

**REPORT WITH RESPECT TO THE APPLICATION
FOR REVIEW OF ██████████ IN RELATION TO INFORMATION
REQUESTED FROM SASKATCHEWAN ENERGY AND MINES**

[1] By an Access to Information Request form, ██████████ (the “Applicant”) requested information from the Saskatchewan Department of Finance regarding royalties received by the Saskatchewan government from Cameco and Cogema in the year 2000. The request was worded as follows:

“For the year 2000, the amount of royalties received by the Sask Govt from
a) Cameco
b) Cogema.”

[2] In a letter from Bill Van Sickle, Freedom of Information Officer with Saskatchewan Finance dated August 22, 2001, Mr. Van Sickle advised the Applicant as follows:

“We received your application for access under The Freedom of Information and Protection of Privacy Act on August 21, 2001.

We have transferred your application to Saskatchewan Energy and Mines, 2101 Scarth Street, Regina, Saskatchewan, S4P 3V7 since that department/agency has a greater interest in the record that you have applied to see. Saskatchewan Energy and Mines is now responsible for processing your application and will update you on the status.

This action has been taken pursuant to subsection 11(1) of The Freedom of Information and Protection and [sic] Privacy Act.”

[3] In a letter from Donald Koop, Access Officer for Saskatchewan Energy and Mines (the “Respondent”) dated September 17, 2001, the Respondent advised the Applicant as follows:

“The Department of Energy and Mines has received your application for access to information under *The Freedom of Information and Protection of Privacy Act*.

Your request for information on the amount of royalties received by the provincial government from Cameco and Cogema is denied under the provision of Section 19 (1) (b) and (c) of the Act. The records you requested related to information that is supplied in confidence, implicitly or explicitly, to a government institution. Disclosure of this information could reasonably result in financial loss or gain to; prejudice the competitive position of; or interfere with the contractual or other negotiations of a third party.

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 #700 1914 Hamilton Street, Regina, S4P 3N6.

Please contact me at 787-3624 should you wish to discuss this matter further.”

[4] In a formal Request for Review dated September 25, 2001, addressed to me, the Applicant indicated that he had been refused to all or part of the record that he had requested. In the letter accompanying the Request for Review he stated that:

“I protest the stonewalling of Donald Koop of Energy and Mines, and Request a Review of his decision.

The uranium mining industry in Saskatchewan began under the secrecy of the Manhattan Project. The secrecy has continued during World War II and up to the present time. The provincial and federal governments continue to hold up this umbrella of secrecy.

I would argue that Section 19 (1) (b) (c) does not apply regarding this request for information about the amount of royalties received from uranium mines in the year 2000.

The resource of uranium belongs to the people of Saskatchewan. Various companies are granted licences to mine and mill this Saskatchewan resource. For this opportunity they pay royalties to the Saskatchewan government. The former premier, the Hon. Roy Romanow, used to boast in his public speeches of the income that came from oil royalties, casinos, and uranium royalties.

It is quite in order for a citizen of Saskatchewan to inquire about the sources and amounts of income that come to our Government. To ask about the amount of royalties from uranium, does not reveal a unit price, does not result in financial loss, does not interfere with contractual arrangements, and does not prejudice the competitive position of any corporation.

The reference to this clause is just more “stonewalling” and “secrecy,” which has gone on far too long!

I trust that you will set aside this clause as inappropriate and not pertinent in this case, and advise the Dept. Of Energy and Mines to forward the requested information.”

[5] I determined that I would undertake the Review as requested by the Applicant and duly advised the Respondent. Further, I requested that the Respondent, pursuant to the provisions of Section 52 of the *The Freedom of Information and Protection of Privacy Act* (the “Act”) provide any third party involved with written notice of this Review. Also, I asked the Respondent to advise the third parties involved that I would be pleased to receive from them any representations that they wished to submit to me respecting the

Review application. As well, I invited the Respondent to make any further representations to me that it may have.

[6] In a letter from the Respondent dated November 14, 2001, the Respondent provided me with its further representations as follows:

“I am writing to provide some information respecting the application by [REDACTED] [REDACTED] for information on the uranium royalties for the year 2000 paid individually by Cameco and Cogema Resources. Your file reference is F2001/036 GLG.

