

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

[1] By an Access to Information Request form dated December 3, 2001, [REDACTED] (the "Applicant") requested information from Saskatchewan Labour (the "Respondent") pertaining to the investigation respecting the death of [REDACTED] at the [REDACTED] on [REDACTED]. Her request was worded as follows:

"Any and all documents, correspondence, memos, notes, e-mails, analyses and recommendations related to the investigation into the death of [REDACTED] at the [REDACTED] on [REDACTED] and any notes that may be attached to this request."

[2] In a letter from Steven Pillar, Deputy Minister of the Respondent, dated December 24, 2001, the Respondent advised the Applicant as follows:

"Your recent request for access to information has been partially granted. Other information has been withheld under sections 13, 17, 19, 22, 29 and 30 of *The Freedom of Information and Protection of Privacy Act* (attached). The excluded information includes the autopsy report, Sask Power's electrical inspectors report, confidential corporate information and personal information and advice received from Department legal counsel.

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:

Freedom of Information Officer  
Saskatchewan Justice  
1874 Scarth Street  
REGINA, SK S4P 3V7"

[3] Information provided in the last sentence of this letter is clearly in error. The Applicant correctly directed her Request for Review to me at my address as detailed in the next paragraph.

[4] In a formal Request for Review dated January 11, 2002, addressed to me, the Applicant indicated that she had been refused access to all or part of a record that she had requested. In her Request for Review, she stated as follows:

"See enclosed documents. I wish to receive a copy of the department's response to my Request for Review. I also reserve the right to make further arguments in reply."

[5] I determined that I would undertake the Review as requested by the Applicant and I duly advised the Respondent. Further, I requested that the Respondent, pursuant to the provisions of Section 54 of *The Freedom of Information and Protection of Privacy Act* (the "Act"), provide me with a copy of the documents that were withheld from the Applicant. Copies of the relevant documents were forwarded to me by the Respondent, and I have had an opportunity to read and consider them.

[6] In a letter accompanying these documents, the Respondent wrote to me as follows:

"In answer to your request of January 18, 2002, please find enclosed a copy of [REDACTED] Access to Information Request Form, and copies of documents referred to below, which were withheld.

The documents withheld pursuant to Section 13(1) of *The Freedom of Information and Protection of Privacy Act* include the correspondence between the Occupational Health and Safety Division and Human Resources Development Canada dated September 12 and 14, 2000 respectively. For your information, pursuant to a Memorandum of Agreement with the Federal government, Saskatchewan Labour enforces conventional occupational health and safety requirements in uranium mines. However, the jurisdiction and authority to commence a prosecution under the *Canada Labour Code* in this federally regulated enterprise remains that of the Federal government.

The documents withheld pursuant to section 17(1)(b) of the Act include excerpts from Cogema Resources Inc.'s safety manual, Cogema's revised lock out procedures and sketches and maps. Cogema expressly objected to the release of these documents to any third party.

The document withheld pursuant to section 22 of the Act is a memorandum dated September 7, 2000 from in house counsel to the Executive Director of the Division concerning the feasibility of prosecution. This memorandum is also withheld pursuant to section 17(1)(a) of the Act.

The documents withheld pursuant to section 29, include:

- the names and personal information of witnesses who provided statements to the Division. The names and personal information were blacked out in the statements as well as where they otherwise appeared as witnesses in the report. The blacked out pages are enclosed.
- Email correspondence from and correspondence to [REDACTED] the [REDACTED] of the deceased following the conclusion of the investigation. These documents may not in fact be captured by what was requested in the original request for information as they only indirectly relate to the investigation. However, they were withheld in any event as personal information of [REDACTED] [REDACTED] insofar as they refer to her personal opinions and WCB benefits.

The documents withheld pursuant to section 30 of the Act involving personal information concerning the deceased include the coroner's report, statements concerning first aid administered, photographs of [REDACTED] injuries, and his work and training records.

