

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

By an Access to Information Request Form, dated August 30, 2000, [REDACTED] (the "Applicant") requested of the Department of Finance (the "Respondent") a copy of the Budget briefing materials related to the March, 2000 provincial budget. The request was worded, in part, as follows:

"Please provide a copy of the budget briefing materials related to the provincial budget of March 2000."

In a letter dated October 10, 2000, the Access Officer for the Respondent, Bill Van Sickle, wrote the Applicant as follows:

"This in reply to your Access to Information Request Form, received September 8, 2000 in which you request a copy of the budget briefing materials related to the Saskatchewan Budget of March 2000.

Section 16 of *The Freedom of Information and Protection of Privacy Act* (the Act) states in part as follows:

- 16(1) A head shall refuse to give access to a record that discloses a confidence of the Executive Council, including:
- (a) records created to present advice, proposals, recommendations, analyses or policy options to the Executive Council or any of its committees;
  - (c) records of consultations among members of the Executive Council on matters that relate to the making of government decisions or the formulation of government policy, or records that reflect those consultations;
  - (d) records that contain briefings to members of the Executive Council in relation to matters that:
    - (i) are before, or are proposed to be brought before, the Executive Council or any of its committees; or

(ii) are the subject of consultations described in clause (c).”

Section 17 of the Act also states in part as follows:

- 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 documents you have requested is material that falls within these sections of the Act.

I understand the purpose of your request was to acquire an in-depth explanation of the provincial personal income tax revenue forecast. Specifically, you are interested in how the Government determined that the income tax changes that became effective in the 2000-01 fiscal period resulted in a reduction in tax revenues of \$206.4 million. To assist you in understanding this matter, the Department would like to provide you with the following information.

[...Mr. Van Sickle then proceeds to furnish the Applicant with some information with respect to the provincial income tax revenue forecast, before going on to conclude his correspondence as follows:]

I hope that this information assists you in understanding the basis on which the Government estimated the value of the personal income tax reduction for the 2000-01 fiscal year. I would like to also advise that future fiscal years will see larger personal income tax reductions as the full effect of the personal income tax reforms is phased-in.

If you wish to request a review of this decision, you may do so within one year of this notice. To request a review, you may 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, Mr. Derril McLeod at 2310 Scarth Street, Regina, S4P 3V7. [sic]

Please contact me at 787-6530 should you wish to discuss this matter further.”

In a formal Request for Review dated October 16, 2000, addressed to me, the Applicant requested a Review of the above decision of the Respondent. Attached to his Request for Review, the Applicant set out his position respecting the grounds for denial of access that had been articulated by the Respondent. The Applicant's arguments respecting these areas are reproduced verbatim hereunder:

“This matter, it is submitted, turns on two main points: that the material requested is a “briefing document” and that the material requested was prepared as an aid to help explain budgetary decisions, that is: that the material was prepared *after* budgetary decisions had been made.

That the material requested is a briefing document is all but conceded by the department. It was described to the applicant as such, the applicant sought the material based on the description, and the department was able to identify the record and respond based on that description. Indeed, the record may even have a title page describing the contents as “briefing” materials. Notwithstanding that, it is submitted that the record provides a measure of detailed background information which would assist ministers and officials in providing explanations for budgetary decisions. This is briefing material.

Additionally, it is submitted that the information contained in the material is not “advice, proposals, recommendations, analyses or policy options” as is the wording of the exemption provided in section 16(1)(a) of the Act. The materials, instead, are background information available as a reference for officials and politicians to provide explanations for budgetary decisions made.

I have enclosed a sample of a similar document, called a “briefing note”, from another department of the government of Saskatchewan. (Please see the enclosure “New Briefing Note: Burning at Waste Disposal Grounds”, of Environment and Resource Management.) The format is likely different from the briefing material sought at the department of finance. However, the flavour of the content would be similar. Briefing material provides a summary or synopsis of a particular point and goes on to supply background details to assist in providing information on the point. This type

of document, is it [sic] submitted, is routinely prepared for government and – as is evident – routinely provided.

It does not fall under the exemption sought by the department of finance. The Act makes a clear distinction between briefing materials and other materials (materials that provide “advice, etc.”). It is not open, I submit, for the department head to include within Section 16(1)(a) briefing material when the Act already contains a provision relating to briefing material (Section 16(1)(d)).

