**REPORT WITH RESPECT TO THE APPLICATION OF [redacted]
FOR INFORMATION REQUESTED OF SASKTEL**

[1] In early March, 2000, [redacted] ("the Applicant") submitted an Access to Information Request Form to SaskTel ("the Respondent") outlining his request in the following words:

> "The Job Evaluation Committee's original results based on the appeal presentation of my job duties. Previous ID [redacted], new [redacted] I expect these documents should be dated in the proximity of Jan 14, 1999"

[2] J.C. (John) Meldrum ("Meldrum"), Vice-President Corporate Counsel and Regulatory Affairs of the Respondent, responded to the request by letter dated March 10, 2000, which reads in part as follows:

> "*The Freedom of Information Act* operates on the basis of the applicant describing the documents requested and the corporation then attempting to find those records. In this particular case, the records you have requested are based on a very general description. I believe though, that the enclosed documents represent the records requested. Additional access requests can be made if there are any additional records that you wish to access. Greater specificity with respect to any further requests would be appreciated."

[3] By follow-up Access to Information Request Form and accompanying letter dated March 28, 2000, the Applicant provided further detail of the information that he was seeking. The letter described in part the documentation being sought by the Applicant.

> "The documents/notes/records/evaluation sheets/graphs and or forms that were completed by the Job Evaluation Appeal Committee during and immediately after hearing the appeal on my job duties. Again I emphasize that this information must be dated on or about Jan 14, 1999."

[4] This request for information was responded to by the Respondent by letter dated April 28, 2000, which reads in its entirety as follows:

"I am in receipt of you Access to Information Request Form asking for the following information:

> "As stated on my original request [redacted] and as expanded on in my attached letter, dated March 28/2000."

We have searched the records and have determined which specific document you have requested. The information is, in my opinion exempt from disclosure under Sections 18(1)(d), (e) and (f) of *The Freedom of Information and Protection of Privacy Act* for the reasons set forth below:

a) The information relates specifically to job evaluation issues for specific jobs at SaskTel. The terms and conditions of employment, including the salary to be paid for this job is the subject of collective bargaining between the union that represents you and SaskTel. It is my view that release of this information could reasonably be expected to interfere with contractual negotiations between the C.E.P. and SaskTel [Section 18(1)(d) and (e)].

b) I am also of the view that disclosure of this information could reasonably be expected to prejudice the economic interest of SaskTel. Job evaluation processes are massive undertakings and are very disruptive to the workforce, as evidenced by virtually every company that has implemented an "Equal pay for work of equal value" system. SaskTel has in place an appeal process, from which there is no recourse, as well as a job evaluation maintenance program. It is important for those programs to function properly that information of the nature requested by you not be disclosed in order to preserve the sanctity of these programs. Release of this information is not consistent with the proper functioning of these programs and as such SaskTel's economic interests will be prejudiced by release of this information [Section 18(1)(f)].

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"

[5] The Application submitted to me a formal Request for Review dated April 19, 2001. I was asked to consider by way of Review the production of the following information as described by the Applicant:

> "The Job Evaluation Committee's original results based on the appeal presentation of my job duties. Previous ID [redacted], new [redacted] I expect that these records would include the rating generated after hearing our appeal and where the results fit in the scope of the bands defined. These documents should be dated in the proximity of Jan 14, 1999."

[6] Following a review of the materials submitted to me, I determined that I would carry out the requested Review. The Respondent was formally advised of this decision as required by Section 51 of *The Freedom of Information and Protection of Privacy Act* ("the *Act*") by letter dated April 30, 2001.

[7] Commencing in the fall of 1995, the Respondent began the development and implementation of an in-scope job evaluation system. It was necessary for the Respondent to work with and have the agreement of the Union that represented the in-scope employees of the Respondent, the Communication, Energy and Paper Workers Union ("CEP"). A committee of the Respondent and CEP was created to work towards the development of a system of evaluation and classification of all in-scope jobs and to act as a steering committee in respect to the effective implementation of the proposed new job evaluation plan.

