

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

1. ██████████ (the “Applicant”) is a ██████████ who, by an Access to Information Request Form dated October 22, 2001, requested information from SaskEnergy Incorporated (the “Respondent”) regarding executive compensation.

2. The Request was worded as follows:

“Please provide all materials prepared by or for SaskEnergy which relate to the two pay increases provided to the senior management of the corporation this year [both of which were made effective on or about Feb. 1, 2001], including, but not limited to, information on the economic increases and details on how those amounts were determined and details of the merit increases provided including, but not limited to, the specific performance and/or other criteria used in the determinations for each recipient of a merit increase and details on how each recipient was evaluated relative to such criteria. By senior management, I mean those who report through the crown corporations contracts system.”

3. In a letter from Mark H.J. Guillet, Access Officer for the Respondent, dated December 18<sup>th</sup>, 2001, the Respondent advised the Applicant as follows:

“After reviewing the details of the record, the Corporation can advise that your request for access is refused for the following reasons:

1. Access to the records could reasonably be expected to disclose advice, proposals, recommendations, analyses or policy options developed by or for SaskEnergy. Accordingly, access is refused pursuant to subsection 17(1)(a) of the Act.
2. Access is also refused as those records could reasonably be expected to disclose consultations or deliberations involving officers or employees of SaskEnergy. Accordingly, access is refused pursuant to subsection 17(1)(b)(i) of the Act.
3. Access to the records is also refused as the records could reasonably be expected to disclose agendas or minutes of the Board of SaskEnergy. Accordingly, access is refused pursuant to subsection 17(1)(f)(i) of the Act.
4. The records also contain personal information about identifiable individuals, therefore, access is refused pursuant to section 24 of the Act.

With respect to information regarding the actual pay increases provided to the senior management of the corporation, pursuant to section 4 and subsection

7(2)(b) of the Act, we refer you to the Clerk of the Executive Council where all such information is filed pursuant to The Crown Employment Contracts Act.”

4. A formal Request for Review dated February 7<sup>th</sup>, 2002, and received by me as Acting Freedom of Information and Privacy Commissioner for the Province of Saskatchewan, the Applicant indicated that he had been refused access to the records requested, and on March 11<sup>th</sup>, 2002, I contacted the Applicant advising that I had decided to conduct a review and asked him for any further representations he wished to make in this matter.

5. In a letter dated March 20<sup>th</sup>, 2002, the Applicant responded to me as follows:

- “1. These representations are in support of a request for review made pursuant to The Freedom of Information and Protection of Privacy Act of Saskatchewan. The applicant, [REDACTED], is a [REDACTED] in Saskatchewan. He sought, from the crown corporation SaskEnergy, detailed information regarding **two** pay increases provided to senior managers of the company in 2001. There were two elements to the request. First, the applicant wished to know how the corporation determined what it calls an "economic" increase in pay. This was a general increase, of 2.6 per cent, given to all managers of SaskEnergy regardless of how they performed their duties. Second, the applicant wished to know how the corporation determined what it calls "merit" increases in pay provided in varying amounts to all managers of SaskEnergy in addition to the "economic" increase. The increases both took effect in February 2001.
2. SaskEnergy refused to provide any information on either the "economic" increases or the "merit" increases. The company claims information about the two increases is exempt from disclosure pursuant to four sections of The Freedom of Information and Protection of Privacy Act.
3. SaskEnergy did not provide any other information in support of its refusal to grant access. The president of SaskEnergy, Ron Clark, did however write a letter of complaint to [REDACTED] claiming a news item broadcast on [REDACTED] was misleading. The president then went on to describe what is alleged to be the process by which managers are evaluated at SaskEnergy.
4. The letter of complaint claims the applicant's information request was "omnibus in nature and in effect was requesting documentation relating to each Executive member's individual performance". This is inaccurate.
5. The request for information about the "economic" increase can only be described as general in nature. It could not possibly be related to the "individual performance" of any manager of SaskEnergy. To describe it in any other way defies logic.
6. The request for information about the "economic" increase simply sought the underlying data used to arrive at the figure of 2.6 per cent. Is it a formula-based calculation? Is it related to the consumer price index?
7. Is it connected to increases provided to the general work force of SaskEnergy or other workers in the same industry? Is it tied to increases, generally, for

Canadian or North American utility executives? Is it tied to the price of natural gas, the company's chief commodity? It was a simple question: how did SaskEnergy arrive at 2.6 per cent as a general, economic increase given to all its managers?