A final document withheld was the report received from the Electrical Inspector employed by Saskatchewan Power. Saskatchewan Power specifically objected to the disclosure of its report to third parties. The document was originally withheld pursuant to section 17(1)(b) of the Act. However section 15(1)(b) may equally apply. The purpose of honoring another agencies [sic] request to keep information received from them in confidence, ensures the Division can obtain information from these agencies, which may be necessary to fully investigate and assess the causes of an accident."

With the permission of the Respondent, I provided a copy of this letter (without attachments) to the Applicant.

[7] In a letter dated February 19, 2002, [REDACTED], Manager, Legal Affairs with Cogema Resources Inc., a third party within the meaning of the Act with respect to some of the information being requested by the Applicant, wrote to me as follows:

"Saskatchewan Labour forwarded a copy of their February 8, 2002 letter to yourself regarding the appeal of their decision to deny access to certain records by [REDACTED]

We support the position taken by Saskatchewan Labour on this matter and, in particular, their decision to deny the release of COGEMA Resources Inc.'s safety manual, lock-out procedures, sketches and maps. These documents were supplied to Saskatchewan Labour in confidence for the purposes of an investigation. We contend that they should not be released pursuant to Section 19 (1)(b) of the *Freedom of Information and Protection of Privacy Act* and we have expressly objected to the release of these documents in the past."

[8] Section 53(2) of the Act states that: "the: (a) person who applied for a Review ... are entitled to make representations to the commissioner in the course of the Review ..."

As noted above, the Applicant indicated in her Request for Review that she might choose to make further representations with respect to this matter. I invited her to make any such further representations in my letter to her dated February 18, 2002. However, I did not receive any further representations from the Applicant. On May 1, 2002, I wrote to the Applicant and informed her that I was proceeding on the assumption that she did not wish to make further representations to me.

[9] The provisions of the Act upon which the Respondent relies are 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 ...

unless the government or institution from which the information was obtained consents to the disclosure or makes the information public.

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;
  - (ii) a member of the Executive Council; or
  - (iii) the staff of a member of the Executive Council;

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 ...

(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.

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.

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

- (a) information that relates to the race, creed, religion, colour, sex, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;
- (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;
- (c) information that relates to health care that has been received by the individual or to the health history of the individual;
- (d) any identifying number, symbol or other particular assigned to the individual;
- (e) the home or business address, home or business telephone number, fingerprints or blood type of the individual;
- (f) the personal opinions or views of the individual except where they are about another individual;
- (g) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies 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;
- (h) the views or opinions of another individual with respect to the individual;
- (i) information that was obtained on a tax return or gathered for the purpose of collecting a tax;
- (j) information that describes an individual's finances, assets, liabilities, net worth, bank balance, financial history or activities or credit worthiness;  
or
- (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 personal information about the individual.

(2) "Personal information" does not include information that discloses:

- (a) the classification, salary, discretionary benefits or employment responsibilities of an individual who is or was an officer or employee of a

- government institution or a member of the staff of a member of the Executive Council;
- (b) the salary or benefits of a legislative secretary or a member of the Executive Council;
- (c) the personal opinions or views of an individual employed by a government institution given in the course of employment, other than personal opinions or views with respect to another individual;
- (d) financial or other details of a contract for personal services;
- (e) details of a licence, permit or other similar discretionary benefit granted to an individual by a government institution;
- (f) details of a discretionary benefit of a financial nature granted to an individual by a government institution;
- (g) expenses incurred by an individual travelling at the expense of a government institution.

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 ...

30(1) Subject to subsection (2) and to any other Act, the personal information of a deceased individual shall not be disclosed until 25 years after the death of the individual.

(2) Where, in the opinion of the head, disclosure of the personal information of a deceased individual to the individual's next of kin would not constitute an unreasonable invasion of privacy, the head may disclose that personal information before 25 years have elapsed after the individual's death.

[10] The Respondent claims that the correspondence between the Government of Saskatchewan's Occupational Health and Safety Division and Human Resources Development Canada dated September 12, 2000 and September 14, 2000 are exempt from production pursuant to Section 13(1) of the Act. After reviewing these documents, it appears that the information contained therein was obtained implicitly in confidence from the federal government department. In my opinion, these documents are exempt pursuant to Section 13(1) of the Act.

