

**REPORT WITH RESPECT TO THE APPLICATION FOR REVIEW OF
[REDACTED] IN RELATION TO INFORMATION REQUESTED FROM
SASKPEN PROPERTIES AND SP TWO PROPERTIES**

1. By an Access to Information Request Form dated February 20th, 2002, [REDACTED] of [REDACTED] (the “Applicant”) requested from Crown Investments Corporation of Saskatchewan (the “Respondent”) the following information:

“Please provide detailed information on the holdings, as at the most recent date, of SaskPen Properties Ltd., and SP Two Properties Ltd. By details I mean a description of the holding, the purchase price and current value of the holding, the location of the holding, whether the holding is held by any other entities and, if so, who [if known] and in what proportion, and any other information available about the holding.”

2. By letter dated March 28th, 2002, the Respondent advised the Applicant of the following:

“Please note that *The Freedom of Information and Protection of Privacy Act* does not apply to published material or material that is a matter of public record. In this regard, I direct your attention to the annual reports for Capital Pension Plan for partial answers to your inquiry. In addition, the Act does not prevent you from accessing a registry operated by another government institution where access to the registry is normally allowed to the public, for example, Department of Justice, Corporations Branch.”

3. In a formal Request For Review dated May 22nd, 2002, addressed to me, the Applicant indicated that he had been refused access to all, or part, of the record. In the Request For Review, he stated:

“I am enclosing the following:

1. A completed “request for review” form
2. A copy of my original request
3. A copy of CIC’s response
4. Photo-copy of materials from Corporations Branch of Justice
5. Photo-copy of materials from the annual report of Capital Pension Plan

You will note item 3 [CIC’s response] claims the information sought is obtainable [in part] from the corporate registry of the department of Justice and the annual report of the Capital Pension Plan.

As is evident from the materials in items 4 and 5, no such information is there. As such, I view the response of CIC to be a *de facto* denial of access.”

4. On June 21st, 2002, I received the following reply from the Respondent:

CIC's primary position is that the information sought by [REDACTED] is obtainable as a matter of public record and is accessible through other public forums. CIC's secondary position is that the Act applies to records held by government institutions and it is [REDACTED] responsibility to determine the appropriate government institution, if any.

[REDACTED] asserts that, notwithstanding his review of the search results from the Corporations Branch and notwithstanding his review of an excerpt from the annual report of the Capital Pension Plan, "no such information is there". In this light, CIC reviewed his initial application:

Please provide detailed information on the holdings, as at the most recent date, of SaskPen Properties Ltd., and SP Two Properties Ltd. By details I mean a description of the holding, the purchase price and current value of the holding, the location of the holding, whether the holding is held by any other entities and, if so, who (if known) and in what proportion, and any other information available about the holding.

Breaking down [REDACTED] Request for Information into its constituent components, CIC makes the following observations about [REDACTED] request.

1) Description of Holding

With respect to "description of holding" CIC draws your attention to the excerpt from the Capital Pension Plan annual report which is tabled annually in the Legislative Assembly. The annual report describes SaskPen Properties Ltd. as "as real-estate corporation beneficially owned by Crown managed pension funds in the Province of Saskatchewan." In CIC's view, this publicly available document provides a description of SaskPen Properties Ltd.

2) The Purchase Price and Current Value of the Holding

In this regard, and with respect to Capital Pension Plan, the Capital Pension Plan annual report shows that an investment valued at \$2,188,000 in SaskPen Properties Ltd. is held by Capital Pension Plan. With respect to other investors, CIC does not hold such information but suggests that similar information may also be available from other Crown managed pension fund annual reports.

3) Location of Holding

You will note that [REDACTED] search of the Corporate Registry related to SaskPen Properties Ltd. indicates the registered office and mailing address for the corporation and accordingly, identifies the location of the holding.

