

**REPORT WITH RESPECT TO THE APPLICATION  
FOR REVIEW OF ██████████ IN RELATION TO INFORMATION  
REQUESTED FROM THE SASKATCHEWAN PUBLIC SERVICE COMMISSION**

[1] By an Access to Information Request form received by the Saskatchewan Public Service Commission on February 22, 2002, ██████████ (the “Applicant”) requested information from the Saskatchewan Public Service Commission (the “Respondent”) pertaining to documents regarding the Position #103060 classification. Her request was worded as follows:

“All written notes & rational [sic] regarding the 09POM classification of position #103060”

[2] In a letter from Alanna Whipler, Access Officer, Freedom of Information for the Respondent, dated March 19, 2002, the Respondent advised the Applicant as follows:

“Thank you for your application for access, received on February 22, 2002.

We wish to inform you that the response time of 30 days has been extended another 30 days in accordance with subsection 12(1) of The Freedom of Information and Protection of Privacy Act.

The reason for this extension is that consultations are required with the Joint Committee on Maintenance of the Classification Plan, which falls under subsection 12(1)b [sic] of the Act.

If you wish to request a review of this delay, you may do so within one year of this notice. To do so, 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 at #700-1914 Hamilton Street, Regina, Saskatchewan, S4P 3N6.

In addition, if you do not receive a response to your application for access by the end of the new extension deadline, you may also file a complaint with the Commissioner using the same procedure outlined above.

Please contact me at 787-1445 if you wish to discuss the matter further.”

[3] Further, in a letter from the Respondent dated April 22, 2002, the Respondent advised the Applicant as follows:

“In response to your request for access of February 22, 2002, this is to advise you that the record you requested can not be released.

This information can not be released because it conflicts with the appeal process established through collective bargaining. Information of this nature is exempt from access according to Section 17(1)(a) of *The Freedom of Information and Protection of Privacy Act*. I have attached information regarding the appeal process and the provisions for written disclosure that you may find helpful in obtaining the information that you seek.

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 at #700-1914 Hamilton Street, Regina, Saskatchewan S4P 3N6.

Please contact me at 787-1445 if you wish to discuss this matter further. If you would like to further discuss your classification results, please contact [REDACTED] Director, Staffing and Classification Services, at 787-7566.”

[4] In a formal Request for Review dated April 22, 2002, addressed to me, the Applicant indicated that she had been refused access to all or part of the documents that she had requested. The specific wording of her request was as follows:

“Request was for copies of notes & rationale regarding the 09POM classification of position #103060 – (the position that I occupy). Copy of request, extension letter from PSC & letter refusing access attached.”

[5] I determined that I would undertake a 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 duly forwarded to me by the Respondent, and I have had an opportunity to read and consider them.

[6] In a letter accompanying these documents dated May 22, 2002, the Respondent wrote to me as follows:

"In response to your letter of April 30, 2002, I have attached copies of the records requested by [REDACTED] for your review.

In addition, I have summarized below the statutory authorities that determined our decision to exempt the information:

1. Section 17 (1) of *The Public Service Act, 1998*, which states "the Public Service Commission shall prepare classification plans for all positions within the classified division of the public service and may, at any time, amend those classification plans", and 17 (1) (b) which states the PSC shall allocate each position to the appropriate class within the classification plan based on the positions duties [sic] and responsibilities."
2. Article 5.5 A of the PS/GE Collective Bargaining Agreement, which states "when the Commission reallocates or reclassifies a position, the incumbent, if permanent, may within fifteen (15) calendar days of the receipt of written notice of the decision, appeal one or more job evaluation factors to the Secretary, Classification Joint Council"
3. Article 5.5 B of the PS/GE Collective Bargaining Agreement, which states "appeals shall be made on the form provided to the employee with the classification or reallocation decision. *This form specifically requests that the appellant identify the reasons for the appeal.* The Secretary shall send the appellant a copy of the Classification Joint Council appeal procedures."
4. Letter of Understanding 98-12 – *Maintenance of the Classification Plan*, Section A (E) (6): "The Maintenance Committee shall have the authority to establish and change the roles and authorities of the appeal panels as required."
5. Letter of Understanding 98-12 – *Maintenance of the Classification Plan*, Section B, Role of the Panel, which prescribes "roles, policies and procedures to ensure the integrity of the information presented at appeal hearings." It establishes the roles, responsibilities and authorities of those attending a classification appeal hearing. The rules of evidence for classification hearings stipulate that written materials will be made available at the hearing.

Section 17(1) (a) of *The Freedom of Information and Protection of Privacy Act* provides for the exclusion of a classification analysis done for the Public Service Commission.

To provide additional context for examining the issue of written disclosure, I have provided additional information relating to the PSC's collective bargaining strategy regarding classification appeal hearings.

