

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

[1] On October 11, 2001, ██████████ (the “Applicant”) faxed to Saskatchewan Health (the “Respondent”) an Access to Information Request form. In the body of the form, the Applicant requested that the Respondent provide to him:

“A copy of all letters/communications advocating for coverage of Remicade (Infliximab) under the Saskatchewan Prescription Drug Plan. Approximately 100 letters have been received, according to ██████████ of Sask Health”

[2] The Applicant submitted to the Respondent a letter accompanying the Access to Information Request form, which letter reads in its entirety as follows:

██████████
██████████
██████████

October 11, 2001

Duane Mombourquette
Director, Health Planning/FOIPPA Officer
Saskatchewan Health
3475 Albert Street
Regina, SK S4S 6X6
Tel: (306) 787-3160
Fax: (306) 787-2974

Re: FOIPPA Request: My file # ██████████

Dear Mr. Mombourquette,

Under the Saskatchewan Freedom of Information and Protection and Privacy Act (F22.01), I request access to and copies of all letters or communications advocating for the coverage of Remicade (Infliximab) by the Saskatchewan Prescription Drug Plan. According to ██████████, A communications Consultant with the Saskatchewan Health department, there have been “approximately 100” letters received. I would like to receive the records as photocopies.

I Understand that my request may be subject to fees authorized by the Act. I request that you avail yourself of your power, under Section 9(b)(i) of the Act, to waive fees, since I am a journalist and my request is made in the public interest, with the aim of informing the public.

I look forward to your reply within 30 days as the Act requires. If my request is denied in whole or part, I ask that you justify all deletions by explaining how the information is covered by specific exemptions in the Act. I will expect you to release all severable portions of records partially covered by exemptions. I am aware of my right to appeal your decision to withhold any information or to deny a waiver of fees to the Saskatchewan Freedom of Information and Privacy Commissioner.

If you have any questions, or would like to clarify my request, please feel free to contact me.

Sincerely

[REDACTED]

[3] By letter dated November 7, 2001, the Respondent advised the Applicant of its refusal to provide the requested information or copies of documentation. The letter setting forth the reasons for the refusal of the Applicant reads in its entirety as follows:

“November 7, 2001

[REDACTED]

Dear [REDACTED]:

Thank you for your recent Access to Information Request made pursuant to *The Freedom of Information and Protection of Privacy Act* (FOI Act) in which you requested the following:

A copy of all letters/communications advocating for coverage of Remicade (Infliximab) under the Saskatchewan Prescription Drug Plan. Approximately 100 letters have been received, according to [REDACTED] of Sask Health.

I note also that we spoke on November 7, 2001 to clarify the request. It was agreed that the request is limited to letters/correspondence received from private individuals advocating for coverage of Remicade.

Please be advised that access to the records is denied pursuant to Section 29(1) of the FOI Act which states:

29(1) No government institution shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 30.

Personal information, as it relates to this request, is defined as follows:

24(1) Subject to subsection (2), "personal information" means personal information about an identifiable individual that is recorded in any form, and includes:

(g) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and relies to the correspondence that would reveal the content of the original correspondence, except where the correspondence contains the views or opinions of the individual with respect to another individual;

It is important to note that the letters in question meet the definition provided above and that the definition clearly states that in regard to such correspondence, it is the entire letter which must be treated as personal information. Therefore, we are not able to provide access to any part of the records.

If you wish to request a review of this response, you may do so within one year of this notice. To request a review, please complete a "Request for Review" from [sic], which is available at the same location where you applied for access. Your request should be sent to Mr. Gerald Gerrand, Q.C., Acting Information and Privacy Commissioner, #700 - 1914 Hamilton Street, Regina, Saskatchewan, S4P 3N6.

If you have any questions concerning the FOI process, you may contact me at 787-3160 or Mark Goossens, Assistant FOI Co-ordinator (787-3145).

Sincerely,

Duane Mombourquette
Director, Health Planning/FOI Coordinator"

[4] In a Request for Review directed to me and dated November 13, 2001, the Applicant detailed his review request in the following words:

"Requesting review of Sask Health's decision to deny access to requested records. Questioning Sask Health's reasons for failing to consider/apply section 8 of FOIPP (SK)"

At the same time, the Applicant provided to me a letter outlining his position respecting the statutory provisions relied upon by the Respondent for denying his request for access under the *Act* to the documentation described in his Access to Information Request form.

[5] By letter dated November 27, 2001, I advised the Respondent of my intention to carry out a Review upon the expiration of 30 days as provided in Section 51 of *The Freedom of Information and Protection of Privacy Act* (the “*Act*”). As well, I asked the Respondent to provide to me copies of the documentation which is the subject matter of the request of the Applicant.

