

2000/026

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

By an Access to Information Request form dated June 16, 2000, [REDACTED] requested of the Saskatchewan Property Management Corporation ("SPMC") a copy of any fire safety reports with respect to the Regina Provincial Correctional Centre. The Request was worded as follows:

"Please provide all documents received by SPMC, from Regina Correctional Centre, relating to building conditions and, but not limited to, documents relating to fire safety at Regina Centre."

In a letter dated July 12, 2000, Leslie Krug, in her capacity as Freedom of Information Access Officer for SPMC, wrote to [REDACTED] as follows:

"We are pleased to advise you that your application for access has been completed.

However, in accordance with section 8 of *The Freedom of Information and Protection of Privacy Act*, some of the information contained in these documents cannot be released. Specifically, information relating to building security and some third party information supplied to SPMC in confidence was deleted. These exemptions are provided for under s. 15(1)(m) and s. 19(1)(b) of *The Freedom of Information and Protection of Privacy Act*. The remainder of the information is enclosed.

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' which is available at the same location where you applied for access. Your request should be sent to:

Derril McLeod, Commissioner
500 - 2220 - 12th Avenue
Regina, Saskatchewan
S4P 0M8"

Then, Ms. Krug, wrote a further letter to [REDACTED], dated August 22, 2000, as follows:

“On July 31, 2000 you inquired about a private consulting report referred to in the May 21, 1998 letter from the Office of the Fire Commissioner to [REDACTED].

This will confirm that SPMC is in possession of this report. However, I regret to inform you that I cannot release the record because it could reasonably be expected to disclose “advice, proposals, recommendations, analyses or policy options developed by or for a government institution”. In addition, the release of this record could “reveal the security arrangements of particular vehicles, buildings or other structures or systems including computer or communication systems, or methods employed to protect those vehicles, buildings, structures or systems”. Information of this nature is exempt from access according to Subsection 17(1)(a) and 15(1)(m) of *The Freedom of Information and Protection of Privacy Act*.

If you wish to request a review of this decision, you may do so within one year of this notice. To do so, you must 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 [sic] Mr. Gerald Gerand [sic], Q.C, Acting Information and Privacy Commissioner, #700-1914 Hamilton Street, Regina, Saskatchewan, S4P 3N6.”

In a formal Request for Review, dated August 31, 2000, [REDACTED] requested a Review of the above decision of SPMC. After reviewing the materials supplied to me by [REDACTED], I concluded, pursuant to Section 50(1) of *The Freedom of Information and Protection of Privacy Act* (“the Act”), that reasonable grounds existed for me to conduct a Review as requested.

Section 51 of the *Act* requires that I inform the head of the government institution involved of my intention to conduct the review. As such, I wrote to SPMC on September 7, 2000, as follows:

"I have been asked to conduct a Review by [REDACTED], of [REDACTED], regarding the positions advanced to him in your letters of July 12 and August 22, 2000 respecting the above described matter.

I have decided I will carry out a Review as requested by [REDACTED].

Enclosed herewith is a copy of the Request For Review filed with me, including the attached letter detailing the position of [REDACTED] regarding his Request For Review.

At your convenience, I would appreciate receiving from you any further representations you wish to make regarding the Request For Review and the arguments advanced by [REDACTED] with respect to his request.

Additionally, I would appreciate receiving from you a copy of the consulting report in the possession of SPMC, together with copies of the portions of materials forwarded to [REDACTED] that have been deleted from the materials sent to him. I will use the materials, of course, for the carrying out of my Review.

May I hear from you in this regard."

By letter dated October 3, 2000, SPMC outlined its submissions in this matter.

The letter of Ms. Krug reads, in part, as follows:

"As you know from [REDACTED] letter dated August 31, 2000, [REDACTED] original application asked for "all documents received by SPMC from Regina Correctional Centre, relating to building conditions and, but not limited to, documents relating to fire safety at Regina Centre". The application was received by SPMC on June 19, 2000. By way of letter dated July 12, SPMC provided [REDACTED] with some records but also indicated that some records would not be released by virtue of the exemptions provided for under subsections 15(1)(m) and 19(1)(b). Although the letter spoke of "deleting" the information, this was not a case of severance. No portions of any of the records provided to [REDACTED] were deleted. Rather, this was a case of refusal to provide access to certain records based on specific exemptions.