Section 26 (1) of the *Trade Union Act* requires a final and binding process for the resolution of disputes that arise between the parties to a collective agreement. The parties have agreed

[to] resolve disputes arising from position classification through Classification Joint Council.

Classification Joint Council is a quasi-judicial process established pursuant to the Collective Bargaining Agreement. It was originally established to provide a more expeditious and less costly resolution of classification appeals than that provided through the grievance and arbitration process.

Article 21 (4) of the PS/GE Agreement requires both parties to provide full disclosure at each step of the normal grievance procedure; typically written arguments are not disclosed, and it is not required that they be disclosed in writing until the hearing date.

The classification analysis is interpretation of the classification standards, relative to job content. This is similar to the employer's arguments in an arbitration relating to interpretation of articles of the Collective Bargaining Agreement.

The process is designed to enable an understanding regarding the employee's reasons for the appeal. If, at any point prior to the hearing, the employee discloses his or her reasons for appealing, the Classification Consultant will provide written rationale for the decision.

Until Letter of Understanding 98-12 was established, the classification consultant was not required to explain the rationale for the classification decision, nor was the appellant required to provide any reason for the appeal. Our history with this process was that any type of unverified and undocumented materials could be brought forward at the hearing.

We specifically do not want to commit to full written disclosure until the union agrees that the appellants (union members) will reciprocate prior to the hearing. The procedures provide that the appellant may receive assistance with the presentation of their case and a number of SGEU employees as well as other government employees are trained in the application and interpretation of the plan in order to provide such assistance.

To require the employer, under the *Freedom of Information Act*, to provide written rationale without requiring the appellants (union) to provide their reasons for appealing would permanently circumvent our bargaining position. This would ostensibly overrule the existing negotiated requirement for the employee to provide reasons when appealing, under Section 5.5 B of the SGEU Collective Bargaining Agreement. It would ultimately prejudice our ability to reach agreement to full disclosure by both parties and permanently place the employer in the position of entering future hearings at a disadvantage.

The Joint Union Management Maintenance Committee has broached this issue on two occasions and has reiterated that verbal disclosure of rationale would be provided. The Commission has offered to provide this, a second time to [REDACTED] at length if desired.

Letter of Understanding 98-12 has been attached in its entirety for your information."

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

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

(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.”

[9] In this matter, the Respondent had contended that the information sought by the Respondent should not be released, because in the collective agreement applicable with respect to the Applicant’s position of employment, certain provisions of secrecy have been negotiated between the Respondent and the union involved respecting the appeal process. In my view, the Respondent cannot negotiate away fundamental rights of the Applicant to disclosure which is otherwise available under the Act. I am therefore not in agreement with this aspect of the Respondent’s argument.

[10] The Respondent further contends that the documents withheld from the Applicant are exempt from disclosure pursuant to s. 17(1)(a) of the Act as the documents consist of a job classification analysis done for the Respondent. Having reviewed the documents in question, I am of the view the portions of the document entitled “Public Service Commission - In-Scope Job Evaluation Summary” do fall within the exception pertaining to “analyses ... developed by a government institution ...”, as set forth in s. 17(1)(a) of the Act.

[11] In the case of *Weidlich v. Saskatchewan Power Corp.*, [1998] S.J. No. 133 (Q.B.), Mr. Justice Geatros considered whether the Applicant was entitled to access to two focus group analyses primarily concerning SaskPower rate adjustments. The Court held that the exemption contained in s. 17(1)(a) of the Act applied to this material. The Applicant argued that since the exemption applied only to “advice, proposals, recommendations, analyses or policy options”, the underlying facts contained in the reports should be disclosed. In dismissing that argument, Mr. Justice Geatros stated that: “Having read the Reports, I find that the facts and opinions are so intertwined that they cannot be intelligently separated. The Reports must be disclosed in total or not at all.”

[12] In this matter, I find that the facts and analysis contained in the aforesaid document can be intelligently separated. They are not so intertwined as to be inseparable.

[13] Therefore, I recommend that the following portions of the document entitled “Public Service Commission – In-Scope Job Evaluation Summary” be severed, pursuant to section 8 of the Act, as these portions constitute analysis that I find to be exempt by virtue of section 17(1)(a) of the Act:

- all information contained under the column entitled “Comparisons” on pages 1 to 4 inclusive;
- all of items #6 and #7 on page 4;
- all of page 5; and
- all of page 6.

[14] In my view, section 17(2) of the Act does not apply to any of these severed portions.

[15] I recommend that the Respondent disclose the remainder of the documents to the Applicant.

[16] Dated at Regina, in the Province of Saskatchewan, this 12<sup>th</sup> day of July, 2002.

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