[6] I received from the Respondent on December 13, 2001, a copy of what has been represented to me to be “all the records related to the request...” of the Respondent.

[7] I have now had an opportunity to review all of the documentation provided to me by the Respondent and consider the positions relied upon by the Applicant and the Respondent regarding the issue of release of documentation in the circumstances that prevail.

[8] As is stated in his letter to me of November 13, 2001, the Applicant takes the position that personal information as defined by Section 24(1) of the *Act* can be deleted from the subject correspondence and the balance of the communications released to him under Section 49(2) of the *Act*. He points to the provisions of Section 8 regarding severability and invites the department to excise personal information from the subject correspondence, releasing the balance of the communications to him.

[9] The Respondent has asserted in its response to the Applicant of November 7, 2001 that the definition provisions set forth in Section 24(1) of the *Act* clearly state “that in regard to such correspondence, it is the entire letter which must be treated as personal information”. Based on this interpretation, the Respondent takes the position that it is not able to provide access to any part of the records.

[10] For purposes of clarity, it should be observed that the Applicant’s application for information is made under the provisions of Section 6 of the *Act*; his application to me to conduct a Review is made pursuant to the provisions of Section 49 of the *Act*.

[11] The starting point for the consideration of this issue must be a reiteration of the basic right of the Applicant to access as set forth in Section 5 of the *Act* which reads as follows:

“5 Subject to this Act and the regulations, every person has a right to and, 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.”

Certainly no government institution, including the Respondent, shall disclose personal information in its possession or under its control without the consent given in the prescribed manner of the individual to

whom the information relates. This requirement is clearly set forth in Section 29 of the *Act* but is subject to the exceptions contained in that Section or in Section 30. The factual aspects of this application do not give rise to a consideration of these exceptions.

[12] Pursuant to the provisions of Section 24(1)(c), personal information includes “information that relates to health care that has been received by the individual or to the health history of the individual”. Further under the provisions of Section 24(1)(e), the “home or business address, home or business telephone number, fingerprints or blood type of the individual” are defined as personal information.

[13] It appears clear to me that any information contained in the documents in question that provide any detail to the health care received by or the health history of the individual or the home or business address or telephone number of the individual must not be released by the Respondent.

[14] However, I am not satisfied that other information cannot be released that may be contained in the various items of correspondence that I have reviewed. I do not agree with the assertion of the Respondent that the entire document must be treated as personal information, if a portion of the document in fact contains personal information. Section 24 of the *Act* cannot be interpreted in this manner, in my view. The *Act* permits the approach that is proposed by the Applicant namely, that if there is personal information in the documentation in question and it can be excised, that the balance of the information contained in the document can be released to the Applicant.

[15] The definition of ‘personal information’ was considered by Ontario Adjudicator L. Cropley in the matter of *Halton District School Board* dated October 11, 2001, Order MO-1472-F., [2001] O.I.P.C. No. 204. At paragraph 69, adjudicator Cropley quotes former Commissioner Tom Wright with approval respecting the meaning of Section 2(1) of the Ontario legislation:

“I believe that provisions of the Act relating to protection of personal privacy should not be read in a restrictive manner. If there is a reasonable expectation that the individual can be identified from the information, then such information qualifies under subsection 2(1) as personal information.”

[16] The Ontario legislation is very similar to the provision in the *Act* under consideration. After deleting information that may be used to identify the writer of the letter, I believe that the balance of the letter should be produced publicly upon due request.

[17] I have reviewed the several items of correspondence that have been submitted to me and make the following recommendations with regard to the production of documentation:

1. Communication dated September 20, 2001 addressed to Ms. Barbara Shea, Executive Director, Drug Plan & Extended Benefits, Regina, Saskatchewan.
 - Delete all reference to the writer of the letter and the address of the writer of the letter
 - Delete the name of the individual in the second paragraph of the letter.
 - Delete the last sentence of the second paragraph.
 - Delete the name of the individual in the third paragraph of the letter.
2. Petition addressed to Ms. Barbara Shea, Executive Director, Drug Plan & Extended Benefits, 3475 Albert St. (2nd floor), Regina, Sask. S4S 6X2
 - Delete all names, addresses and phone numbers of signatories but produce narrative of petition and number of signatories.
3. Letter dated August 29, 2001 addressed to Ms. Barbara Shea, Executive Director, Drug Plan & Extended Benefits, TC Douglas Bldg, 3475 Albert St. 2nd Floor, Regina, SK. S4S 6X6.
 - Delete all references to the name and address of the writer of the letter.