[8] In May of 1996, employees of the Respondent ratified a Collective Agreement for the period March, 1995 to March, 1998, which agreement included job evaluation terms of reference. Subsequent agreements were entered into culminating most recently in an Agreement dated February of 2001, wherein employees ratified a Collective Agreement covering the period March, 2001 to March, 2004. The most recent Agreement contains a provision that the Respondent and CEP will establish a committee to review job evaluation disclosure issues. The specific term of the Agreement in this regard is set out at paragraph 10 and reads as follows:

> "10. SaskTel and the CEP agree that the JEAC shall investigate and make recommendations with respect to full, partial or non-disclosure of the Job Evaluation rating results. Failing agreement by the committee members, the issue shall be forwarded to the Bargaining Committees for

resolution. The investigation and recommendation shall be completed on or before March 24, 2002."

[9] Pursuant to the provisions of paragraph 9 of the said Agreement, the Respondent and CEP agreed to re-establish the Job Evaluation Advisory Committee and did so following contractual terms.

> "9. SaskTel and the CEP agree to re-establish the Job Evaluation Advisory Committee in accordance with Terms of Reference to be approved by the respective Bargaining Committees. This committee will be comprised of four CEP members, of which one will be a National Representative, with equal representation from management. Once member from the CEP and one member from management will act as Co-Chairs of the committee. This body shall serve as the final decision-making body for all job rating results."

[10] By letter dated June 11, 2001, Mr. Doug Burnett ("Burnett"), General Manager Human Resources & Industrial Relations of the Respondent, described in some detail the establishment and operation of the Job Evaluation system. At page 2 of that letter, Burnett detailed how the evaluation process, in fact, was carried out.

> "2.1 Overview of Process
> From an overview perspective, here is how job evaluation works for all jobs:
>
> - Information is gathered about each and every job through questionnaire (completed by employees and immediate managers), interviews, job descriptions, and job analysis completed by Human Resources.
> - Human Resources assembles an information package based on the sources identified above, which is then submitted to a joint committee. The joint committee (3 union members and 3 management) measures the job against a common set of criteria (factors). (see factors below).
> - Once the joint committee has reached consensus in relation to each factor, a total "score" for the job is calculated which in turn is used to determine the relative worth of the job. The score effectively places the job within a job hierarchy for the organization and will determine exactly what the job should be paid.
> - Prior to communication with employees, the results are filed with the union and with the company for review and acceptance. This review process is a quality check on the results of the joint committee.
> - Once accepted, the employees are notified of the results. The employees receive information about impact on pay (if any) but not the details of the factor ratings/scores. The details of the rating process are

> held confidential in accordance with the "no disclosure agreement" established between SaskTel and the union."

[11] Further, Burnett described to me the manner in which an appeal process operates under the Job Evaluation process. He detailed the appeal process in the following words:

> "2.3 Appeals
>
> Once the results are communicated to employees and managers, they have a right to appeal. In an appeal, the incumbents and managers appear before the job evaluation committee and present information about the job being evaluated. The committee also has the opportunity to question incumbents and managers about their original submission or any new material that may have been brought forward in the appeal process. The job evaluation committee will then reconsider all facts and make a final decision with respect to the scores associated with each factor. Similar to an original rating, the results of an appeal are also subject to the review and acceptance process by the union and the company. The company or the union can not override results of the job evaluation process but they can send it back for clarification or further review. Once all questions are answered, the results from the job evaluation committee become final and binding on all parties."

[12] The Respondent properly gave notice to CEP as a third party contemplated by the *Act* pursuant to the provisions of Section 52 of the *Act*. By letter to me dated June 18, 2001, [redacted], National Representative of CEC indicated that CEP wished to make representations to me and advised that CEP "believes very strongly that the requested information should not be given to the party making the request".

[13] By letter dated July 3, 2001 to CEP, I invited CEP to make any representations to me in writing. In a telephone conversation with [redacted] on July 30, 2001, he indicated that he would be attempting to prepare written submissions and I advised him that I would require them as soon as reasonably possible. No written submissions have come from CEP and I am proceeding with the preparation of this Report without having received any written submissions from CEP other than the previously referred to statement that it strongly opposes the release of the information to the Applicant.

[14] I have requested from the Respondent and the Respondent has provided to me, pursuant to Section 54 of the *Act*, the document that is the subject of the Request for Review and access to

information. The document is a single sheet of paper headed by the words "Rating Sheet – APPEAL". The sheet sets forth the sub-factors considered in the Appeal together with some mention made of substantiating data respecting each sub-factor and the degree given to each sub-factor for the purposes of the Appeal.

