

**REPORT WITH RESPECT TO THE APPLICATION
FOR REVIEW OF ██████████ IN RELATION TO INFORMATION
REQUESTED FROM SASKTEL**

[1] By an Access to Information Request form (undated), ██████████ (the “Applicant”) requested information from SaskTel (the “Respondent”) regarding the purchase of “Warren’s Farm & Ranch Directory”.

[2] The Request was worded as follows:

“Purchase & particulars of the acquisition of Warren’s Farm & Ranch Directory.”

[3] In a letter from John Meldrum, Access Officer, Freedom of Information, for the Respondent, dated December 6, 2000, the Respondent advised the Applicant as follows:

“SaskTel is in receipt of the above-noted Freedom of Information Request for the following records:

‘Purchase and particulars of the acquisition of Warren’s Farm & Ranch Directory.’

The information that you have requested is exempt from disclosure pursuant to Section 18(1)(d) of the *Freedom of Information and Protection of Privacy Act*. More particularly, release of the information could reasonably be expected to interfere with contractual or other negotiations of DirectWest in the event DirectWest were to acquire any similar publications. Likewise, the release of the information could prejudice the economic interest of DirectWest in the event additional acquisitions are pursued (Section 18(1)(b)).

I also note that the documents requested contain third party information of the former owners of Warren’s Farm & Ranch Directory since the sale/purchase agreement is a shared document. Such third party information is exempt from disclosure pursuant to Section 19(1)(c) of the *Act*.

If you wish to request a review of this decision, you may do so within one year of this notice. To request a review, please 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:

Mr. Gerald Gerrand
Acting Information and Privacy Commissioner
#700 - 1914 Hamilton Street
Regina, Saskatchewan
S4P 3N6"

[4] In a formal Request for Review dated March 20, 2001, addressed to me, the Applicant indicated that he had been refused access to all or part of the record that he had requested. In the Request for Review, he stated that:

"Purchase and particulars of the acquisition of Warren's Farm and Ranch Directory by SaskTel were originally requested and refused.

Attached is a copy of the refusal of the original application. The SaskTel Access Officer refuses access based on possible interference of contractual or other negotiations that do not and may never exist. If [sic] is submitted that the refusal cannot be based on speculation but rather actual facts.

Further, the reference to 'prejudicing the economic interest of Direct West in the event additional acquisitions are pursued' again refers to events which have not happened and no basis for any prejudice has been established."

[5] In a letter dated March 29, 2001, I asked the Applicant to provide me with any response that he may have to the Respondent's position, as was outlined in its December 6, 2000 correspondence.

[6] In a letter dated April 18, 2001, the Applicant responded to me as follows:

"Enclosed please find a copy of my Access to Information Request Form which I originally filed.

With respect to your request for my response to the letter of Mr. Meldrum dated December 6, 2000, I would reiterate the Details of Request in my request for review. Mr. Meldrum refers to 3 sections of the *Act*, Section 18(1)(d), 18(1)(b) and 19(1)(c). With respect to Section 18(1)(d) the sale of Warren's Farm & Ranch Directory is complete and Mr. Meldrum has

provided no basis why disclosure of the information would interfere with those negotiations or that contract. The references in Mr. Meldrum's letter with respect to "prejudicing the economic interest of DirectWest in the event additional acquisitions are pursued", does not refer to any actual prejudice or loss but merely the possibility of such prejudice in the future.

With respect to Mr. Meldrum's contention that third party information is exempt from disclosure under Section 19(1)(c), this does not appear to be necessarily the case. Section 19(1)(c) exempts information where there is either a financial loss or gain, a prejudice in the competitive position of, or an interference with contractual or other negotiations of a third party. Again this sale is at an end and Mr. Meldrum provides no information as to how the release of this information could compromise negotiations which have already been completed.

I trust this is the information you require, however if you require anything further please do not hesitate to contact me."