Section 16(1)(d) of the act provides for an exemption if the record is briefing material related to matters that are “*before, or are proposed to be brought before*” cabinet. The materials sought were not prepared for that purpose. They were prepared for use by government officials generally. And, indeed, officials claim the briefing materials were used by government officials on budget day.

Even if the materials were prepared for cabinet, it is submitted that the exemption only applies to matters that are “alive” for cabinet deliberations. The exemption, it is submitted, does not apply to materials that relate to matters that are no longer before cabinet. The subject matter – the provincial budget – had been dealt with by cabinet, and decisions were made. Subsequently, the minister of finance tabled his government’s budget documents in the assembly. The briefing materials sought relate to a matter that is no longer “*before*” cabinet. Indeed, the matter is no longer even before the assembly. It – the budget – is now law.

It is not open, I submit, for the department head to now rely on this exemption. The moment has long passed.

It might be noted, parenthetically, that this is precisely the scenario envisioned by the legislators when then [sic] Act was passed. Members of the public would have the right to scrutinize decisions of the government – particularly after decisions have been made.

It is also submitted that the material sought is not, *prima facie*, a confidence of the Executive Council, as required in the Section 16 exemptions. The briefing materials sought were prepared by the department for general use by department officials. Members of the executive council may have used the materials, but they are not records of the executive council.

The department also relies on Section 17 of the Act.

Section 17(1)(a) indicates that the department may refuse to disclose a record that could disclose "advice, proposals, recommendations, analyses, or policy options". The briefing materials, it is submitted, contain nothing of that ilk. They are support documents, which contain a certain measure of detailed background information on budgetary decisions already made by cabinet. They are "explanatory" documents, not "opinion" documents. They provide information that helps to explain a position. They do not contain information which would purport to endorse, analyze or recommend a position.

Section 17(1)(b) relates to consultations or deliberations. The briefing record sought, it is submitted, is neither a consultation document nor a record reflecting any deliberations. A consultation involves seeking advice. The briefing material does not offer advice, it provides supporting information. A deliberation involves a discussion or consultation. The briefing material sought is not a discussion paper, nor does it offer any responses to a consultation. Again, the briefing material merely provides supporting information for decisions already taken.

As has been well established in the jurisprudence on Access to Information, there is an over-riding principle of openness, not secrecy, to be observed in such matters. Where there is cause to deny access, there must be clearly delineated statutory language to that effect. It is not enough, it is submitted, for a department head to cite an exemption and hope that a generous interpretation of the law would capture a document. Unless the document can be shown to be clearly within the scope of exemption, it must – it is submitted – be released.

The exemptions sought in this case, it is submitted, fall well short of the standard required.

I hope this information is useful to the commissioner."

I determined that I would undertake the Review as requested by the Applicant and so advised the Respondent. At the same time, I provided the Respondent with a copy of the arguments submitted by the Applicant and invited the Respondent to provide me with any rebuttal submissions by way of response. No rebuttal submissions have been received by me.

For purposes of carrying out my Review, I determined that it would be necessary for me to personally inspect the materials in question. I requested the materials by letter dated

January 26, 2001 addressed to the Access Officer, Saskatchewan Finance. Following several telephone calls, I received a copy of the Budget Briefing Book on March 14, 2001. The 2000-01 Budget Briefing Book, dated March 29, 2000, consists of a large binder, which contains approximately 853 pages.

The relevant sections of *The Freedom of Information and Protection of Privacy Act* read as follows:

"16 (1) A head shall refuse to give access to a record that discloses a confidence of the Executive Council, including:

(a) records created to present advice, proposals, recommendations, analyses or policy options to the Executive Council or any of its committees;

(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;

(c) records of consultations among members of the Executive Council on matters that relate to the making of government decisions or the formulation of government policy, or records that reflect those consultations;

(d) records that contain briefings to members of the Executive Council in relation to matters that:

(i) are before, or are proposed to be brought before, the Executive Council or any of its committees; or

(ii) are the subject of consultations described in clause (c).