4. Letter dated June 24, 2001 addressed to the Honourable J. Nilson, Minister of Health, Legislative Bldg., Gov't of Sask., Regina, Sask.
 - Delete all reference of name and relationship of individual referred to by the writer.
 - Delete all reference to the writer of the letter and address of the writer of the letter.
5. Letter dated September 15, 2001, addressed to Dr. Mr. Honourable John Nilson.
 - Delete all reference to the writer of the letter and the address of the writer of the letter.
 - Delete the last paragraph of the letter.
6. Letter dated August 29, 2001, addressed to Miss Barbara Shea, Executive Director, Drug Plan and Extended Benefits, T.C. Douglas Building, 3475 Albert St. – 2nd Floor, REGINA, Saskatchewan. S4S 6X2.
 - Delete all reference to the writer of the letter and the address of the writer of the letter.
 - Delete the first two words of the letter.

7. Letter dated September 6, 2001, addressed to Ms. Barbara Shea, Executive Director, Drug Plan and Extended Benefits Branch, T.C. Douglas Building, 3475 Albert Street, REGINA, Saskatchewan. S4S 6X6.
 - Delete all reference to the writer of the letter and address of the writer of the letter.
 - Delete the last two paragraphs of the letter.
8. Letter dated July 5, 2001, addressed to Barbara Shea, Executive Director of Drug Plan & Extended Benefits, T.C. Douglas Bldg., 3475 Albert St., 2nd Floor, Regina, Sask.
 - Delete all reference to the writer of the letter and the address of the writer of the letter.
 - Delete all paragraphs that precede the final six paragraphs of the letter.
9. Letter dated September 6, 2001, addressed to the Honourable John Nilson.
 - Delete all reference to the writer of the letter and the address and phone number of the writer.
10. Letter dated September 7, 2001, addressed to the Hon. John Nilson.
 - Delete all reference to the writer of the letter and the address and phone number of the writer of the letter.
 - Delete the last sentence of the letter.
11. Letter dated August 27, 2001, addressed to The Honourable John Nilson, Minister of Health, Legislative Assembly; Room 361, 2405 Legislative Direct, Regina, SK., S4S 0B3.
 - Delete all reference to the writer of the letter and the address and phone number of the writer of the letter.

- Delete all but the first and last paragraphs of the letter.
12. Letter dated August 29, 2001, addressed to the Honourable Ron Osika, MLA, Saskatchewan Legislature, Melville, Saskatchewan. S0A 2P0.
 - Delete any reference to the writer of the letter and the address and phone number of the writer of the letter.
 - Delete all but paragraphs 1, 2 and 6 of the letter.
 13. Letter dated September 13, 2001, addressed to the Honourable John Nilson, Minister of Health, 361 Legislative Building, Regina, SK. S4S 0B3.
 - Delete all reference to the writer of the letter and the address and phone number of the writer of the letter.
 - Delete paragraphs 1 and 4 of the letter.
 14. Letter dated September 12, 2001, addressed to The Honourable John Nilson, Minister of Health.
 - Delete all reference to the writer of the letter and the address and phone number of the writer of the letter.
 - Delete all but paragraphs 3, 4 and 5 of the letter.
 15. Letter dated August 31, 2001, addressed to John Nilson, Minister of Health, Legislature Bldg., Room 361, 2405 Legislature Drive, Regina, Sask. S4S 0B3.
 - Delete all reference to the writer of the letter and the address and phone number of the writer of the letter.
 - Delete all but the final three paragraphs of the letter.
 16. Letter dated August 29, 2001, addressed to the Hon. John Nilson, 3831A Albert Street, Regina, SK., S4S 3R4.

- Delete all reference to the writer of the letter and the address and telephone number of the letter.

- Delete all but the last three paragraphs of the letter.

17. Letter dated July 17, 2001, addressed to the Honorable John Nilson, Minister of Health, Room 361, 2405 Legislative Drive, Regina, Saskatchewan, S4S 2B3.

- Delete all reference to the writer of the letter and the address and telephone number of the writer of the letter.

- Delete all but the final two paragraphs of the letter.

18. Letter dated July 23, 2001, addressed to the Minister of Health, John Nilson, 2405 Legislative Dr., Regina, Sask. S4S 0B3.

- Delete all reference to the writer of the letter and the address and phone number of the writer of the letter.

- Delete all but the final two paragraphs of the letter.

19. Letter dated July 16, 2001, addressed to the Honorable John Nilson, Minister of Health, Province of Saskatchewan, 2405 Legislative Dr., Regina, Saskatchewan.

