prohibit the Authority from releasing the information you are seeking. Section 16 [sic] states:

Section 19 states:

- 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;

- (c) information, the disclosure of which could reasonably be expected to:
  - (i) result in financial loss or gain to;
  - (ii) prejudice the competitive position of; or
  - (iii) interfere with the contractual or other negotiations of: a third party;

Section 20 states:

20 A head may refuse to give access to a record that contains information relating to:

- (a) testing or auditing procedures or techniques; or
- (b) details of specific tests to be given or audits to be conducted; if disclosure could reasonably be expected to prejudice the use or results of particular tests or audits.

We are unable to provide you with copies of all notes or any other material that is attached or accompanies your request during processing pursuant to the restrictions in section 17 of the Act which states:

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 government institution or a member of the Executive Council; or
- (b) consultations or deliberations involving:
  - (i) officers or employees of a government institution;”

Following receipt of the Request for Review from the Applicant, I concluded that I would carry out a Review and duly advised the Applicant and the Respondent of my decision, pursuant to the provisions of Section 51 of *The Freedom of Information and Protection of Privacy Act* (“the Act”). In the course of carrying out my Review, I personally inspected the documents which are the subject of the application for access, which inspection was carried out pursuant to the provisions of Section 54 of the Act. Following my inspection of the documents, the Respondent proceeded to formally advise the Saskatchewan Indian Gaming Authority (“the Third Party”) of the on-going Review, as required by Section 52(1) of the Act. The formal notification to the Third Party went forward to it by letter dated December 18, 2000. No submissions have been received by me from the Third Party and I have received indications orally from a representative of the Third Party that the Third Party relies on the position taken by the Respondent.

In a report from the Provincial Auditor of Saskatchewan to the Speaker of the Legislative Assembly dated November 3, 2000, the Provincial Auditor outlined certain conclusions, findings and recommendations to the Legislative Assembly in relation to the audits carried out of Saskatchewan Liquor

and Gaming Authority and the Saskatchewan Indian Gaming Authority for the year ended March 31, 2000.

Following the release of the Provincial Auditor's report, the Applicant took the position that certain requested information had been revealed in the report but that certain other matters that were the subject of his request for production of information had not been covered by the report. Matters covered by the report, to the satisfaction of the Applicant, related to the sponsorship, policies and procedures of the Respondent. Matters which the Applicant felt had not been dealt with in the Provincial Auditor's report were the following:

1. List of outstanding issues that have not been resolved as of June 8, 1998 – Appendix K;
2. Flowcharts of Business Relationships. Page 14 of the interim report states: "A flowchart outlining the relationships and listing the directors has been prepared and can be viewed as Appendix H."
3. Budgets vs. Actual Expenditures. Page 13 of the interim report notes Budget vs. Actual Expenses and makes reference to Appendices F and G.

All of the documents and information to which the Applicant seeks access will be provided to the Provincial Auditor. Representatives of the Third Party announced on December 19, 2000, that the Third Party will facilitate complete access by the Provincial Auditor to all books and records of the Third Party. The Acting Provincial Auditor has confirmed to me that that access has been granted and that in due course, the office of the Provincial Auditor will report publicly the results of its review of these books and records. However, the documentation that will be inspected by the office of the Provincial Auditor will not be made public by reason of the confidentiality requirements of Section 30 of *The Provincial Auditor's Act*.

The question that remains, therefore, is whether the Applicant is entitled, pursuant to the provisions of the *Act*, to access to the documentation and information that remains unpublished at this point in time.

By letter to me dated December 15, 2000, the Respondent advanced additional grounds for refusal to produce the requested documents to the Applicant. The relevant portion of that letter reads as follows:

“With respect to the documents requested by [REDACTED] under *The Freedom of Information and Protection of Privacy Act* and upon which you are conducting a review, we are submitting additional information that supports denial of the request subject to section 15 of the Act. Section 15 states:

- 15(1) A head may refuse to give access to a record, the release of which could:
- (a) prejudice, interfere with or adversely affect the detection, investigation, prevention or prosecution of an offence or the security of a centre of lawful detention;
  - (b) interfere with a lawful investigation or disclose information with respect to a lawful investigation.