Energy and Mines has always approached information supplied by taxpayers in support of royalty/tax calculations as confidential. This includes information obtained through audits. Individual companies have provided information on the basis that such information would be kept confidential by the department. Energy and Mines staff are aware of the importance of treating such information as confidential and they are extremely careful of their responsibilities in this regard. In their regular contact with taxpayers, staff assure them that their royalty/tax returns are confidential. In the event that others seek specific taxpayer information, our practice is to require that they provide written approval from the taxpayer to release this information. For example, corporations who wish to purchase the mineral interests of another corporation would approach the department to obtain the status of various royalty and tax accounts of the corporation whose interest is being acquired. In order to obtain this information, the company or its legal representative must provide written consent from the taxpayer for the release of the information.

Energy and Mines has not disclosed information on royalties paid by individual companies for any resource, not just uranium. This is similar to the treatment of individual corporate or individual income taxes. Aggregate information on oil, natural gas, potash, uranium, and other mineral royalties/taxes collected by the government is disclosed in Public Accounts or other provincial government financial documents. Where the number of producers is less than three the department aggregates the information under the Other Minerals category so as not to disclose the specific amounts for that resource due to confidentiality considerations.

Under section 5 of *The Mineral Resources Act, 1985* the department is obliged not to disclose information from Crown dispositions in such a manner that it would be possible to relate such information to the person from whom it was acquired. Section 5.1 of that Act describes when certain types of information may be released and under what conditions. This latter provision is also found in both *The Crown Minerals Act* which applies to all Crown mineral lands and *The Mineral Taxation Act, 1983* which applies to all privately owned mineral lands. I believe that these provisions would be unnecessary if the records were not held in confidence in the first place.

By way of background information, in the late 1990s, the uranium industry was undergoing consolidation and for a period of time there were only two producers/royalty payers in Saskatchewan. This led to a review of how the department handles information in situations where there are a small number of producers. The department consulted with uranium, coal and other mineral producers about this issue. The companies wanted to keep individual royalty/tax, sales and production information confidential and supported the department's proposed policy to aggregate resource information where there were less than three producers within the Other Minerals category. I understand that this practice is similar to confidentiality provisions used by Statistics Canada.

In a related matter, [REDACTED] wrote to the department on October 23, 2001 requesting information on the production and export of Saskatchewan uranium and aggregate royalties for 1998, 1999 and 2000. In that letter (copy attached), [REDACTED] asked if figures for Cameco and Cogema were available or only in aggregate. The department's reply dated October 30, 2001 is also attached for your information. You will note that we supplied the aggregate uranium royalty amount collected by the government for the 2000-01 fiscal year. For your information the reference to *The Crown Minerals Act* in the reply is incorrect, it should read *The Mineral Resources Act, 1985*.

I trust this information will be helpful in your review of [REDACTED] [sic] request for records."

[7] In a letter from the Applicant dated January 5, 2002, the Applicant provided me with his further representations as follows:

"Your letter of December 3/01, plus the letter of Mr. Koop of November 14/01 is at hand.

Since the beginning of the Manhattan Project the Provincial and Federal Governments have retained a cloak of secrecy, sometimes called "confidentiality," around the uranium business. The letter by Mr. Koop certainly illustrates the extent to which the secrecy has been written into the laws surrounding the matter.

This stance and attitude is revealed in the Budget Address of March 2000 by the Minister of Finance, the Hon. Eric Cline. There he mentions the royalties received from oil, potash, and natural gas, but does not even mention "uranium," but rather lumps it together in the category of "Other Minerals" even though it amounts to 39 or 40 million dollars. (pp. 21, 64).

It is informative to note that the regulations regarding corporate business always override the rights of citizens to know what is happening to their Saskatchewan resources.

It is questionable that companies' royalties have to be so zealously guarded when Cameco and Cogema work so closely together, and, indeed, co-operate together in jointly operating the McArthur River Project.

I think it is time for some of the regulations to be updated to modern times, and to decrease the degree of secrecy.

Fortunately, the facts can be discovered from other sources besides the Dept. Of Energy and Mines.”

[8] In a letter from [REDACTED], Vice-President and Treasurer of Cameco Corporation, one of the third parties involved in this matter, dated January 14, 2002, Cameco’s representations respecting this matter were outlined as follows:

“This is the response of Cameco Corporation (“Cameco”) to the application of [REDACTED] to the Information and Privacy Commissioner pursuant to section 49(1) of the FIPPA for a review of the decision of Mr. Donald Koop, Assistant Deputy Minister of the Saskatchewan Department of Energy and Mines (“SEM”), to refuse to provide [REDACTED] with access to SEM’s records regarding the amount of uranium royalties paid in 2000 by specific companies including Cameco.

