

**REPORT WITH RESPECT TO THE APPLICATION  
FOR REVIEW OF ██████████ IN RELATION TO INFORMATION  
REQUESTED FROM EXECUTIVE COUNCIL**

[1] On April 17, 2002, ██████████ (the “Applicant”) filed with Saskatchewan Executive Council (the “Respondent”) an Access to Information Request Form which stated as follows:

“Please provide all information prepared by or for executive council on reorganizing the provincial government, leading up to the Premier’s announcement of March 26, 2002.

Please include the following:

- 1.) all information gathered from other provinces which have undertaken government reorganization.
- 2.) all the various options provided for consideration.
- 3.) all the objects or goals for the reorganization.
- 4.) the entire communications strategy for presenting the decision to the public.

Please ensure the records I receive are comprehensive and, where applicable, include: documents, files, notes, reports, memorandums, letters, e-mails, briefing notes, transcripts of meetings, agendas of meetings, sticky notes – and any other material that makes reference to the reorganization of government.”

[2] By letter dated May 31, 2002 the Respondent replied in part as follows:

“I wish to advise that access to the record(s) as mentioned above has been partially granted. Enclosed you will find a copy of the presentation prepared for the media technical briefing and some media clips.

The majority of the record(s) you have requested are exempt from release pursuant to Sections 16(1)(a) and 17(1)(a)(b)(c) and (d) of *The Freedom of Information and Protection of Privacy Act*.

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 Mr. Gerald Gerrand, Q.C., Information and Privacy Commissioner, #700 – 1914 Hamilton Street, Regina, Saskatchewan, S4P 3N6.”

[3] A Request for Review was filed by the Applicant with the then Freedom of Information and Privacy Commissioner, Mr. G.L. Gerrand, Q.C., on June 6, 2002.

[4] Mr. Gerrand forwarded a copy of this Request to the Respondent with the following letter:

“June 12, 2002

Saskatchewan Executive Council,  
Legislative Building,  
Regina, Saskatchewan  
S4S 0B3

ATTENTION: Ms. Bonita Cairns, Access Officer  
Freedom of Information

Dear Ms. Cairns:

Re: [REDACTED] and Saskatchewan Executive Council  
File Reference: F 2002/026 GLG

On June 7, 2002, I received from [REDACTED] a Request for Review in the above-described matter. I enclose a copy of the form of Request for Review completed by [REDACTED] together with a copy of letter dated June 6, 2002 that accompanied the Request for Review.

Pursuant to the provisions of Section 51 of *The Freedom of Information and Protection of Privacy Act*, I advise you of my intention to proceed with the Review that has been requested.

[REDACTED] forwarded to me, in her materials, a copy of letter that you wrote to her dated May 31, 2002. Would you be good enough to forward to me a copy of the materials that were enclosed with that letter.

I wish to have access to and inspect the documents which you have declined to disclose to [REDACTED]. If this documentation is not too voluminous, would you please forward to me copies of it; if the materials are excessively lengthy in number, I will arrange with you for a convenient time for me to review them at your office. I ask for the production of the documents in question pursuant to the provisions of Section 54 of the Act.

If you any submissions, [sic] additional to those outlined in your letter to [REDACTED] of May 31, 2002, which you wish to submit to me, I would appreciate receiving them at the time of receiving the copies of documentation.

Yours truly,

G.L. GERRAND, Q.C.  
Freedom of Information  
And Privacy Commissioner  
Province of Saskatchewan

c: [REDACTED]

[5] Mr. Gerrand was advised by the Respondent that the documents requested were quite voluminous and accordingly it would be more practical to review them at the Respondent's office rather than copy them as there were several hundred pages involved.

[6] Mr. Gerrand retired as Commissioner on July 31, 2002, and I succeeded him effective August 1, 2002.

[7] On September 10 and September 17, 2002 I attended at the Respondent's office and reviewed the very extensive documentation to which access by the Applicant had been denied by the Respondent.

[8] Following my review, I contacted both the Applicant and the Respondent who both advised that they did not wish to make any further submissions to me with respect to this matter other than a reference by the Applicant to a previous report which I will address later in this report.

[9] The Respondent's position, as set out in their letter of May 31, 2002 is that these documents are exempt from release pursuant to Sections 16(1)(a) and 17(1)(a)(b)(c) and (d) of *The Freedom of Information and Protection of Privacy Act*.

[10] These sections are as follows:

“16(1) A head shall refuse to give access to a record that discloses a confidence of the Executive Council, including:

- (a) records created to present advice, proposals, recommendations, analyses or policy options to the Executive Council or any of its committees;

“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;”

[11] The documents in question were contained in five separate files, and for purposes of clarity I have appended to this Report a listing and description of the documents contained in each of the five files.

[12] In my view, all of the documents or records in question were clearly created to present advice, proposals, recommendations, analysis or policy options to the Executive Council.

The Executive Council was contemplating a restructuring of government departments and the documents were created for the very purpose of providing the detailed information necessary for it to make an informed decision and to proceed to prepare proposed legislation and place it before the Legislature.

Accordingly, due to the mandatory wording of Section 16(1)(a) the Respondent was obligated to deny access to these documents.

[13] In addition, it is my view that Section 17(1)(a)(b)(c) and (d) also apply as the documents clearly contain advice, proposals, recommendations, analysis or policy options to certain members of the Executive Council; they include consultation or deliberation involving government employees, Executive Council members and staff; they involve positions, plans and procedures developed that relate to negotiations by or on behalf of the government and they also clearly contain plans that relate to the management of personnel or the administration of a government institution and that have not yet been implemented.

[14] I have underlined the last seven words as my review indicated that the documents in question were created for the Executive Committee for consideration prior to submitting proposed legislation to the Provincial Legislature.

The documents and records were prepared prior to the implementation of any of the advice, plans or proposals referred to therein.

I make reference as the Applicant submitted that in the case of *Weidlich v. Department of Finance* (File 2000/035) the Commissioner recommended disclosure of certain records and documents on the grounds that the material in question related to a matter that was already before the Provincial Legislature.

The present case is clearly distinguishable as the material herein was prepared prior to the matter being placed before the Legislature and involved advice proposals, recommendations, analyses or policy options to the Executive Council.


In the previous case referred to by the Applicant, the document in question was a briefing note created to provide background details to support a provincial budget presented to the Legislature. The

matter was no longer before the Executive Council when the briefing note was created and did not include any advice or policy options. The briefing note was thus not exempt under sections 16 and 17.

I also do not believe that the facts contained in the documents should be disclosed as the situation is similar to that contained in the case of Weidlich v. Sask Power Corp (1998), 164 Sask. R. 204 (Q.B.), where the Court held 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.”

For these reasons I would recommend that the Respondent continue to deny access to the documents and records in question.

[15] Dated at Regina, in the Province of Saskatchewan, this 23<sup>RD</sup> day of September 2002.

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