(2) Subject to section 30, a head shall not refuse to give access pursuant to subsection (1) to a record where:

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

- (b) consent to access is given by:
  - (i) the President of the Executive Council for which, or with respect to which, the record has been prepared; or
  - (ii) in the absence or inability to act of the President, by the next senior member of the Executive Council who is present and able to 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;
- (c) 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 those negotiations;
- (d) plans that relate to the management of personnel or the administration of a government institution and that have not yet been implemented;
- (e) contents of draft legislation or subordinate legislation;
- (f) agendas or minutes of:
  - (i) a board, commission, Crown corporation or other body that is a government institution; or
  - (ii) a prescribed committee of a government institution mentioned in subclause (i); or

(g) information, including the proposed plans, policies or projects of a government institution, the disclosure of which could 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.



(3) A head may refuse to give access to any report, statement, memorandum, recommendation, document, information, data or record, within the meaning of section 35.1 of The Saskatchewan Evidence Act, that, pursuant to that section, is not admissible as evidence in any legal proceeding.

With respect to the potential exemptions relied on by the Respondent that are contained within Section 16, there is nothing in the material that I have reviewed that indicates that the material discloses a confidence of Executive Council, as described in Section 16(1)(a), (c) or (d). With respect to Section 16(1)(a), there is nothing to indicate that the Budget Briefing Material was prepared for the purpose of presenting any advice, proposals, recommendations or policy options to the Executive Council or that the material or any portion of it was presented for the above purposes to Executive Council. With respect to Section 16(1)(c), the material does not contain records of consultations among members of Executive Council, nor does it contain records that reflect such consultations. With respect to Section 16(1)(d), the material does not contain briefings to Executive Council members either regarding matters that are before, or proposed to be brought before, the Executive Council or its committees, or regarding matters that are the subject of consultations among members of Executive Council.

It is clear from the Budget Briefing Material that the material relates to a matter (the provincial budget) that was, at the March 29, 2000 date indicated on the document, before the Provincial Legislature, and no longer before the Executive Council.

In my view, the Respondent has not met the onus on it respecting the applicability of the relied upon subsections of Section 16.

However, I do not agree with the Applicant's submission that urges me to disregard the other exemptions claimed by the Respondent if I do not find that this material falls within the Section 16(1)(d) exemption regarding briefing materials. In my view, if I am not satisfied that the material falls within the exemption set out in subsection 16(1)(d), it remains open to the Respondent in this matter to claim that the material falls within other statutory exemptions. The

Respondent continues to bear the burden of demonstrating that the requested material falls within one of the other clearly delineated statutory exemptions.

With respect to Section 17(1)(a), there is nothing in the material that indicates that it was prepared for the purpose of presenting any **advice, proposals, recommendations or policy options** by or to a government institution or a member of Executive Council.

With respect to Section 17(1)(b), the material does not disclose consultations or deliberations involving the parties referred to therein.

This leaves me to consider whether the material discloses “analyses ... developed by or for a government institution or a member of the Executive Council”, as referred to in subsection 17(1)(a).

According to *The New Shorter Oxford English Dictionary* (1993 edition) the word “analysis” is defined as follows:

The resolution or breaking up of something complex into its various simply elements; the exact determination of the elements or components of something complex. A statement of the result of such an operation ...”

According to the *Webster's II New Riverside University Dictionary* (1984 edition), the word “analysis” is defined as follows:

“Separation of an intellectual or substantial whole into its constituent parts for individual study ...”

I must also take into account the common usage of the word “analysis”, which in my view, would include an examination of the consequences and ramifications of pursuing alternative options and the factors to be taken into account in evaluating such alternative options.

In addition, I must bear in mind the jurisprudence in the realm of access to information. In *General Motors Acceptance Corp. of Canada v. Saskatchewan Government Insurance* (1993), 116 Sask. R. 36 at 41 (C.A.), Tallis, J.A. set out the governing principles as follows:

“The Act’s basic purpose reflects a general philosophy of full disclosure unless information is exempted under clearly delineated statutory language. There are specific exemptions from disclosure set forth in the Act, but these limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act. That is not to say that the statutory exemptions are of little or no significance. We recognize that they are intended to have a meaningful reach and application. The Act provides for specific exemptions to take care of potential abuses. There are legitimate privacy interests that could be harmed by release of certain types of information. Accordingly, specific exemptions have been delineated to achieve a workable balance between the competing interest. The Act’s broad provisions for disclosure, coupled with specific exemptions, prescribe the “balance” struck between an individual’s right to privacy and the basic policy of opening agency records and action to public scrutiny.”