Cameco agrees with the decision of Mr. Koop to refuse to provide [REDACTED] with the records regarding Cameco’s uranium royalty payments in the year 2000 and the reasons for this refusal as set forth in his November 14, 2001 letter to yourself. Pursuant to section 19 of the FIPPA, the head of a department may refuse to give an applicant access to any record that contains, inter alia, the following types of information:

1. Financial, commercial, scientific, technical or labour relations information that is supplied in confidence, implicitly or explicitly, to a government institution; and
2. Information, the disclosure of which could reasonably be expected to prejudice the competitive position of or interfere with the contractual or other negotiations of a third party.

Cameco, like SEM, understands that information provided to or gathered by SEM in connection with company’s royalty payments is confidential. In addition to Mr. Koop’s observations that the provisions of *The Mineral Resources Act, 1985* and *The Crown Minerals Act* suggest that royalty records and information are confidential, the fact that the royalty information provided to and recorded by SEM are similar in nature to tax information and records also supports this conclusion. The similarity between tax and royalty records is intensified where the uranium royalties were calculated on the basis of profits a company like Cameco derives from each of its uranium production sites. The confidential nature of such information within the context of the FIPPA is demonstrated by the fact that both Part III of *The Revenue and Financial Services Act* (which deals with the collection and remittance of taxes and records by businesses to the Saskatchewan Government) and all of *The Income Tax Act* are prescribed by section 12 of *The Freedom of Information and Protection of Privacy Regulations* as legislation to which section 23(1) of the FIPPA (Section 23(1) is an override provision, which indicates the FIPPA overrides provisions in other legislation that restricts or prohibits access to information under the FIPPA) does not apply, with the result that the Government cannot be compelled under the FIPPA to disclose tax information and records. Given the similar nature of the royalty information and records in question, it is only reasonable to conclude these are also to be kept confidential.

Accordingly, as the information and records relating to royalty payment was provided to SEM in confidence, Mr. Koop was correct in refusing entitled to refuse [sic] to give [REDACTED] access to Cameco's royalty records.

Further, Cameco wishes to point out that the release of the royalty information could also prejudice its competitive position vis-a-vis other uranium producers or interfere with its contractual or other negotiations with its customers. There are a limited number of producers and customers in the uranium industry not only in Canada, but also on a worldwide basis. In an industry of this nature, disclosure of the royalty payment records of a particular company (which in turn were derived from profits earned from particular uranium production operations) will provide insight into the economics of its uranium operations. Such information could be used by other players in the uranium industry to the detriment of Cameco, particularly in the case of producers located outside of Saskatchewan which may not be subject to similar disclosure requirements.

It would also be appropriate to give a broad interpretation to what constitutes "confidential" or other "sensitive" information because section 19(3) of the FIPPA authorizes the disclosure of such information in appropriate circumstances, namely:

1. if disclosure of the 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
2. if the public interest could reasonably be expected to clearly outweigh in importance any
 - (a) financial loss or gain to;
 - (b) prejudice to the competitive position of; or
 - (c) interference with contractual or other negotiations of;a third party.

[REDACTED] has already been provided with the total amount of uranium royalties paid for the 2000/2001 SEM fiscal year and the total uranium production in Saskatchewan for the calendar year 2000. The public interest has been more than adequately served by the provision of the uranium royalty information on an industry wide basis and little or no public interest will be served in identifying the particular amounts paid by individual companies.

We thank you in advance for giving due consideration to our submissions and would be pleased to provide you with any other information you may require in arriving at your decision."

[9] In a letter from [REDACTED] Vice President of Finance for Cogema Resources Inc., one of the other third parties involved in this matter, dated January 11, 2002, Cogema outlined its representations with respect to this matter as follows:

“COGEMA Resources Inc. is pleased to have the opportunity to respond to the application of [REDACTED] to the Information and Privacy Commissioner for a review of the decision of Mr. Koop, Assistant Deputy Minister of the Saskatchewan Department of Energy and Mines (SEM), to refuse to provide [REDACTED] with access to SEM's records regarding the amount of uranium royalties paid in 2000 by specific companies. COGEMA supports Mr. Koop's decision and the reasons for his refusal as set forth in his November 14, 2001 correspondence to yourself.

