

**REPORT WITH RESPECT TO THE APPLICATION
FOR REVIEW OF ██████████ IN RELATION TO INFORMATION
REQUESTED FROM SASKATCHEWAN ENVIRONMENT RESOURCE MANAGEMENT,
SASKATCHEWAN JUSTICE AND ROYAL CANADIAN MOUNTED POLICE**

[1] In January of 2001, ██████████ (the "Applicant") forwarded to the Saskatchewan Environment Resource Management (the "Respondent") an Access to Information Request Form. The copy of form provided was quite illegible but appeared to request:

"All records from 1980 to present (that shouldn't be hard, they should all be in Meadow Lake, that's where the problems started)."

[2] The Respondent declined to provide copies of any documentation as requested and formally advised the Applicant by letter dated March 6, 2001 to this effect. The body of the letter of March 6 to the Applicant reads as follows:

"This will acknowledge receipt of your application for access under *The Freedom of Information and Protection of Privacy Act* regarding all records with respect to yourself from 1980 to the present.

In accordance with *The Freedom of Information and Protection of Privacy Act*, some of the information requested cannot be released. The reasons for this are that it is law enforcement and investigation information that is exempt from access according to Section 15(1)(a), (c), (f), (i) and (k) of the Act, and/or advice to a member of Executive council that is exempt under Section 17(1)(a). All other information requested in your application is enclosed.

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
#700 - 1914 Hamilton Street
REGINA SK S4P 3N6

Further correspondence on this request should be directed to:

Linda Foster, Freedom of Information Coordinator
#338, 3211 Albert Street
REGINA SK S4S 5W6”

[3] A Request for Review was filed with Mr. Gerrand by the Applicant, which Request is dated January 22, 2002. The request of the Applicant is detailed in the following words:

“I would like all info except pay sheets, third party should be blacked out. All info includes all files. See attached letter.”

[4] At the time of filing the Request for Review, the Applicant forwarded to Mr. Gerrand additional materials, including a letter addressed to him dated January 22, 2002. This letter reads in its entirety as follows:

“Tuesday, January 22, 2002-04-17
Mr. Gerald Gerrand, Q.C.
#700 – 1914 Hamilton St.
Regina, SK
S4P 3N6

Dear Sir:

Its been over three years now that I have been trying to have an incident my then, [REDACTED] and I had with SERM dealt with in a reasonable manner. This incident of October 1, 1998 was the last in a series of negative situations directed at me by SERM, starting before [REDACTED]. And now, even including him in these negative situations. I would like all reports where SERM came to my house or stopped me on the road accusing me of poaching deer. [REDACTED] of Meadow Lake (C.O.) came to my house in February/93 with an R.C.M.P. [REDACTED] to pick me up and question me about poaching deer. [REDACTED] said he had a 100% positive eye witness that I was poaching deer the day before. It just so happens that was the day I came home from the hospital. [REDACTED] [REDACTED] When [REDACTED] told him that (I was bedridden), he and [REDACTED] left. Neither of them had the courtesy to apologize in person or by letter. As far as I'm concerned, the only piece of material they should have kept from it is the statement by [REDACTED] of July/88.

SERM maintains they did no wrong, if that is the case they shouldn't have any trouble giving me all the files, including the incident in the late 80's when [REDACTED] refused to give me a bear gall permit, so I could ship 4 bear galls to B.C. (this practice was legal at that time). There should be some records of it as [REDACTED], who was head of the Wildlife department had to phone [REDACTED] and order him to give me a permit! Since that time he ([REDACTED]) made it his business to get me at all costs.

Also, the mediation contract by [REDACTED] was a collusive arrangement between himself and [REDACTED] to pervert the course of Justice. The only reason they called for mediation, was to gather as much material as possible under the pretense of mediation, so it could supposedly [sic] not be used in court. And the biggest reason is that No other Government Department would touch it, Once mediation was involved! This falls under "contracts which injure the Government to Obstruct Justice". In other words, [REDACTED] and [REDACTED] are using the Justice System to prevent justice from taking its course!! Fact! [REDACTED] said SERM has to answer to the justice system if problems are not dealt with properly by his department. SERM also has to answer to Ombudsmen. Both of these departments now refuse to deal with this issue, because mediation was implemented! [REDACTED] said he was totally neutral, yet works for Sask. Justice! Almost all the information I've seen from [REDACTED] leans in favour of SERM.

