

**REPORT WITH RESPECT TO THE APPLICATION  
FOR REVIEW OF [REDACTED]  
IN RELATION TO INFORMATION REQUESTED FROM  
THE DEPARTMENT OF MUNICIPAL AFFAIRS AND HOUSING**

By an Access to Information Request Form, [REDACTED] (the “Applicant”) requested of the Office of the Fire Commissioner (the “Respondent”) a copy of the statements, pictures, investigator’s reports, etc. with respect to the [REDACTED] store in McLean, Saskatchewan, which had a date of loss of [REDACTED]. The Request was worded as follows:

“Statements, pictures, investigator reports etc.”

In a letter dated July 21, 2000, the Access Officer for the Respondent, Ken Pontikes, wrote the Applicant as follows:

“We are pleased to advise that your application for access to records in the possession of the Office of the Fire Commissioner relating to a fire that occurred on [REDACTED] at the [REDACTED], Saskatchewan has been completed.

In accordance with Section 8 of *The Freedom of Information and Protection of Privacy Act*, with the exception of seven photographs and three picture diagrams, the records on file cannot be disclosed as the information contained in those records:

- (a) was obtained in confidence, implicitly or explicitly, from an agency or other institution of the government of Canada. Information of this nature is exempt from access according to Section 13(1)(a) of the *Act*; or
- (b) was obtained in confidence, implicitly or explicitly, from a local authority. Information of this nature is exempt from access according to Section 13(2) of the *Act*; or
- (c) is financial, commercial, scientific or technical information that was supplied in confidence, implicitly or explicitly, by a third party. Information of this nature is exempt from access according to Section 19(1)(b) of the *Act*.

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

As noted above, seven photographs and three picture diagrams are releasable and copies of these records are enclosed at no charge to you. If you would like reprints of the photographs, please advise and the same will be provided to you at a cost of \$8.00 per print.

Please direct all further correspondence on this application to our Freedom of Information Administrative Coordinator, Bernice Nesbitt, at Saskatchewan Municipal Affairs, Culture and Housing, 1855 Victoria Avenue, Regina, Saskatchewan, S4P 3V7. If you have any questions regarding your application, please feel free to telephone Ms. Nesbitt at 787-4154."

In a formal Request for Review dated January 16, 2001, addressed to me, the Applicant requested a review of the above decision of the Respondent.

I determined that I would undertake the Review as requested by the Applicant and so advised both the Applicant and the Respondent. At the same time, I invited each party to provide me with any additional submissions with respect to the issues in this matter.

In a letter dated March 26, 2001, the Applicant wrote to me as follows:

"Thank you for your letter to me of March 19, 2001.

I do not have any representations to make regarding the position of Municipal Affairs, Culture and Housing, other than that in order to determine if we may subrogate [REDACTED], it is vital that we attain more information in regards to the cause of the fire. [REDACTED] is denying the claim suggesting that the fire was deliberately set; any further information, such as pictures, investigation reports, Fire Incident Report, etc. would greatly assist us in the subrogation process.

I trust this is satisfactory. I would be pleased to speak with you if you require further information, and I can be reached at the above telephone number."

In a letter dated April 3, 2001, the Access Officer for the Respondent, Brij Mathur, wrote to me as follows:

We are in receipt of your letter of March 19, 2001 advising of the Request for Review filed with you by [REDACTED] in respect to Freedom of Information Application Number [REDACTED]

As requested, we enclose copies of the following documents to which the applicant was denied access:

1. Three Basic Fire Incident Reports completed by [REDACTED] [REDACTED] (access denied pursuant to Section 19(1)(b)).
2. Basis Fire Incident Report and Fire Department Response to Fire Incident Report completed by the McLean Fire Department (access denied pursuant to Section 13(2)).
3. Witness statements taken by the Royal Canadian Mounted Police (access denied pursuant to Section 13(1)(a)).