On July 31, I received a call from [REDACTED], who inquired about a "private consulting report" that was referred to in one of the records released to him. Because of various staff being away on holidays at the time, it was over two weeks before I was able to obtain the report. The private consulting report

proved to be a "Building Condition Assessment" prepared in March 1998 by [REDACTED]. A copy of the report has been included in these materials as per your request.

When I spoke with [REDACTED] on August 18, he suggested to me, as he has done in his letter to you, that the building assessment report should have been identified by SPMC when it originally conducted a search of its documents in response to his June 16 application for access. However, as I explained to [REDACTED] at the time, he applied for access to documents "received by SPMC from Regina Correctional Centre", while the consulting report was SPMC's own document, commissioned by and for SPMC. The Regina Correctional Centre did not provide it to us. Therefore, it was not identified as a document which was caught by the terms of [REDACTED] application for access.

With respect to the first element of [REDACTED] appeal, SPMC has had a chance to review those documents which were initially refused under the July 12 letter, and has decided to release all those which do not pertain to building security. Accordingly, we undertake to forward those documents to [REDACTED] immediately. The remaining documents which we are claiming an exemption for under subsection 15(1)(m), are included with this letter for your review. This leaves the matter of the Building Condition Assessment of the Regina Correctional Centre.

As is stated in the Executive Summary, the report was commissioned by SPMC for the purpose of developing its long-range plan for correctional centres in Saskatchewan. The report tells SPMC what work needs to be done in order to make the Regina Correctional Centre "safe, secure, code compliant and in reasonable operating condition".

Further, in its correspondence dated October 3, 2000, SPMC stated that access to the Building Condition Assessment Report may be refused because it falls within the exemptions contained in sections 15(1)(a), 15(1)(h) and 15(1)(m) of the *Act*. In its correspondence, SPMC stated that release of the record could:

- "(a) prejudice, interfere with or adversely affect the security of a centre of lawful detention (Section 1(a));
- (b) facilitate the escape from custody of any individual who is under lawful detention (Section 1(h));

- (c) reveal the security arrangements of particular buildings or other structures or systems, including computer or communications systems or methods employed to protect those building structures or systems (Section 1(m)).

Further, SPMC submits that the report contains information relating to the building's security system and contains a site plan, which maps, among other things, the location of all buildings, roads and fences within and immediately surrounding the Regina Correctional Centre. SPMC submits that if this information becomes public, it would not only pose a serious risk to the security of the Correctional Centre, but could also facilitate the escape from custody of those under lawful detention.

SPMC's October 3, 2000 correspondence also contains the following representations:

“Section 17 – Advice from Officials

While SPMC does not dispute that the Building Condition Assessment contains technical information, not all of the information within the report falls into this category. For instance, at the end of each section there are recommendations for capital cost expenditures. These recommendations represent one consultant's estimate of costs to perform the recommended work. This information can not be classified as either technical or scientific. It is simply the consultant's advice to SPMC on how much the proposed work would cost. Therefore, the financial estimates do not fall within the perimeters of subsection 17(2)(e). [SPMC submits that this information should be exempted under subsections 17(1)(a) and 17(1)(g)].

Section 18 – Economic and Other Interests

The introductory paragraph to the entire Building Condition Assessment states clearly that “This Report is part of the Planning process for development of a Long Range Plan for Correctional Centres in Saskatchewan.” SPMC submits that access to the report may be refused because it falls within the exemptions contained in subsections 18(1)(d), 18(1)(e), 18(1)(f) and 18(1)(g). We submit that the release of this record would:

- Interfere with contractual or other negotiations of the Government of Saskatchewan or SPMC (See subsection 18(1)(d));
- Disclose positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the government of Saskatchewan or SPMC,

or considerations that relate to those negotiations (See subsection 18(1)(e));

- Prejudice the economic interest of the Government of Saskatchewan or SPMC (See subsection 18(1)(f)); and
- Be injurious to the ability of the Government of Saskatchewan to manage the economy of Saskatchewan (See subsection 18(1)(g).