[15] The reasons relied upon by the Respondent for refusal for release of the requested information to the Applicant was set forth in some detail by the Respondent in a letter to me dated May 30, 2001. The Respondent:

> "...relied upon Section 18(1)(d) of the Act to deny disclosure on the basis that release of this information will interfere with contractual negotiations between the C.E.P. and SaskTel. When this refusal was made in April of 2000, it was made both on the basis of the negotiations that would be occurring for the renewal of the collective agreement as well as the ongoing negotiations that occur between the parties as part of the administration of the collective agreement as well as the job evaluation process outlined above.
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> Contrary to the assertions of [redacted], negotiations between SaskTel and the C.E.P. do not stop with the ratification of the collective agreement. Many matters are brought forward by both the company and the union for negotiation during the life of a collective agreement. For example, just prior to opening negotiations for the early renewal of SaskTel's collective agreement, the union brought forward a request for a salary market adjustment for the specific job classification occupied by [redacted]. While the company did not accept that the job in question was underpaid in relation to market, discussions did occur between the union and SaskTel following the Freedom of Information request with respect to the proper amount of pay for this particular job, which could have been impacted by the release of this information to the workforce.
>
> In addition, the job evaluation process itself involves considerable negotiation between the parties in order to make the process work. As indicated earlier, this particular job could come forward for re-rating at any time and will in fact be re-rated next year. The release of this information to the workforce could in my view impact those negotiations. It is also possible for the union to bring forward the specific concerns of this work group and attempt to negotiate a higher wage rate. This could occur prior to the expiration of the collective agreement or perhaps as part of the next round of negotiations. Either way, release of job rating information to the general workforce could impact those negotiations.
>
> Lastly, I note that the parties, pursuant to Sections 9 and 10 of the ratified collective agreement, are themselves negotiating what if any information

from the rating and appeals process should be released. There are pros and cons on both sides of this issue, and it is unknown at this point where the course of negotiations will take the parties. If SaskTel were to release this information, it would circumvent the collective bargaining process and would certainly interfere in contract negotiations between SaskTel and the C.E.P. concerning release of rating information.

I also declined to release the information on the basis that release could reasonably be expected to prejudice the economic interest of SaskTel (Section 18(1)(f) of the Act). Job evaluation programs by their nature, are costly and time consuming undertakings, and the results initially create a tremendous amount of internal dissatisfaction, controversy and work disruption. It is now almost 3 years since SaskTel first implemented the job evaluation program and it is only in the last 6 months or so that employee dissatisfaction has dissipated. SaskTel experienced a tremendous amount of disruption despite the fact that 88% of employees received an increase in pay as a result of the job evaluation process. The dissatisfaction occurs as a result of employee groups feeling that their job should have been considered more important than other jobs. The comparisons and the ongoing discussions are never-ending and frankly impact the overall productivity of the workforce, not to mention that an unhappy workforce is less productive than a satisfied one. In the event [redacted] is to be given access to this information, we believe that all similar information would have to be released to the employees, which will inevitably lead to a second round of employee dissatisfaction, disruptions and corresponding reduction in productivity.

I also make reference in my letter of denial to how the release of this information would impact the sanctity of the job evaluation and appeal process. Clearly if the employees know all of the details of the job rating of all of the various jobs within SaskTel (which would ultimately occur if the precedent is set to release this information) the evaluation process can potentially become the subject of gamesmanship. Rather than simply presenting the information to the committee, special attention could be paid to minor aspects of the job which would affect the overall rating. Were this to occur, SaskTel could easily be the subject of rating creep, where all jobs creep up in value, resulting in increased costs to SaskTel. This possibility of increased costs would in my view satisfy the test of reasonable expectations that release could prejudice the economic interest of SaskTel."

[16] I have met with Meldrum and Burnett to discuss these issues and gain some knowledge of the job evaluation process.

[17] The Applicant has outlined his position to me. His final written submission is dated August 15, 2001. In part, the Applicant asserts:

> "In response to Meldrum's letter, I have not broadened my original request to include other documentation. I am only asking for the ratings based on my specific appeal presentation, on or about the date of the presentation, by the appeal committee. We were initially told that our result would be passed on to us in a reasonable time frame (two to six weeks) and it turned out to be a year later. This extraordinarily long delay indicates that some type of negotiations, not just clarifications, was taking place."