The mandate of the Office of the Fire Commissioner is to gather and disseminate statistical information relating to fires in the Province. For this purpose, insurance companies and fire departments are required by law to provide fire reports to the Office of the Commissioner. As matter of courtesy, the R.C.M.P. may also provide copies of their investigation documents to the Fire Commissioner's Office. All third party reports and documents are supplied in confidence and are exempt from access. The Office of the Fire Commissioner will, however, provide information as to the nature of a fire, either verbally or in writing, upon request. In instances where litigation is involved, Fire Prevention Officers are prepared to testify at trial.

In this particular matter, there is an obvious dispute between [REDACTED] and [REDACTED]. To release to [REDACTED] information provided in confidence by [REDACTED] would be prejudicial to [REDACTED]. With respect to the fire reports from the McLean Fire Department, [REDACTED] may apply for access to these records directly to the Fire Department pursuant to *The Local Authority Freedom of Information and Protection of Privacy Act*. As well, [REDACTED] could attempt to access the records of the R.C.M.P. under the federal *Access to Information Act*.

In due course, we look forward to hearing from you as to the outcome of your Review. If you require anything further, please let us know."

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 March 19, 2001

addressed to Mr. Pontikes, the Access Officer for the Department of Municipal Affairs, Culture and Housing. I was provided with the materials in question, consisting of approximately 21 pages, along with the Respondent's letter to me dated April 3, 2001.

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

- “13(1) A head shall refuse to give access to information contained in a record that was obtained in confidence, implicitly or explicitly, from:
- (a) the Government of Canada or its agencies, Crown corporations or other institutions;
- ...
- (2) 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. ...
- 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;”
- ...
- (2) A head may give access to a record that contains information described in subsection (1) with the written consent of the third party to whom the information relates.
- (3) Subject to Part V, a head may give access to a record that contains information described in subsection (1) if:
- (a) disclosure of that information could reasonably be expected to be in the public interest as it relates to public health, public safety or protection of the environment; and
  - (b) the public interest in disclosure could reasonably be expected to clearly outweigh in importance any:

- (i) financial loss or gain to;
- (ii) prejudice to the competitive position of; or
- (iii) interference with contractual or other negotiations of; a third party.”

With respect to the three Basic Fire Incident Reports completed by [REDACTED], to which the Respondent has denied the Applicant access pursuant to Section 19(1)(b) of the *Act*, in my view these documents properly fall within this exemption and as such, should not be disclosed to the Applicant. [REDACTED] supplied the Respondent with this information (that has financial, commercial and technical overtones) in confidence.

Further, Section 19(2) of the *Act* does not apply in this case, as [REDACTED] has not provided its written consent to allow access to these documents. And, in my view, Section 19(3) does not apply, since any public interest in access to these documents could not reasonably be expected to outweigh in importance any financial loss or gain to [REDACTED], or any prejudice to [REDACTED] competitive position that could result from allowing the Applicant access to these documents.

With respect to the Basic Fire Incident Report and Fire Department Response to Fire Incident Report completed by the McLean Fire Department, to which the Respondent has denied the Applicant access pursuant to Section 13(2) of the *Act*, in my view, these documents properly fall within this exemption and as such, should not be disclosed to the Applicant. The McLean Fire Department, a body that comes within the definition of “local authority” pursuant to *The Local Authority Freedom of Information and Protection of Privacy Act Regulations*, provided these documents to the Respondent in confidence.

Turning to the witness statements taken by the Royal Canadian Mounted Police, to which the Respondent has denied the Applicant access pursuant to Section 13(1)(a) of the *Act*, I have concluded that these documents properly fall within this exemption and as such, should not be disclosed to the Applicant. The Royal Canadian Mounted Police, an agency of the Government of Canada, supplied the Respondent with these documents in confidence.

In summary, I recommend that the Respondent not disclose any of the documents requested herein to the Applicant.

Dated at Regina, in the Province of Saskatchewan, this 19<sup>th</sup> day of April, 2001.



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