As mentioned above, in each subsection or technical area a recommendation for action is made and related costs are estimated. Together, these constitute a package of information that the government will use in contractual and other negotiations. The release of this information will make publicly available information that may compromise the government's ability to manage its overall budget. For example the recommended capital cost expenditures in this report do not take into consideration other priorities and capital cost expenditures across government. Release of this information related to only this building may place undue public attention and focus on this issue, to the exclusion of other priorities on properties.

In addition to undue public interference with Government's management of its budget and management of the economy, the details contained in this report, for example costs estimates, if released publicly could compromise a tendering process or the Government's position in sales or contract negotiations.

Section 21 – Danger to Health or Safety

For the same reasons stated under Section 15, SPMC submits that the release of the Building Condition Assessment would pose a significant risk to the safety of Corrections staff, and to the inmates themselves.”

By letter dated October 12, 2000, SPMC provided me with further representations regarding this matter. The letter of Ms. Krug reads as follows:

“We have received your letter of September 27 and reviewed [REDACTED] written argument. Since we have already submitted an argument (by way of our letter of October 3, 2000) with respect to the Building Condition Assessment on the Correctional Centre, we would refer you back to that letter when considering this matter. Although the exemptions contained under sections 15 and 21 will not be relevant in most cases, we submit that access to Building Assessment reports may be refused because they fall within the

exemptions contained in subsections 17(1)(a) and 17(1)(g) and 18 (1)(d), 18(1)(e), 18(1)(f) and 18(1)(g).

Section 17 – Advice from Officials

We must disagree with [REDACTED] characterization of Building Assessment reports. Of course, he has not had an opportunity to see such a report, so he cannot know that it is not simply an assessment of the physical condition of the building. Building Assessment reports also contain advice and recommendations for appropriate action, along with the recommendations for capital cost expenditures. For this reason, the reports fall within the exemption contained in subsection 17(1)(a).

We also disagree with [REDACTED] interpretation of section 17(1)(g). The exemption does not relate to something precise, but rather, is general in nature. The exemption relates to “information, ... the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision”. This information can include, but is not limited to, the “proposed plans, policies or projects of a government institution”. In any event, it’s [sic] clear that the recommendations for action together with the recommendations for capital cost expenditures constitute a proposed plan or project within the meaning of subsection 17(1)(g). In addition, the reports form the basis of SPMC’s capital plan, which is submitted to Cabinet as part of SPMC’s overall budget. For these reasons, we submit that the Building Assessment reports contain information, the disclosure of which, could reasonably be expected to disclose a pending policy or budgetary decision within the meaning of subsection 17(1)(g).

Section 18 – Economic and other Interests

In his written argument, [REDACTED] asserts that detailed documents of this sort are routinely released to bidders. On the contrary, we can advise that SPMC has always treated these reports as confidential information and as a matter of practice, does not release them to anyone, including its clients. Furthermore, while it is true that public tenders for work would be based upon recommendations contained in the Building Assessment reports, it is not necessarily true that the information contained in the report would appear in the tender documents. For instance, the Building Assessment report may recommend that the roof be replaced, while the bid documents would specify in detail as to what kind of products to use. In any event, we submit that the release of information pertaining to a specific project does not in any way compare to the impact associated with the release, in its entirety, of a comprehensive Building Assessment report.

For this reason also, we must disagree with [REDACTED] contention that the Building Assessment reports contain nothing that could impact on the economic

interests and business dealing of SPMC and the Government of Saskatchewan. In this regard, we would refer you to the arguments put forward in our October 3, 2000 letter. In particular, we submit that the release of the cost estimates would interfere with the public tendering process because these costs represent a particular consultant's estimate to do the required work. If this information became public knowledge, bidders would, in effect, have prior knowledge of one consultant's bid and this would compromise the tendering process."

The relevant sections of the *Act* read as follows:

"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; ...

(h) facilitate the escape from custody of an individual who is under lawful detention; ...

(m) reveal the security arrangements of particular vehicles, buildings or other structures or systems, including computer or communication systems, or methods employed to protect those vehicles, buildings, structures or systems.

(2) Subsection (1) does not apply to a record that:

(a) provides a general outline of the structure or programs of a law enforcement agency; or

(b) reports, by means of statistical analysis or otherwise, on the degree of success achieved in a law enforcement program.

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; ...