COGEMA reports its commercial activities to SEM for the purpose of being assessed royalties and taxes by the Province of Saskatchewan. In addition, COGEMA co-operates fully with follow-up provincial audits. It has always been our clear understanding that such information is supplied to the Province on a confidential basis. The knowledge that our particular information is to be kept confidential ensures the Company's co-operation in the assessment of taxes and royalties and reassures us that competitors will not have access to that information. We believe this is good public policy.

The possibility that an individual taxpayer's private position could be made public is troublesome. We are not aware of any circumstances in Saskatchewan where private information on a taxpayer's personal or income taxes are not to be kept confidential by the Government of Saskatchewan.

The Government of Saskatchewan has taken specific steps to protect the confidentiality of information relating to individual companies in the mining industry through such Acts as; [sic] The Mineral Resources Act, 1985, The Crown Minerals Act and The Mineral Taxation Act, 1983. It is our contention that the public policy objective behind such legislation is a commitment to confidentiality of information specific to an individual company.

In addition, we are aware that SEM maintains an internal policy that prohibits the disclosure of specific producer's information where there are less than three producers in an industry. SEM only provides information on that industry in an aggregate fashion. This policy reinforces the commitment of the Province to an industry, such as the uranium industry, of its position to protect an individual company's private and confidential information. As a company in an industry with two major producers in Saskatchewan, we rely on the credibility of this policy and the integrity of the legislation when providing information to the Government of Saskatchewan. The possibility of other producers having access to the information we provide to SEM would provide our competitor's insight into the economics of our operations and be to the detriment of COGEMA.

The Freedom of Information and Protection of Privacy Act provides for an override of the privacy provision if it is in the public interest. We submit that the greatest public interest in this situation is to keep an individual taxpayer's position confidential. The public has access to the aggregate royalty numbers for our industry but the position of individual companies are a private matter. The disclosure of our commercial activities could prejudice our competitive position. It is in the public interest to have companies co-operating fully with the Province when supplying information for royalty and taxation purposes, and to support the competitiveness of our Saskatchewan companies. That is best accomplished with a system that ensures confidentiality.

In summary, COGEMA strongly opposes any release of our individual royalty, tax, sales and production information. This is truly private and confidential information that could prejudice the competitive position of our company.

Thank you for considering our submission. If you have any further questions please call me at (306) 343-4552.

[10] The provisions of the *Act* upon which the Respondent relies are as follows:

“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.”

[11] As noted above, the Respondent contends that the information not provided to the Applicant is exempt from disclosure pursuant to Section 19(1)(b) and (c) of the *Act*. The third parties involved, Cogema Resources Inc. and Cameco Corporation, have both explicitly refused to give their consent to the release of this information.

[12] After giving consideration to the type of material which the Respondent has declined to produce to the Applicant and the relevant provisions of the *Act*, it is my view that disclosing the information in question could prejudice the competitive position of the

third parties, Cogema Resources Inc. and Cameco Corporation, given the sensitive nature of this material. The third parties have advised me that they oppose production of the material withheld by the Respondent. Disclosure of the requested information could reasonably be expected to prejudice Cogema Resources Inc. and Cameco Corporation's competitive position if publicly released. I note that the Applicant has previously been provided with the total amount of uranium royalties paid for the 2000/2001 fiscal year of the Respondent, and the total uranium production in Saskatchewan for the year 2000. Providing the Applicant with the more detailed breakdown as to the particular amounts paid by the limited number of individual companies involved in this industry would, in my view, prejudice the competitive positions of these companies.

[13] With respect to Section 19(3), though disclosure of the requested information could reasonably be expected to be in the public interest as it relates to protection of the environment, in my view, the public interest in disclosure could not reasonably be expected to outweigh in importance any prejudice to the competitive position of Cogema Resources Inc. and Cameco Corporation. Section 19(3) does not, in this situation override the exemption contained in Section 19(1)(c)(ii).

[14] Section 19(3) permits access where "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 disclosure "could reasonably be expected to clearly outweigh in importance..." the "prejudice to the competitive position" of the third parties. The information sought relates only to the dollar share of total royalties paid to the third parties respectively. These dollar figures have, in themselves, little relationship to public health, public safety or the protection of the environment. An argument can be made that the activities that generate the royalties are of public interest in the aforementioned three areas, but in my view, the actual dollar figures do not constitute an exemption contemplated by Section 19(3).

[15] In conclusion, I recommend that the information in question not be disclosed to the Applicant.

[14] Dated at Regina, in the Province of Saskatchewan, this 27th day of May, 2002.

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