8. Mr. Clark's complaint letter does not provide any information about how the economic increase was determined. It does not even reference that element of the request.
9. According to Section 61 of the Act, the "Burden of proof" to establish that access may be refused is on Mr. Clark. However, Mr. Clark's assertions in his letter of complaint do not even address the matter of the "economic" increase. As such, although Mr. Clark is entitled to claim the information is exempt, he has not provided any argument or evidence in support of that decision. The claim of the exemptions, alone, is not enough to meet the requirement of section 61.
10. The applicant also sought details about the "merit" increases provided to executives of SaskEnergy. There were different amounts given to different people. The people, and the specific amounts, are identified in material held at the office of the Clerk of Executive Council. The applicant asked for as much information as possible, and listed two specific elements of interest:
  - "the specific performance and/or other criteria used" to determine an increase
  - "details on how each recipient was evaluated"
11. In his complaint letter, in support of his refusing access to this information, Mr. Clark says there are a variety of measures used to evaluate managers of SaskEnergy. He goes on to describe a process that is called "performance review". Mr. Clark's description, however, does not address the matter of *remuneration*. It is that element, the *various "merit" pay increases* provided to the managers that was the substance of the information request. Mr. Clark claims there is a "rigorous process dealing with management compensation". He then goes on to talk about everything *except* management compensation. There is only one vague reference to a "discussion" that takes place with a committee of the board of SaskEnergy, following which adjustments are implemented. Are these "adjustments" related to pay? Again, Mr. Clark - the head of SaskEnergy - has failed to meet the requisite onus in support of his decision to refuse access.
12. The claimed exemptions [various parts of section 17(1) of the Act, and section 24 of the Act] are not referenced in Mr. Clark's complaint letter other than in the most general way. Subsection 17(1)(a) and subsection 17(1)(b)(i) of the Act are not even indirectly referenced by Mr. Clark. Subsection 17(1)(f)(i) of the Act [dealing with board minutes] is mentioned, but there is no connection established between the claimed exemption and the information requested.
13. Indeed, according to Mr. Clark, while the board of SaskEnergy may be involved in discussions about managerial performance, ultimate determinations are made by the C.E.O. of SaskEnergy. The privacy section of the Act (subsection 24) is, similarly, only generally referenced by Mr. Clark. It is of no avail in any event since, as SaskEnergy admits, most of the

requested information is available in a form that *already identifies the individuals*.

14. Notwithstanding the fact the Mr. Clark has failed to meet the onus of proof, as required in the Act, the claimed exemptions do not apply in this situation especially with regard to information about the "economic" increase.
15. Subsection 17(1)(a) is an exemption concerning "advice, proposals, etc". The "economic" increase is a calculation based on non-subjective data. As such, it cannot fall within this exemption.
16. Subsection 17(1)(b) is an exemption concerning "consultations or deliberations". The "economic" increase is, again, an objective measure arrived at using non-subjective means. The data is factual and does not involve consultations or deliberations. As such, it cannot fall within this exemption.
17. Subsection 17(1)(f)(i) is an exemption relating to confidences of the board of SaskEnergy. The "economic" increase is nothing of the sort. It is, rather, an external factor that is simply applied to the senior managers. The calculation is not determined by the board. It is an automatic bit of mathematics. As such, it cannot fall within this exemption.
18. Section 24 of the Act relates to personal information which could identify someone. The section, however, does not include "salary" as personal information. The "economic" increase is an element of salary that is applied generally. As such, it is not "personal" information or, if it were, it is specifically not included in the section. As such, it cannot fall within this exemption.
19. Furthermore, notwithstanding the fact that Mr. Clark has failed to meet the onus of proof, as required in the Act, the claimed exemptions do not apply in this situation especially with regard to information about the "merit" increase.
20. Subsection 17(1)(a) is an exemption concerning "advice, proposals, etc." The "merit" increase is a calculation based on specific criteria. Information about the criteria and how they are used is what is being sought. The exemption does not apply.
21. Subsection 17(1)(b) is an exemption concerning "consultations or deliberations". Again, the "merit" increase - and its component parts - is a measurement or calculation. The exemption does not apply.
22. Subsection 17(1)(f)(i) is an exemption relating to confidences of the board of SaskEnergy. The "merit" increase is nothing of the sort. It is, again, a calculation or measurement. The exemption does not apply.
23. Section 24 of the Act concerns personal information which could identify someone. The "merit" increase, however does not identify anyone. It describes criteria needed to win an increase in pay beyond the economic increase. It may contain information about employment responsibilities but that information is not "personal" according to subsection 24(2)(a) of the act. The exemption does not apply.
24. These representations are based on all the information that has been made available to me, to date. If there is additional information available I would

appreciate an opportunity to review that material and provide further representations.

25. Finally, I reiterate a previous point for the sake of emphasis: The onus is on Mr. Clark to show how his claimed exemptions are justified. There is no evidence or argument supplied in support of his claimed exemptions. As such, Mr. Clark has failed to meet the minimum standard, demanded by the legislation in question, and the information sought ought to be released.”
- 
6. On May 24<sup>th</sup>, 2002 I received from the Respondent the following list of documents:
    1. Topic Summary: Total Rewards Strategy – Submitted to the Human Resources/Compensation Committee of the Board of Directors of SaskEnergy on November 17, 2000 (“HR/Compensation Committee”).
    2. Document entitled “Total Rewards Strategy” that provides the context for SaskEnergy’s salary planning increase which was submitted for approval to the HR/Compensation Committee.
    3. Topic Summary: Management Compensation and Benefits Plan 2001 – Submitted for approval to the HR/Compensation Committee on November 17, 2000.
    4. Document entitled *Management Compensation and Benefits Plan 2001* which outlines the changes that were recommended for approval by the HR/Compensation Committee.
    5. Attachments to the Management Compensation and Benefits Plan 2001. This includes:
      - (a) 2001 Summary of Planned Market Increases
      - (b) Backup of the Economic Data: 2001 Planned
      - (c) Backup of the Statistics Canada data
      - (d) SaskEnergy Recommendation: Executives and Management
    6. Topic Summary: SaskEnergy Human Resources Briefing Session – Submitted as an information item to the HR/Compensation Committee on April 19, 2001. This was part of a complete package providing information and updates on each area of Human Resources.
    7. Attachments to the Compensation and Benefits portion of the briefing. This information was included at the request of the Chair of the HR/Compensation Committee of the Board and includes:
      - (a) Executive Variances from Market
      - (b) Two charts showing the Market Variance in graphs. These graphs indicate the variance based on Average salary market data and Total Cash