The following pages are an example of the kind of problems I am having in trying to obtain justice:

[REDACTED] from Meadow Lake office once smugly told me he didn't have to give me anything (information) if he chose not to! He carried out his promise by giving me useless paysheets and holiday requests. He also included the statement of [REDACTED] (the only article he should have kept), a letter by [REDACTED] and a memo to [REDACTED]. These were probably given to me to intimidate me, that SERM has near limitless resources to fight my complaint.

I would be very grateful to receive all the rest of the file, having certain C.O.'s in positions of power and acting in a reckless and dangerous manner should be dealt with as soon as possible. More so, because they carry loaded weapons, or should I say tools, according to [REDACTED].

I will wait for your decision.

Sincerely,

[REDACTED]

[5] On January 28, 2002, Mr. Gerrand wrote ██████████ asking him to confirm that the Request for Review related to the aforementioned Access to Information Request Form and response of SERM dated March 6, 2001. By letter dated January 31, 2002, ██████████ confirmed that the requested Review does, in fact, relate to the Access to Information Request Form and response from SERM outlined previously in this Report.

[6] Additionally in his letter to Mr. Gerrand of January 31, 2002, ██████████ said as follows:

“In particular, I would be most interested in receiving the file and material on the October 1, 1998 incident involving ██████████ and me. If the other material I sent has no relevance in this matter, could you please return them?”

[7] Utilizing the powers provided to me under Section 51 of *The Freedom of Information and Protection of Privacy Act* (the “Act”), Mr. Gerrand requested and obtained from the Respondent copies of the documentation which had been requested of it by the Applicant and subsequently refused by the Respondent. In due course, copies of this documentation were forwarded to Mr. Gerrand and as his successor I have had an opportunity to review the actual copies of documents.

[8] Having read and considered the copies of all of the documentation that has been provided, I have the following comments and recommendations respecting the copies of documents:

- i) Report respecting events of October 1, 1998. This document is two and one-half pages in length and comprised of detailed factual reporting of events that occurred during an investigation on October 1, 1998. The Respondent relies on Section 15(1)(c) and (k) of the *Act* as the basis for its decision to decline to provide the Applicant access to this document. Sections 15(1)(c) and (k) read as follows:

“15(1) A head may refuse to give access to a record, the release of which could:

- ...
 - (c) interfere with a lawful investigation or disclose information with respect to a lawful investigation;
- ...
 - (k) interfere with a law enforcement matter or disclose information respecting a law enforcement matter;”

The materials I have read satisfy me that the preparer of the report has been involved in a lawful investigation and the granting of access to the report would, in fact, disclose information with regard to that lawful investigation. I am of the opinion that the Respondent was and is entitled to refuse access to this document by reason of the provisions of Section 15(1)(c) of the *Act* and I recommend that the Respondent continue to decline access to this document. The second document is a five page recitation of information. The Respondent relies on Sections 15(1)(f) and (i) as the basis for declining release of the documentation in question. Section 15(1)(f) and (i) read as follows:

- “15(1) A head may refuse to give access to a record, the release of which could:
- ...
 - (f) disclose the identity of a confidential source of information or disclose information furnished by that source with respect to a lawful investigation or a law enforcement matter;
 - ...
 - (i) reveal law enforcement intelligence information;”

Having reviewed the documentation, I am satisfied that access to this five page document can be refused by the Respondent on the grounds that its release would disclose “the identity of a confidential source of information” and further would “reveal law enforcement intelligence information”.

I therefore recommend that the Respondent continue to decline to grant access to the Applicant of this five page document.

- iii) There are three pages of materials marked “RIP”. The Respondent relies on the provisions of Section 15(1)(e) and (i) of the *Act* as authority for refusing production of copies of these pages.

Having studied the three pages in question, I agree with the position advanced by the Respondent and recommend that the Respondent continue to decline to grant access to the Applicant of these specific three pages.

- iv) 13 pages of legal opinion and briefing notes comprise this section of copies of documents. The Respondent relies on Section 17(1)(a) of the *Act* as the basis for declining access to copies of the documents. Having studied the pages in question, I am satisfied that the first two pages (dated August 11, 2000) contain information that is subject to solicitor and client privilege. The Respondent is entitled to decline to reveal this information pursuant to the provisions of Section 22 of the *Act* which reads as follows:

“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.”