4) Whether the Holding is Held by Other Entities, if so, (Who, if Known)

Once again CIC refers to the Corporate Registry search that outlines, as with any other corporate entity incorporated in the Province of Saskatchewan, individual shareholder information.

5) Any Other Information Available About the Holding

This latter part is rather broad and CIC once again submits that any other information [REDACTED] is seeking would most likely be available in public records that are readily accessible.

CIC's first, and clearly supportable submission, is that this information is in the public domain. In such a case the Act does not apply. The Act also does not prevent access to a registry operated by a government institution including the Corporate Registry, the Land Titles Registry, the Personal Property Registry, and the Court Registry. Finally, nothing prevents access to information that is normally available to the public, such as annual reports tabled in the Legislative Assembly. In essence, a government institution, such as CIC, is not obligated to act as researcher for the applicant.

Similarly, determining the appropriate government institution to which the applicant should apply is the responsibility of the applicant – not of the government institution. In this vein, the applicant must identify the appropriate government institution and in particular the one that is likely to have custody and control of the information being sought.

In this regard, I draw your attention to the *Report to the Legislative Assembly of Saskatchewan on the Financial Statements of Crown Agencies for the Year Ending in the 2001 Calendar Year*, dated April, 2002 (excerpts attached). This report is submitted by the Provincial Auditor of Saskatchewan to the Legislative Assembly and can be viewed in its entirety at www.auditor.sk.ca. In that report, the purpose is clearly identified in the first paragraph on the first page and states:

This report does not include our views on the Financial Statements of Crown Investments Corporation of Saskatchewan (CIC), its subsidiaries, and other related entities to the Assembly in a separate report entitled the *Report to the Legislative Assembly of Saskatchewan on the 2001 Financial Statement of CIC Crown Corporation and Related Entities*.

The report also names SaskPen Properties Ltd. and SP Two Properties Ltd. This suggests that the Provincial Auditor considers these corporations to be agencies of the Crown and by exclusion, not agencies of CIC. Such a reference also suggests that, if these corporations are in fact Crown agencies, some other government institution may hold records related to the corporations.

Clearly, the Provincial Auditor does not consider SaskPen Properties Ltd. and SP Two Properties Ltd. to be entities related to CIC and it follows that information with respect to these corporations is not under the control or the possession of CIC. Further, determining which government institution controls such information is not the function of CIC unless known by CIC. In this case, CIC does not know which government institution, if any, has such records and CIC asserts that [REDACTED] is responsible to research the proper avenues for this information. Perhaps [REDACTED] should contact the Office of the Provincial Auditor.

5. On September 12th, 2002, I received a response from [REDACTED] regarding the Respondent's response of June 21st, 2002, as follows:

- “1. Regarding the “description of holding”. This referred to the real estate property held by the entities. There is no information “in the public domain” that provides this information.
2. Regarding prices and values. One report provides the global number of \$2,188,000. This does not provide all the prices and values.
3. Regarding “location” of holding. Again, this is a reference to real estate property, not the address of the holding entities.
4. Regarding “others”. The corporate registry referenced would be a good place to get the information ... but only when the identity of the real estate property is known.
5. Regarding any other information. This refers to any information CIC holds concerning the real estate properties.”

6. The points raised by the Respondent in their letter of June 21st, 2002 are valid. In particular, the detailed analysis of the fact that most of the information requested is in the public domain, and in that case, the *Act* does not apply. The Applicant has reviewed some of the public records, such as the Corporations Branch and the Annual Report of the Capital Pension Plan. However, as pointed out by the Respondent, other public records do exist, and must be explored by the Applicant. It is not the duty of the Respondent to obtain the public records for the Applicant.

7. The Respondent's material also points out that the two agencies, namely, SaskPen Properties Ltd. and SP Two Properties Ltd. are not under the control of the Respondent and, therefore, is not able to provide the information requested.

Dated at the City of Swift Current, in the Province of Saskatchewan, this 22nd day of October, 2002.

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