market data. Total Cash includes any bonuses paid are market comparators.

- (c) Executive salary ranges effective the previous year for the information of the Committee.

7. I have had an opportunity to review all of these documents. The duty of the office of the Information and Privacy Commissioner is to review the material provided to me and determine if the Respondent has complied with Section 61, the burden of proof section, and established that access to the records applied for must be refused or granted and whether or not the material falls within the exceptions as set out within *The Act*. The Respondent relies on Section 17(1)(a) and 17(1)(b)(i)

“17(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

- (a) advice, proposals, recommendations, analyses or policy options developed by or for a government institution or a member of the Executive Council;
- (b) consultations or deliberations involving:
  - (i) officers or employees of a government institution;”

They also rely on Section 17(1)(f)(i)

“17(1)(f) agendas or minutes of:

- (i) a board, commission, Crown corporation or other body that is a government institution;”

and Section 24, which deals with the definition of personal information.

8. In their letter of May 23<sup>rd</sup>, 2002, they reiterate that these are the Sections they are relying on, and also point out:

“that the foregoing documents are the only documents relating exclusively to the economic and merit increases for SaskEnergy’s senior executives. All other documentation within the compensation file relate to other management individuals. You will note that the material sent to the Board of Directors references the total compensation and benefits plan relating to all Corporation management.

9. I am of the opinion that the documents provided to me do fall within Section 17(1) and are providing advised proposal recommendation analysis for policy options by SaskEnergy, and do involve consultations and deliberations involving officer employees of a government institution. In addition, they clearly are an instruction or guideline issued to the officer employees of SaskEnergy, as set out in Section 17(1)(f)(i).

10. I have concluded that SaskEnergy is not obliged to produce the documents before me, pursuant to the terms of *The Act*.

11. Throughout this Report there is reference to correspondence from SaskEnergy President, Ron S. Clarke, and the Applicant's opinion that further explanation is required. The Applicant in a letter to me dated June 4<sup>th</sup>, 2002, in response to the Respondent's letter of May 23<sup>rd</sup>, 2002, suggests that:

“the material supplied were an incomplete response to his request. The access request sought information on how the two pay increases were calculated, information on performance criteria used, and details of how those criteria were applied to recipients of increases.”

12. In order to clarify this matter, I spoke to Mr. Mark Guillet on July 3<sup>rd</sup>, 2002, and he explained to me the procedure used by the President in making performance evaluations of the executive members. It is the same as outlined in Mr. Clark's letter to the Applicant.

13. The Applicant feels this is not sufficient, and he wants information as requested as to how the two pay increases were calculated, information on performance criteria used, and details of how those criteria were applied to recipients of increases.

14. I find it hard to see how this information can be provided without being in breach of Section 24 of *The Act*. To provide details of these individuals as requested would definitely provide personal information about that individual; and is, therefore, exempt under Section 24 of *The Act*.

15. Also, the Applicant's letter of June 4<sup>th</sup>, 2002 questioned:

“The material includes information submitted to the HR/Compensation Committee of the SaskEnergy Board on April 19, 2001. However, executives were notified of increases on March 21, 2001, some 28 days *earlier*. If the material provided to you purports to be that submitted to the board of SaskEnergy for decision-making purposes, why would executives receive the benefits of the decision *before it is made*? [I am enclosing photocopies which show when executives learned of one of their increases, the “economic” increase.]

16. I also requested clarification from Mr. Mark Guillet regarding this matter, and he advised that the president does perform an appraisal and meets with the individual executive member, and reviews his appraisal. After the individual executive signs off the appraisal, it is taken to the HR Compensation Committee, which reviews the matter and can reject or accept it. This, I feel,

explains why the executives were notified of increases on March 21<sup>st</sup> and the final decision made sometime later. Hopefully, these explanations will clarify some of the concerns of the Applicant.

17. I also reviewed the documents with Section 8 in mind, to see if any documents could be severable, and have concluded that this would not be possible.

Dated at the City of Swift Current, in the Province of Saskatchewan, this 3<sup>rd</sup> day of July, 2002.

---

FRANK A. MacBEAN, Q.C.  
Acting Freedom of Information  
and Privacy Commissioner  
Province of Saskatchewan