The balance of the materials in this category are briefing notes which have been prepared for the Respondent in the form advice, proposals, recommendations, analysis or policy options as contemplated by Section 17(1) of the *Act*. This provisions reads as follows:

“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;

(c) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the Government of Saskatchewan or a government institution, or considerations that relate to those negotiations;

(d) plans that relate to the management of personnel or the administration of a government institution and that have not yet been implemented;

(e) contents of draft legislation or subordinate legislation;

(f) agendas or minutes of:

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

- (ii) a prescribed committee of a government institution mentioned in subclause (i); or

(g) information, including the proposed plans, policies or projects of a government institution, the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision.

(2) This section does not apply to a record that:

- (a) has been in existence for more than 25 years;

- (b) is an official record that contains a statement of the reasons for a decision that is made in the exercise of a discretionary power or an adjudicative function;

- (c) is the result of product or environmental testing carried out by or for a government institution, unless the testing was conducted:

- (i) as a service to a person, a group of persons or an organization other than a government institution, and for a fee; or

- (ii) as preliminary or experimental tests for the purpose of:

- (A) developing methods of testing; or

- (B) testing products for possible purchase;

- (d) is a statistical survey;

(e) is the result of background research of a scientific or technical nature undertaken in connection with the formulation of a policy proposal; or
(f) is:

- (i) an instruction or guide-line issued to the officers or employees of a government institution; or
- (ii) a substantive rule or statement of policy that has been adopted by a government institution for the purpose of interpreting an Act or regulation or administering a program or activity of a government institution.

(3) A head may refuse to give access to any report, statement, memorandum, recommendation, document, information, data or record, within the meaning of section 35.1 of The Saskatchewan Evidence Act, that, pursuant to that section, is not admissible as evidence in any legal proceeding.

[9] I am satisfied that the Respondent need not provide the Applicant with copies of these documents and I recommend that it continue to decline access to them.

[10] On March 5, 2002 Mr. Gerrand received a further Request for Review from [REDACTED] dated February 27, 2002, Application No. JU25/OIP regarding this same incident and his request for information from Saskatchewan Justice.

[REDACTED] Access to Information Request Form contained the following description of record:

“Investigation of incident involving SERM Officers and [REDACTED] and me that took place on October 1, 1998 close to Green Lake, Saskatchewan.”

Mr. John D. Whyte, Access Officer for Freedom of Information at Saskatchewan Justice responded to this request by letter dated February 15, 2002, which stated, in part, as follows:

“This letter is to advise you that the record you have requested does not exist within Saskatchewan Justice. Departmental officials have made enquiries in an effort to locate any such record as may exist and have been unable to find any

record relating to an incident on October 1, 1998, close to Green Lake, Saskatchewan.”

██████████ then filed his Request for Review which stated: :

“I was told an investigation was carried out. Three copies of letters inclosed [sic] to verify plus letter stating no file exists.”

Mr. Gerrand then proceeded with his review and received certain internal memoranda which I have now reviewed and which consisted of legal advice provided to SERM respecting a draft of its Freedom of Information response to ██████████.

Mr. Whyte’s response made it clear that notwithstanding a statement contained in the correspondence attached to ██████████ Request for Review, no investigation into this matter was ever done by the Department of Justice.

In light of this response, I am unable to make any recommendation as there is no record in existence that I could recommend be disclosed.

[11] In addition, on June 17, 2002 Mr. Gerrand received a package of correspondence from ██████████ ██████████ which included a copy of his Access to Information Request Form under the federal Access to Information Act.

This request was directed to the RCMP, Meadow Lake, Saskatchewan and was responded to by letter dated February 1, 2002.

I mention this as in a telephone conversation with ██████████ on August 26, 2002 he inquired as to whether Mr. Gerrand had received this request and he also faxed me a further copy of same.

In reviewing this file I noted that these documents had been received but as this is a matter of federal jurisdiction I have no authority to make any recommendation in this connection.

[12] Dated at Regina, in the Province of Saskatchewan, this 30th day of August, 2002.

RICHARD P. RENDEK, Q.C.
Acting Commissioner of Information
and Privacy for Saskatchewan