[7] I then determined that I would undertake the review as requested by the Applicant and advised the Respondent of this. I further determined that for purposes of carrying out my review, it would be necessary for me to personally inspect the materials in question. As such, I requested that the Respondent, pursuant to the provisions of Section 54(1)(a) of *The Freedom of Information and Protection of Privacy Act* provide me with a copy of the documentation that was withheld from the Applicant. A copy of the relevant document was duly forwarded to me by the Respondent and I have had an opportunity to review it.

[8] Along with the document in question, the Respondent provided me with further clarification as to its position in a letter addressed to me dated June 13, 2001. This correspondence stated:

"Thank you for your letter dated April 30, 2001, advising that you are performing a Review as requested by [REDACTED].

Enclosed is a copy of the Asset Purchase Agreement dated March 28, 2000, which Agreement contains the "purchase and particulars of the acquisition of Warren's Farm & Ranch Directory.

In detailing the reasons why I considered this document to be exempt from disclosure, I believe it is important to advise you that [REDACTED], which publication is a direct competitor of Warren's Farm & Ranch Directory, which is owned by DirectWest. Copies of pages from their web site are enclosed,

recognizing that the main area of overlap is the hard copy farm directory that each party publishes.

Prior to this Freedom of Information Request, DirectWest had a couple of conversations with [REDACTED] about whether or not he was interested in selling his business. I understand the last discussions were between [REDACTED] [sic] (of DirectWest at this time) wherein [REDACTED] was advised that, if he were ever interested in selling, he should let DirectWest know. No further discussions have taken place; however, [REDACTED] is obviously interested in what DirectWest paid for his competitor.

With respect to my reasons for denial of access, I will now expand upon same:

Section 18(1)(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.

My position with respect to this section is that the document in question contains financial information of DirectWest that has value to a prospective seller of a business such as The Prairie Ag Directory. What better way for a seller to start negotiations than to have the actual negotiated form of agreement and value that was paid for a competitor. Section 18(1)(d) does not limit the exclusion to actual existing negotiations. The wording of this section is clearly broad enough to include prospective negotiation. The test to be met is whether "the disclosure could reasonably be expected to interfere" with negotiations. Our view is that as a prospective seller to SaskTel, this information in the hands of [REDACTED] could reasonably be expected to interfere with any future negotiations. Were the potential of a sale merely a "pie in the sky" possibility, I might agree with [REDACTED] arguments; however, actual opening discussions had occurred just prior to the Freedom of Information Request in question. On this basis, I believe the test is met.

Section 18(1)(f): information, the disclosure of which could reasonably be expected to prejudice the economic interest of the Government of Saskatchewan or a government institution.

With respect to my position in my December 6, 2000, refusal that release of this information could prejudice the economic interest of DirectWest, I note that I should have made reference to Section 18(1)(f), rather than Section 18(1)(b), of the Act. I do not believe Section (1)(b) has any application to this request.

With respect to Section 18(1)(f), I do believe that portions of this document could prejudice the economic interests of DirectWest in

the operation of Warren's Farm & Ranch Directory. The document in question contains detailed financial information concerning the operations of Warren's, including revenues and expenses, which could be beneficial to a direct competitor, such as The Prairie Ag Directory. If this information proved beneficial to [REDACTED], conversely it would be to DirectWest's economic detriment, since they directly compete against each other.

Sections 19(1)(b) and (c): 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 a third party.

The agreement in question clearly contains information that is personal to the third parties. This information would have been provided to the purchaser in confidence and should not now be disclosed pursuant to the Act. This situation is quite similar to a Review Decision of Mr. McLeod (File #92/012) where Mr. McLeod declined to order the disclosure of a lease agreement between the Department of Parks & Renewable Resources and Mission Ridge Ski Development Inc. on the basis of Section 19(1)(b) of the Act. In addition, I note that the Warrens continue to be involved with DirectWest in the operation of Warren's Farm & Ranch Directory through their company K. Warren Management & Consulting Ltd. (a name change from Warren's Farm & Ranch Directory Limited). Their economic well being could be impacted by the release of this information to a direct competitor. (Section 19(1)(c)).