[18] Further, the Applicant asserts:

> "Since this process began, the target was to set some sort of standard rating system and evaluate each individual job against common criteria. This is the first step in ensuring 'Equal Pay for Work of Equal Value'. The rest is negotiation. I am only interested in the first part. I am not asking for the details on why or how they scored any particular part of my appeal. I am not asking why or how they value the work that I perform. I am asking for the results of the joint appeal committees evaluation of my appeal. I would even be happy with just the total for my test scores, as it relates to the hierarchy, without specific category scores, unbiased, non-negotiated."

[19] The analysis of this matter must commence with the proposition that the Applicant has a statutory entitlement to access to the information requested. Section 5 of the *Act* sets forth in clear terms the entitlement of every person to access to records in the possession or under the control of a government institution. Section 5 of the *Act* reads as follows:

> "Subject to this Act and the regulations, every person has a right to an, on an application made in accordance with this Part, shall be permitted access to records that are in the possession or under the control of a government institution."

[20] The fundamental issue here is whether or not the Respondent is entitled to refuse access to the information requested on the basis of the statutory exemptions relied upon.

[21] The Respondent relies upon two provisions of Section 18 of the *Act*, Section 18(1)(d) and Section 18(1)(f). I have concluded that neither of those sections operate to prevent the Applicant from having access to the document to which he seeks access.

[22] Section 18(1)(d) of the *Act* reads as follows:

> "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."

[23] The document which the Applicant asks the Respondent to deliver to him under the *Act* is a document that reflects the results of an appeal adjudicated by his union and his employer respecting the evaluation of the very job that the Applicant is doing. In my view, the Applicant has a basic entitlement under the *Act* to the information contained in the questioned document, as it fundamentally affects the full-time work in which he is engaged. The object of the *Act* is at least in part to promote an openness and transparency in the workings of government. In my opinion, there are certain fundamental pieces of information and documentation to which a citizen is entitled and one of these includes the precise manner in which his employing government institution has specifically dealt with his right of appeal of job classification, when there is a right of appeal granted in the agreement covering his employment.

[24] Both the Respondent as employer and CEP as the negotiating union representing the Applicant oppose the release of the information. They have incorporated in the collective agreement they have negotiated certain provisions of secrecy respecting the Appeal process. In my view, the Respondent and CEP cannot negotiate away fundamental rights of the Applicant set forth in the *Act*.

[25] The onus is on the Respondent to establish that the disclosure of the information could reasonably be expected to interfere with contractual negotiations with CEP. The information provided to me does not, in my view, satisfy that onus. In any event, even if difficulties did arise by reason of the release of the documentation to the Applicant, those are difficulties that the Respondent and CEP will have to face.

[26] Section 18(1)(f) of the *Act* provides as follows:

> "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."

Again, I observe that the onus is on the Respondent to satisfy me that the release of the information in question to the Applicant "could reasonably be expected to prejudice the economic interest of ..." of the Respondent. In my view, that onus has not been satisfied. Again, in any event, if there is a financial downside to the Respondent by reason of the release to the Applicant of the information, that is a complication that, in my view, must be accepted by the Respondent as the Applicant has a basic and fundamental right to the release of the information.

[27] Section 18(1)(f) of the *Act* grants a discretion to a "head" of a government institution to refuse access "to a record that could reasonably be expected to disclose...prejudice the economic interest of the...government institution." There will, no doubt, be large numbers of records in the possession of the Respondent to which this provision applies. Information gathered by the Respondent respecting market trends, competitors' practices and pricing by potential suppliers are basic examples of information gathered or acquired by the Respondent, the release of which probably could prejudice its economic interests. This is the type of record or information contemplated by Section 18(1)(f) of the *Act*, in my opinion.

[28] Most of the business records generated in-house by the Respondent would fall within the exemption provisions of Section 18(1)(f) of the *Act*. This type of information does not relate to or impact upon a specific individual but rather the overall business affairs and financial objectives or strategies of the Respondent.

[29] When a record is created that relates to, or impacts on a specific individual, I am of the general view that the Respondent should grant access to record to the individual involved, even though the granting of the access might adversely affect the Respondent financially. In the matter under consideration in this Review, the Respondent granted to the Applicant a right of appeal respecting the rating of his job position. To complete the appeal procedure fairly, I am of the view that the Applicant should be provided with the precise assessments and ratings respecting the Applicant's job as set forth in the "Rating Sheet – Appeal".

[30] It is therefore my recommendation that a copy of the "Rating Sheet – Appeal" form be provided by the Respondent to the Applicant.

[31] 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