[11] The Respondent claims that two internal memorandums dated March 16, 2000 and March 31, 2000 and an internal briefing note, containing discussion and deliberations by Occupational Health and Safety officers on the feasibility of prosecution, are exempt from production pursuant to Section 17(1) (a) and (b) of the Act. In my view, the March 16, 2000 memorandum is exempt pursuant to these sections, as it contains analyses developed

by or for a government institution and contains deliberations involving officers or employees of a government institution. In my view, the March 31, 2000 memorandum is exempt from disclosure pursuant to Section 17(1)(a) of the Act, as it contains analyses developed by or for government institution. Also, the briefing note is exempt from disclosure, in my view, pursuant to Section 17(1)(a) of the Act, as it contains analyses developed by or for a government institution or a member of the Executive Council.

[12] The Respondent claims that excerpts from Cogema Resource Inc.'s safety manual, Cogema's revised locked-out procedures, sketches and maps are exempt from production pursuant to Section 19(1)(b) of the Act. As noted above, Cogema expressly objects to the release of these documents. After studying these documents, I have concluded that they are exempt from disclosure pursuant to Section 19(1)(b) of the Act, as they contain technical information that was supplied implicitly in confidence to a government institution by Cogema Resources Inc., a third party within the meaning of the Act.

[13] The Respondent claims that a memorandum dated September 7, 2000 from its in-house counsel to the Executive Director of the Respondent's Occupational Health and Safety Division concerning the feasibility of prosecution is exempt from disclosure pursuant to Section 22 or Section 17(1)(a) of the Act. In my view, this memorandum is exempt from disclosure pursuant to Section 22 of the Act.

[14] The Respondent claims that the names and personal information of witnesses who provided statements to the Respondent's Occupational Health and Safety Division are exempt from production pursuant to Section 29 of the Act. I have reviewed both the complete witness statements, and copies of the edited pages provided to the Applicant. The Respondent edited witnesses' names, their dates of birth, addresses, telephone numbers, and positions where disclosing that information would identify the individuals. In my view, the personal information that was edited from the documents provided to the Applicant is exempt pursuant to Section 29 of the Act.

[15] The Respondent claims that e-mail correspondence from [REDACTED], the [REDACTED] of the deceased, [REDACTED], and correspondence to [REDACTED] following the conclusion of the investigation into [REDACTED] death is exempt from production pursuant to Section

29 of the Act. In my view, this correspondence constitutes personal information pursuant to Section 24(1)(f) and (g) of the Act, as it either contains the personal opinions or views of [REDACTED] or is correspondence sent in reply to her correspondence containing these personal opinions or views. [REDACTED] personal opinions or views expressed do not relate to another individual in particular, but instead, primarily relate to her personal opinions or views regarding the Workers' Compensation benefits respecting her matter.

[16] The Respondent claims that personal information concerning [REDACTED] including the coroner's report, statements containing first aid administered, photographs of [REDACTED] [REDACTED] injuries and his work and training records, are exempt from production pursuant to Section 30 of the Act. In my view, the coroner's report, statements concerning first aid administered and photographs of [REDACTED] injuries, are personal information pursuant to Section 24(1)(c) of the Act, and as such, are exempt from disclosure pursuant to Section 30 of the Act. [REDACTED] work and training records are personal information pursuant to Section 24(1)(b) of the Act, and as such, are exempt from disclosure pursuant to Section 30 of the Act.

[17] The Respondent claims that the report received from Saskatchewan Power's electrical inspector is exempt from production pursuant to Section 17(1)(b), or alternatively Section 15(1)(b) of the Act. In my view, this report is exempt from disclosure pursuant to Section 17(1)(i) of the Act, as it contains consultations or deliberations involving officers or employees of a government institution.

[18] For the reasons above stated, I recommend that the documents in question withheld by the Respondent not be disclosed to the Applicant.

[19] Dated at Regina, in the Province of Saskatchewan, this 21<sup>st</sup> day of May, 2002.

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

