

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

1. The Applicant [REDACTED] is a journalist, who, by an Access to Information Request Form dated February 18th, 2002, requested information from Saskatchewan Health (the “Respondent”), as follows:

“Please provide a copy of the forms and resumes and any other submissions received by the dept. for consideration for appointment to the new Regional Health Authorities (all forms).”

2. In a letter dated March 22nd, 2002, [REDACTED] Senior Policy Analyst for the Respondent, advised the Applicant as follows:

“With respect to your application, 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 related 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:

(b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

(e) the home or business address, home or business telephone number, fingerprints or blood type of the individual;

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual; or

(ii) the disclosure of the name itself would reveal information about the individual.”

3. By a formal Request for Review dated March 25th, 2002, received at my office on March 28th, 2002, the Applicant indicated that he had been denied access to the records requested, and in the Request for Review the Applicant states:

“This is a request for review concerning a decision by Saskatchewan Health to deny access to requested material.

Last fall the government announced that it would reorganize the management of health services in Saskatchewan. Instead of 32 district health boards, 12 regional health authorities would oversee the system. In order to effect this change, the government invited people to apply to sit on transitional Regional Health Authorities. The deadline to receive “declarations of interest” was Jan. 3, 2002. On Feb. 28, 2002 appointments were announced.

I asked to see material that would tell me who declared an interest in sitting on the transitional authorities. That request was denied.

I spoke, briefly, with [REDACTED] (of Saskatchewan Health) hoping that they would change their minds in light of past practice and in light of the fact that applicants had consented to the release of the information. She repeated the department’s position/denial of access.”

Further:

“You may note that the response of the department [attachment2] says they are relying on section 29(1) of the act which says no personal information shall be disclosed without “consent, in the prescribed manner”.

You may also note that the blank nomination form [attachment 3] requires, at point 6, nominees to sign that they understand that personal information may be disclosed whether appointed or not.

You may further note that subsection 18 of the regulations [attachment 4] indicates that they “prescribed manner” of consent [for the release of personal information] is simply “in writing”. In other words: a properly signed nomination form satisfies the requirements in the Act.”

4. On April 8th, 2002, I contacted the Respondent, Saskatchewan Health, advising them that it is my intention to conduct the review which has been requested, and for the purpose of conducting the review, I requested the copies of the documents that are the subject to the Access to Information Request.

5. By letter dated April 24th, 2002, received by me April 26th, 2002, the Respondent provided me with a copy of 11 of the records related to the request. They also advised these records were a representative sample of 529 *Declaration of Interest for Appointment to a Regional Health Authority Board* and résumés received by the Department from individuals around the Province. The Respondent also points out in their letter of April 24th, 2002, the following:

“I would also like to bring to your attention the fact that the acknowledgement taken by each individual as outlined in point #6 of the Declaration of Interest relates only to the disclosure of the information contained within the declaration. This acknowledgement does not pertain to the disclosure of information contained within the resume.

6. On May 1st, 2002 the Respondent requested more time to provide a more detailed explanation with respect to the Department’s rationale for denying [REDACTED] request. This explanation was received by me on May 8th, 2002. The Respondent relies on Section 31, which reads as follows:

“31(1) Subject to Part III and subsection (2), an individual whose personal information is contained in a record in the possession or under the control of a government institution has a right to, and:
(a) on an application made in accordance with Part II; and
(b) on giving sufficient proof of his or her identity;
shall be given access to the record”.

They feel, and I quote:

“In our view section 31 being specifically related to records of personal information, “trumps” the more general right to access other types of records in the possession of government found in section 5 of the Act. We do not deny that [REDACTED] has a right, subject to the exceptions in the Act, to access records in the custody or control of the government. Further, when such records contain personal information, we equally do not deny that the government has the duty to attempt to sever that personal information from the record and disclose the balance of the record pursuant to section 8.

However, this is not the situation here. [REDACTED] is not asking for records that may contain some personal information in them. There is no possible way of severing these records of the personal information and satisfying any aspect of [REDACTED] request. Rather, his entire request is for personal information about who has applied for these positions. [REDACTED] has no right to access personal information about others. Accordingly, his request to do so was denied.”

They also argue further, and I quote:

“While no person other than the person to whom the information relates has a right to access personal information under the Act, section 29 of the Act does give the department a limited authority to disclose personal information. However, nothing in section 29 legally requires the department to disclose personal information. Rather it provides a discretion which the department can choose to exercise, if the situation warrants and the Act permits.

7. As to whether or not Section 31 “trumps” the more general right to access other types of records in the possession of Government found in Section 5 of the *Act*, I feel the presumption in Section 5 which reads:

“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.”

must be given the fullest weight when the Government is considering any exception. The onus is on the Government to establish that their case falls within the exceptions. Also, as was stated by Tallis, J.A. in *General Motors Acceptance Corp. of Canada v Saskatchewan Government Insurance* (1993), 116 Sask. R. 36 at 41 (C.A.):

“The *Act’s* basic purpose reflects a general philosophy of full disclosure unless information is exempted under clearly delineated statutory language.”

8. I have had an opportunity to review the representative samples sent to me by the Respondent. They are similar to the applications ruled on in May of 1996 by Derril G. McLeod, Q.C., Commissioner of Information and Privacy for Saskatchewan in the Report [REDACTED] v. Saskatchewan Health. The main difference between this Application and the one ruled on by Derril G. McLeod is that in the form before me, paragraph 6 reads as follows:

Paragraph 6. I understand that my name, address, occupation, and the fact that I declared an interest in this appointment may be disclosed to the public, whether I am appointed or not.

9. The Applicant argues the consent allows release of the Applications. The Respondent, in their letter of April 24th, 2002, argues that paragraph 6 relates only to disclosure of the information contained within the Declaration, that is name, address and occupation, and the fact that the party disclosed an interest in the appointment. The Respondent argues this does not pertain to the disclosure of information contained in the résumé, and in their letter of May 7th, 2002 go on to argue that they feel this is not a consent to disclosure at all but simply an acknowledgement that the Department may exercise its discretionary authority to disclose the information.

10. In my opinion, paragraph 6, whether it is a consent or not, is not the question to be answered. The question is “Does disclosure of the information requested about individuals constitute an unreasonable invasion of the privacy of the individuals, and has the Department established that this case falls within the exceptions?”

11. I agree with the above decision of Mr. Darril G. McLeod, Q.C., Commissioner of Information and Privacy for Saskatchewan, that:

“The notion of privacy carries with it a quality of confidentiality. The disclosure of information which is not in any sense confidential could never, it is suggested, constitute an invasion of privacy.”

And further:

“It would appear to me that an applicant for appointment (or a candidate for election) to a public office should reasonably expect that information about himself or herself will necessarily be made or become known to the public to a greater or lesser extent, depending on the office, that this would include the very information which the applicants were invited to submit in this case, and that such persons would have no reasonable expectation of privacy, and no reason to suppose that the information being supplied would be held on a confidential basis.”

And further on:

“I would suggest that Section 29(2)(o) might be viewed as supporting the above interpretation, since it expressly permits the Department to disclose information if:

“the public interest in disclosure clearly outweighs any invasion of privacy that could result from disclosure...””

12. I have concluded that anyone applying for a public office must assume that their qualifications for that position may be made public. I feel the information requested is not prohibited by the *Act*, and I recommend that the head of the Department disclose the information requested by [REDACTED]

Dated at the City of Swift Current, in the Province of Saskatchewan, this 16th day of May, 2002.

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