In the event you have any questions with respect to this matter, please feel free to contact me."

[9] I also received the following correspondence from the solicitors for the third parties in this matter, [REDACTED], who were the [REDACTED]. I have concluded that Warren's Farm & Ranch Directory Limited, and [REDACTED] are third parties as defined by *The Freedom of Information and Protection of Privacy Act*. In a letter dated June 20, 2001, [REDACTED] wrote to me as follows:

"We are the solicitors for [REDACTED] the [REDACTED]. We have been instruction [sic] to reply to Mr. J.C. (John) Meldrum's correspondence of June 13, 2001, which was copied to you.

Our clients object to the release of any documents to the Applicant, [REDACTED], [REDACTED], pertaining to the sale of Warren's Farm & Ranch Directory Limited to SaskTel, Direct West. Warren's Farm & Ranch Directory Limited, was, at all material times hereto, a private company and the details of that company's financial affairs are private and confidential and not for public disclosure.

We understand that the Applicant herein is a competitor to the Direct West, Warren's Farm & Ranch Directory operation. It is respectfully submitted that the release of the requested information would give the applicant an unfair competitive advantage.

It is further respectfully submitted that release of the requested information and/or documents to the Applicant would offend Section 19(1) of The Freedom of Information and Protection of Privacy Act, S.S. 1990-91, c. F-22.01. Our clients, [REDACTED] continue to have personal services contracts with Direct West Publishing Partnership, which contracts formed part of the consideration for the sale of Warren's Farm & Ranch Directory Ltd. The requested records/information were supplied in confidence by our clients to the government institution. Any disclosure of these third party records/information would invariably result in financial loss to our clients, prejudice their financial position, and interfere with their contractual relations.

For the above reasons our clients humbly ask that the Applicant's Freedom of Information Request be denied."

[10] I provided the Applicant with copies of the letter from the Respondent dated June 13, 2001 and the letter from the solicitors for [REDACTED] dated June 20, 2001, and invited the Applicant to provide me with any further submissions that he may have after reviewing this correspondence. I did not receive any further submissions from the Applicant.

[11] The relevant provisions of *The Freedom of Information and Protection of Privacy Act* are as follows:

"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;

. . .

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

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.

(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.”

[12] After reviewing these potential exemptions, it is my view that the requested document in this matter (the Asset Purchase Agreement between Warren’s Farm & Ranch Directory Limited,

DirectWest Publishing Partnership and [REDACTED] is exempt from disclosure pursuant to Sections 18(1)(d), 18(1)(f), 19(1)(b) and 19(1)(c) of the Act.

[13] With respect to Section 18(1)(d), I agree with the Respondent's submission that the relevant test is whether the disclosure of the information could reasonably be expected to interfere with negotiations. In my view, prospective negotiations could be included within this definition, as long as they were foreseeable. It is my view that such negotiations were foreseeable in this matter.

[14] With respect to Section 18(1)(f), it is my view that disclosure of the document in question could prejudice the Respondent's economic interests in operating "Warren's Farm & Ranch Directory", given the detailed financial information included in the document. As submitted by the Respondent, such information could be beneficial to a direct competitor.

[15] With respect to Section 19(1)(b) and (c), it is my view that the document in question was supplied by the third parties involved in a manner that was intended to be confidential by the parties that entered into the written agreement. Additionally, the third parties involved have advised the Respondent that they oppose production of the document requested by the Applicant. Further, disclosure of the requested information could reasonably be expected to detrimentally impact upon the third parties' financial well-being if the information was released to their direct competitor.

[16] For the reasons outlined above, I recommend that the Respondent not release to the Applicant the withheld document in question.

[17] Dated at Regina, in the Province of Saskatchewan, this 10th day of September, 2001.

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