We did not cite this section in our original response since it was not relevant prior to the release of the auditor’s report on SIGA and SLGA on Wednesday, November 15, 2000. After release of the auditor’s report, Saskatchewan Justice Deputy Minister, John Whyte, has stated that the matter will be sent to the Commercial Crime unit at the R.C.M.P. for an investigation. He also stated that the Department of Justice takes the position that SLGA should not release the [REDACTED]. Correspondence in this regard is attached for your information.”

The Applicant articulated his reply to this argument by letter to me received January 17, 2001, as follows:

“With regards to section 15 of the Act, I find it difficult to understand how that would apply to my request. I fail to understand how the information I requested could prejudice, interfere or adversely affect the investigation, or any potential legal proceeding. I would assume that if the Liquor and Gaming Authority feels the RCMP should review the documents they appear to be concerned about, they would hand them over. As you are well aware, the police are not going to discuss their investigation with me. The use of that section 15 sounds like a fishing expedition by government officials to find any possible reason for not releasing documents. I would assume those officials will be required to show some proof to back that assertion and I will be given the opportunity to respond. As for the Ernst and Young report, I am ware [sic] of the government’s position on that and did not request a copy as part of my request. I will leave that for another time.”

I have concluded that a portion of the information requested by the Applicant that remains unproduced publicly should be provided to the Applicant.

Appendix K (the list of outstanding issues that had not been resolved as of June 8, 1998) and the Flowchart of Business Relationships are not, in my view, exempt from production under

the provisions of the *Act* relied upon by the Respondent. The Respondent relies on four sections of the *Act* as detailed above as the basis for its position in declining to produce these documents.

Section 19 requires a “head” to refuse 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;
- (c) information, the disclosure of which could reasonably be expected to:
  - (i) result in financial loss or gain to;
  - (ii) prejudice the competitive position of; or
  - (iii) interfere with the contractual or other negotiations of;a third party;”

The materials that contain budget information, either in draft or final form, are exempted from production by this provision. The files that I have reviewed indicate that the financial information supplied by the Third Party to the Respondent was done so on a confidential basis. The provisions of Section 19, in my view, support the position of the Respondent respecting the refusal to produce to the Applicant the documents described as budgets versus actual expenditures.

However, Appendix K is simply a listing of issues that were outstanding as of June 8, 1998. The listing, no doubt, has a relationship to exempted financial documents, but the listing does not reveal the contents of those exempted documents. Hence, Section 19 of the *Act* does not prohibit the production of Appendix K.

Nor does Section 19 prohibit the production of the Flowcharts of Business Relationships. The flowcharts were drafted by the Respondent based on information supplied to it by the Third Party and further on information obtained by the Respondent from records maintained by the Corporations Branch of the Department of Justice. The flowcharts reflected factual matters unrelated to subjects itemized in Section 19(1)(b) of the *Act*. The release of this flowchart would not, in my view, offend the provisions of 19(1)(c) of the *Act* because the flowchart information could not reasonably be expected to result in “financial loss or gain”, “prejudice the financial position” or “interfere with the contractual negotiations” of the Third Party.

Section 20 of the *Act* also prohibits the production to the Applicant of the auditing and financial information provided to the Respondent by the Third Party as the information relates directly to auditing procedures and details of audits to be done. However, the listing that appears in Schedule K and the Flowcharts of Business Relationships does not fall within the prohibition detailed in Section 20.

Section 17 permits the Respondent to decline disclosure of documents that “could reasonably be expected to disclose ... advice, proposals, recommendations, analysis or policy options developed by or for a government institution” or “consultation or deliberations involving officers or employees of a government institution”. The materials reflected by Schedule K and the Flowcharts of Business Relationships do not fall within the description of documents set forth in Section 17. The two items are essentially matters of fact identified by the Respondent.

The provisions of Section 15 of the *Act* have been reproduced previously in this Report. My review of the materials that constitute Schedule K and the Flowcharts of Business Relationships does not indicate that the production of these documents to the Applicant could “prejudice, interfere with or adversely affect the detection, investigation, prevention or prosecution of an offence” or “interfere ... or disclose information with respect to a lawful investigation”. The onus is on the Respondent to establish the applicability of Section 15 (as well as the applicability of the other sections of the *Act* relied on). The Respondent has not met the onus in respect to the documents described as Schedule K and the Flowcharts of Business Relationships.

I therefore recommend that the Respondent provide the Applicant with copies of these last mentioned documents.

Dated at Regina, in the Province of Saskatchewan, this 17<sup>th</sup> day of April, 2001.

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