Taking all of these factors into account, in my view, most of the material contained in the Budget Briefing Book cannot properly be categorized as “analysis”. Much of the material is either simply background information, or states details of the March, 2000 Budget, or provides sample questions and their suggested responses (that do not constitute analysis) relating to the budget.

In the case of *Weidlich v. Saskatchewan Power Corp.*, [1998] S.J. No. 133 (Q.B.), Mr. Justice Geatros considered whether the Applicant was entitled to access to two focus group analyses primarily concerning SaskPower rate adjustments. The Court held that the exemption contained in S. 17(1)(a) of the *Act* applied to this material. The Applicant argued that since the exemption applied only to “advice, proposals, recommendations, analyses or policy options”, the underlying facts contained in the reports should be disclosed. In dismissing that argument, Mr. Justice Geatros stated that: “Having read the Reports, I find that the facts and opinions are so

intertwined that they cannot be intelligently separated. The Reports must be disclosed in total or not at all.”

In this matter, I find that, for the most part, the facts and analysis contained in the Budget Briefing Book can be intelligently separated. Generally, they are not so intertwined as to be inseparable.

As such, I recommend that the following portions of the Budget Briefing Book be severed, pursuant to Section 8 of the *Act*, as these portions constitute analysis that I find to be exempt by virtue of Section 17(1)(a) of the *Act*:

- Section C, page 115
- Section C, page 134, section commencing with the last three paragraphs on that page, and all of page 135
- Section C, page 139
- Section C, page 176, last four paragraphs of page
- Section C, page 208, section commencing with the last three paragraphs on that page, and all of pages 209, 210 and 211
- Section C, page 219, section commencing with the last paragraph on that page and all of pages 200, 221 and 222
- Section D1, page 18, Item D4
- Section D1, page 20, last four paragraphs of that page and page 21, first paragraph
- Section D4, page 9, Item E3
- Section D4, page 11, last three paragraphs of that page
- Section D8, page 8, Item E7
- Section D8, page 12, first six paragraphs of that page


- Section D10, page 13, Item F6
- Section D10, page 17, everything after that page's first paragraph, and page 18, first paragraph of that page
- Section D11, page 11, Items F6, F8, F9 and F11
- Section D11, page 17, last three paragraphs of that page and page 18, first two paragraphs of that page
- Section D11, page 19
- Section D11, page 20, last three paragraphs of that page, and page 21, first two paragraphs and chart contained on that page
- Section D12, pages 7 and 8
- Section D13, page 11, Items E3, E5, E7, E8 and E9
- Section D13, page 13, everything other than the first paragraph on that page
- Section D13, page 16, everything other than the first paragraph on that page and all of pages 17 and 18
- Section D15, page 13, Items F2 and F3
- Section D15, page 14 and first paragraph of page 15
- Section D16, page 17, Items F1 to F7 inclusive
- Section D16, pages 18-22 inclusive
- Section D23, page 6, Items D2, D3 and D4
- Section D23, pages 7, 8 and 9
- Section D24, page 10, Item E3
- Section D24, page 12, last five paragraphs of that page, all of page 13 and first two paragraphs of page 14
- Section D25, page 5, Item E3

- Section D25, page 6, last four paragraphs of that page, and all of page 7
- Section E, page 49, last paragraph
- Section E, page 53, everything other than the first paragraph on that page
- Section E, page 76, last three paragraphs on that page and page 77, first five paragraphs on that page
- Section E, page 93, last three paragraphs on that page
- Section E, page 108, last paragraph of that page and chart below it, and page 109, first two paragraphs of that page
- Section F, page 2, last two paragraphs of that second section on that page
- Section F, pages 47 to 51 inclusive
- All of Section G

In my view, section 17(2) of the *Act* does not apply to any of these severed portions.

I recommend that the Respondent disclose the remainder of the Budget Briefing Book to the Applicant.

Dated at Regina, in the Province of Saskatchewan, this 21<sup>st</sup> day of March, 2001.



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