(g) information, including the proposed plans, policies or projects of a government institution, the disclosure of which would reasonably be expected to result in disclosure of a pending policy or budgetary decision.

(2) This section does not apply to a record that:

(a) has been in existence for more than 25 years;

(b) is an official record that contains a statement of the reasons for a decision that is made in the exercise of a discretionary power or an adjudicative function;

(c) is the result of product or environmental testing carried out by or for a government institution, unless the testing was conducted:

(i) as a service to a person, a group of persons or an organization other than a government institution, and for a fee; or

(ii) as preliminary or experimental tests for the purpose of:

(A) developing methods of testing; or

(B) testing products for possible purchase;

(d) is a statistical survey;

(e) is the result of background research of a scientific or technical nature undertaken in connection with the formulation of a policy proposal; or

(f) is:

(i) an instruction or guide-line issued to the officers or employees of a government institution; or

(ii) a substantive rule or statement of policy that has been adopted by a government institution for the purpose of interpreting an Act or regulation or administering a program or activity of a government institution.

18(1) A head may refuse to give access to a record that could reasonably be expected to disclose: ...

(d) information, the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of the Government of Saskatchewan or a government institution;

(e) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the Government of Saskatchewan or a government institution, or considerations that relate to these negotiations;

(f) information, the disclosure of which could reasonably be expected to prejudice the economic interest of the Government of Saskatchewan or a government institution;

(g) information, the disclosure of which could reasonably be expected to be injurious to the ability of the Government of Saskatchewan to manage the economy of Saskatchewan; ...

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; ...

21 A head may refuse to give access to a record if the disclosure could threaten the safety or the physical or mental health of an individual”

The documents provided to me by SPMC, for which it claims exemption from production, can be divided into two categories: documents for which SPMC claims exemption pursuant to section 15(1)(m) of the *Act*, and the Building Condition Assessment Report, together with its appendices.

My perusal of the first category of documents satisfies me that these documents fall within the parameters of section 15(1)(m) of the *Act*. These materials are exempt from production, in my opinion, as they clearly reveal the security arrangements of the Regina Correctional Centre and its structures and systems, including its computer and communication systems, and methods employed to protect these structures and systems.

In light of the foregoing, I recommend that these documents for which SPMC has sought exemption pursuant to section 15(1)(m) not be released to [REDACTED].

With respect to the Building Condition Assessment Report and its appendices, as noted above, SPMC claims that this documentation should be exempted from production pursuant to several different sections of the *Act*, which I have outlined earlier in this Report.

In my view, much of the Building Condition Assessment Report (including the site map outlined as an appendix and many of the other appendices) should be exempted from production pursuant to section 15(1)(m) of the *Act*. Several portions of the Building Condition Assessment Report provide detailed information regarding the security arrangements of the Regina Correctional Centre and its structures and systems, including its computer and communication systems, and methods employed to protect these structures and systems.

Further, I find that the portions of the Building Condition Assessment Report and its appendices that do not fall within the exemption contained in section 15(1)(m) should be exempted from production pursuant to sections 15(1)(a) and 15(1)(h) of the *Act*. In my view, the release of the remaining portions of the Building Condition Assessment Report and its appendices could prejudice, interfere with or adversely affect the security of the Regina Correctional Centre (being a centre of lawful detention) and further, their release could facilitate the escape from custody of an individual who is under lawful detention.

The Building Condition Assessment Report and its appendices provide a detailed review of every aspect of the Regina Correctional Centre's construction and its systems. This type of information regarding a centre of lawful detention is simply too revealing to be disclosed to the general public.

Section 15(2) of the *Act* outlines exceptions to the provisions of section 15(1). I find that the requested documents do not fall within either of those exemptions.

In addition, I have considered whether portions of the requested documents could be severed, and the remaining portions disclosed. In my view, severing is not a viable alternative in this case.

Thus, in light of my findings, I find it unnecessary to consider the applicability of the other exemptions relied upon by SPMC.

I therefore recommend that the Building Condition Assessment Report and its appendices not be released to [REDACTED].

Dated at the City of Regina, in the Province of Saskatchewan, this 30th day of November, 2000.

[REDACTED]

G.L. Gerrand, Q.C.
Commissioner of Information and
Privacy for Saskatchewan