

**REPORT WITH RESPECT TO THE REQUEST FOR REVIEW
OF ██████████ IN RELATION TO INFORMATION
REQUESTED FROM SASKATCHEWAN JUSTICE**

[1] On May 11, 2001, ██████████ presently of ██████████, ██████████ (“the Applicant”) filed with Saskatchewan Justice an Access to Information Request Form. The Applicant described the name of the record sought as “██████████”. He described the record that he wanted in the following words in his Access to Information Request Form:

“All information regarding the recant of ██████████ from date of recant to enter of stay (Dec 05, 1994) including but not limited to, dates and communications of said information to CSC/NPB and record of any phone communications and notes from same, RCMP reports etc.”

[2] By letter dated June 7, 2001, John D. Whyte, Access Officer, of Saskatchewan Justice (“the Respondent”) wrote to ██████████:

“Your application for access was received in my office on May 11, 2001.

Attached is the information you requested pertaining to:

‘All information regarding the recant of ██████████ from date of recant to enter of stay (Dec. 5, 1994) including but not limited to, dates and communications...’

You will need to apply to the Federal freedom of information office for:

‘...of said information to CSC/Parole and any response received from CSD/NPB and record of any response received from CSC/NPB and record of any phone communication and notes from same, RCMP reports, etc.’

You may have this decision reviewed by the Information and Privacy Commissioner, within one year of this notice. To request a review, you must complete a ‘Request for Review’ form and submit it to #700 - 1914 Hamilton Street, Regina, Saskatchewan, S4P 3N6.

If you require further information, please contact Sherri Fowler, Freedom of Information Administrative Co-ordinator at (306) 787-5473.”

[3] The Applicant filed with me a Request for Review dated June 11, 2001. He articulated his reasons for requesting a review in the following words:

“Having failed to get the needed dates etc from RCMP I then tryed (sic) Sask. Justice, who enquired through my ██████████, who I provided certain documents for better explanation of what dates I wanted. Sask. Justice simply sent me back copies of my own documents. No further disclosure as to the dates I wanted. See attached; The day has now come as ██████████ said it would.”

[4] The attachment referred to was a copy of memorandum prepared by [REDACTED] dated 94/09/08 addressed to "OIC Criminal Operations". The body of the memorandum written by [REDACTED] reads as follows:

1. I have reviewed the OC Regina's memo and have discussed this with him. I agree that although we have received verbal responses from Saskatchewan Justice the entire matter should be referred to them formally so that a written decision can be obtained.

2. The OC's concern surrounding point (a) is well founded. [REDACTED] should be informed of the investigation we have undertaken and the final results after Sask Justice has examined the facts. The issue is one for which we or Sask Justice could be accused of failure to disclose at some future date and time. (remember the accusations in the Milgaard matter).

3. If you agree, I will have the appropriate correspondence produced to the OC/

[5] By letter dated September 10, 2001 to the Respondent, I indicated my intention to carry out the Review as requested and asked that relevant documentation on the files of the Respondent be forwarded to me for my inspection for purposes of the Review.

[6] Through communications with officers of the Respondent, I determined that the following documents were enclosed in the letter of Mr. Whyte to the Applicant dated June 7, 2001, namely:

1. A Consent Order executed by the agent of the Attorney General for the Province of Saskatchewan consenting to a new trial being ordered by the Saskatchewan Court of Appeal in the matter of [REDACTED];
2. A copy of letter from the Respondent to the Crown Prosecutor's office and Pandila law office advising as to date of trial for January 16, 1992;
3. A copy of Report of Criminal Proceedings;
4. A copy of Stay of Proceedings dated December 5, 1994 executed by an agent of the Attorney General for the Province of Saskatchewan in the matter of Her Majesty the Queen against [REDACTED].

[7] There are further materials on file with the Respondent relating to the request of the Applicant, which the Respondent declines to provide to the Applicant. From my review of the file, these documents are restricted to a letter and attached memorandum from the R.C.M.P. dated April, 1994 and a

memorandum from the Executive Director of Public Prosecutions to the Regional Crown Prosecutor for the Regina Region dated May, 1994. All other documents on the file of the Respondent relating to the application of the Applicant have been forwarded to the Applicant.

[8] The first mentioned document withheld from the Applicant (letter and attached memorandum from R.C.M.P. dated April, 1994) is information contained in a record that was obtained in confidence by the Respondent from an agent of the Government of Canada namely the R.C.M.P. Section 13(1)(a) of *The Freedom of Information and Protection of Privacy Act* ("the Act") reads 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;"

In my view, the subject document is exempt from production under the quoted provision of the Act.

[9] The second withheld document (the memorandum from the Executive Director of Public Prosecutions to the Regional Crown Prosecutor for Regina Region dated May, 1994) is subject to the solicitor and client privilege as articulated in Section 22 of the *Act*, which section reads as follows:

"22 A head may refuse to give access to a record that:

(a) contains information that is subject to solicitor-client privilege;

(b) was prepared by or for an agent of the Attorney General for Saskatchewan or legal counsel for a government institution in relation to a matter involving the provision of advice or other services by the agent or legal counsel;
or

(c) contains correspondence between an agent of the Attorney General for Saskatchewan or legal counsel for a government institution and any other person in relation to a matter involving the provision of advice or other services by the agent or legal counsel."

[10] The document in question was clearly prepared by an agent of the Attorney General for Saskatchewan respecting the providing of advice by that agent by way of correspondence to another agent of the Attorney General for Saskatchewan. In my view, the Respondent may decline to give access to this record on the basis of solicitor and client privilege.

[11] In the circumstances, I recommend that the two documents on file with the Respondent that have not been produced as requested by the Applicant continue to be withheld from him for the reasons set out above.

[12] Dated at Regina, in the Province of Saskatchewan, this 28th day of November, 2001.

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