- Delete all reference to the writer of the letter and the address and phone number of the writer of the letter.

- Delete the second paragraph of the letter.

20. Letter dated July 16, 2001, addressed to the Honorable John Nilson, Minister of Health, Saskatchewan Legislative Assembly, Room 361, 2405 Legislative Drive, Regina, Saskatchewan. S4S 0B3.

- Delete all reference to the writer of the letter and the address and phone number of the writer of the letter.

- Delete the second paragraph of the letter.

21. Letter dated July 5, 2001, addressed to the Honorable Minister of Health - John Nilson

- Delete all reference to the writer of this letter and the phone number of the writer of the letter.

- Delete the first page of this letter.

22. Letter dated June 28, 2001, addressed to Mr. John Nilson, Health Minister, Regina Legislative Building, Regina, Saskatchewan.
 - Delete all reference to the writer of the letter and the address and phone number of the writer of the letter.
 - Delete paragraphs 1, 2 and 3 of the letter.
23. Facsimile communication dated July 16, 2001, addressed "To Whom it may Concern".
 - Delete all reference to the writer of the letter and the address and phone number of the writer of the letter.
 - Delete paragraphs 1, 2 and 3 of the letter.
24. Letter dated July 3, 2001, addressed to The Honourable John Nilson, Minister of Health, Government of Saskatchewan.
 - Delete all reference to the writer of the letter and the address and phone number of the writer of the letter.
 - Delete paragraphs 1 and 2 of the letter.
25. Letter dated June 22, 2001, addressed to Saskatchewan Minister of Health, The Honourable Pat Atkinson, Legislative Building, Regina, Sask., S4S 0B3.
 - Delete all reference to the writer of the letter and the address and phone number of the writer of the letter.
 - Delete paragraph 1 of the letter.
26. Letter dated June 16, 2001, addressed to the Hon. John Nilson, Minister of Health, Legislative Bldg., Regina, Sask.
 - Delete all reference to the writer of the letter and the address and phone number of the writer of the letter.

- Delete the first paragraph of the letter.
27. Letter undated but received by the office of the Minister of Health June 20, 2001.
- Delete all reference to the writer of the letter and the address and phone number of the writer of the letter.
 - Delete the first paragraph of the letter.
28. Letter dated September 7, 2001, addressed to [REDACTED], Executive Director, Drug Plan, 2475 Albert Street, 2nd Floor, Regina, SK. S4S 6X6.
- Delete all reference to the writer of the letter and the address and phone number of the writer of the letter.
 - Delete paragraphs 1, 2 and 5 of the letter.
29. Letter dated August 9, 2001, addressed to [REDACTED], Executive Director, Drug Plan & Extended Benefits, TC Douglas Building, 3475, Albert St. 2nd Floor, Regina, Sask. S4S 6X6.
- Delete all reference to the writer of the letter and the address and phone number of the writer of the letter.
 - Delete the first paragraph of the letter other than the first sentence of the first paragraph.
30. Letter dated September 10, 2001, addressed to the Minister of Health, Sask. Health Care, 361 legislative Assembly, 2405 Legislative Drive, Regina, Saskatchewan. S4S 0B3.
- Delete all reference to the writer of the letter and the address and phone number of the writer of the letter.
 - Delete paragraph 1 (with the exception of the first two sentences thereof), paragraphs 2, 3, 5 and 6.

31. Letter dated June 18, 2001, addressed to the Minister of Health, Sask. Health Care, 361 Legislative Assembly 2405 Legislative Drive, Regina, Saskatchewan, S4S 0B3.
 - Delete all reference to the writer of the letter and the address and phone number of the writer of the letter.
 - Delete paragraphs 2, 3, 4 and 6 of the letter.

32. Letter dated October 1, 2001, addressed to the Honorable John Nilson.
 - Delete all reference to the writer of the letter and the address and phone number of the writer of the letter.
 - Delete paragraphs 1 and 3 of the letter

33. Letter dated September 4, 2001, addressed to Gerry Ritz: MP
Battlefords/Lloydminster [sic].

- Delete all reference to the writer of the letter and the address and phone number
of the writer of the letter.

- Delete paragraphs 1 and 4 of the letter.

34. Facsimile communication dated September 10, 2001, addressed to "Dear
Sir/Madam".

- Delete all reference to the writer of the letter and the address and phone number
of the writer of the letter.

- Delete paragraphs 1, 2, 3 and 4 of the letter.

[18] Subject to the deletion particularized above, I recommend the release to the Applicant and the
balance of the documentation.

[19] Dated at Regina, in the Province of Saskatchewan, this 16th day of January, 2001.

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