

**REPORT WITH RESPECT TO THE APPLICATION
FOR REVIEW OF ██████████ IN RELATION TO INFORMATION
REQUESTED FROM CROWN INVESTMENTS CORPORATION OF SASKATCHEWAN**

[1] On May 2, 2002, ██████████ (the "Applicant") filed with Crown Investments Corporation of Saskatchewan (the "Respondent") an Access to Information Request Form which stated as follows:

"Please provide all materials prepared by or for or held by C.I.C. which would indicate the level and type and any other details of Saskatchewan activity expected and/or required of Minds Eye [or the appropriate company related to Minds Eye] as part of any agreement or other arrangement between the government of Saskatchewan and Minds Eye [or the appropriate company related to Minds Eye] relating to the government's investment in the company."

[2] By letter dated June 3, 2002, the Respondent replied as follows:

"We are in receipt of your Freedom of Information Request in which you ask for the following information:

"Please provide all materials prepared by or for or held by C.I.C. which would indicate the level and type and any other details of Saskatchewan activity expected and/or required of Minds Eye [or the appropriate company related to Minds Eye] as part of any agreement or other arrangement between the government of Saskatchewan and Minds Eye [or the appropriate company related to Minds Eye] relating to the government's investment in the company."

In accordance with clause 7(2)(d) of The Freedom of Information and Protection of Privacy Act, access to the records you seek is refused on the basis that:

1. The records contain information, the disclosure of which could reasonably be expected to result in the financial loss or gain to, prejudice the competitive position of or interfere with the contractual or other negotiations of Minds Eye. Accordingly, access is refused pursuant to clause 19(1)(c) of the Act.
2. The records could disclose information which could reasonably be expected to result in an undue benefit or loss to a person. Accordingly, access is refused pursuant to clause 18(1)(h) of the Act.

If you wish to seek 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, Saskatchewan, S4P 3N6."

[3] A Request for Review was filed by the Applicant with Mr. Frank MacBean, Q.C., the Acting Freedom of Information and Privacy Commissioner on June 5, 2002.

[4] Mr. MacBean forwarded a copy of this Request to the Respondent who responded by letter dated July 19, 2002 as follows:

"Thank you for your letter dated June 25, 2002, advising that [REDACTED] has filed a Request for Review pursuant to The Freedom of Information and Protection of Privacy Act (the "Act"). Attached to your letter is [REDACTED] Request for Review form and letter, both dated June 5, 2002.

CIC's position is that the records sought by [REDACTED] contain information that could harm the financial, competitive or economic position of Minds Eye Pictures ("Minds Eye"). Accordingly, on June 3, 2002, CIC refused access pursuant to clause 19(1)(c) and clause 18(1)(h) of the Act.

CIC submits that, pursuant to section 19 of the Act, if the head reasonably concludes that the information sought is third party information then the head is prohibited by the Act from giving access to the information. In the present case, the information [REDACTED] seeks is contained in a provision that states that the majority of the revenue made by Minds Eye between March 1, 2003 and February 28, 2008, must originate from Saskatchewan productions. The clause further states that if Minds Eye fails to meet the above target, Minds Eye will be required, as a penalty to make certain distribution advances to independent Saskatchewan producers. Given the competitive nature of the movie production industry, CIC reasonably concludes that such information comes within the ambit of section 19, and in particular clause 19(1)(c), in which case the provisions of section 19 are mandatory and the head is under a legislative duty not to disclose such information.

Similarly, CIC submits that the discretion of the head under section 18 was reasonably exercised. CIC submits that in the present case, access to the requested information would result in an undue benefit to competitors of Minds

Eye who are not constrained by revenue penalties. Such a benefit to Minds Eye competitors would, in return, result in an undue hardship to Minds Eye.

Accordingly, it is submitted that the discretion to refuse access under clause 18(1)(h) was reasonable and properly exercised.

As the Act places no restrictions on the grounds the Commissioner may consider in the course of a review, you may rely on any exemption under the Act when considering an application for review. In the event further exemptions are necessary CIC submits clause 18(1)(h) of the Act as a further exemption since CIC is a shareholder of Minds Eye.

Attached for your reference is a copy of the provision containing the pertinent information. Please note that the attached provision is provided to you for the purpose of your preliminary review and should be retained in strict confidence.

I trust the above sets out the position of CIC in regard to [REDACTED] Request for Review. The above representations are made to assist you in determining whether there are reasonable grounds to review the matter.”

[5] By letter dated July 22, 2002 Mr. MacBean sent a copy of the Respondent's letter to the Applicant and inquired of the Respondent if he wished to make any comments.

[6] By letter dated August 7, 2002 the Applicant forwarded his comments to Mr. MacBean, the relevant portions of which read as follows:

“The department, CIC, claims the material sought contains information that could harm Minds Eye Pictures. It claims it has come to a “reasonable” conclusion that this is so.

However, on June 12, 2002 – despite the department's concern that the release of confidential information could harm Minds Eye – the minister responsible for CIC released the sought-after information in the legislature. This took place more than one month *after* I asked for the information.

I enclose a photocopy of the relevant portion of Hansard of that day.

As such, the exemption claimed cannot apply. The minister has negated the claimed exemption by releasing the information.

I am simply, now, hoping to receive the documentation that supports the words of the minister.”

[7] By letter dated August 19, 2002 Mr. MacBean forwarded this file to me as [REDACTED] and felt that he could not complete this matter.

[8] On August 21, 2002 I sent a copy of the Applicant's letter to the Respondent, asking if they wished to make any further representations and on September 3, 2002 they replied as follows:

“Thank you for your letter dated August 21, 2002, advising that [REDACTED] has filed further representations regarding his Request for Review pursuant to *The Freedom of Information and Protection of Privacy Act* (the “Act”). Attached to your letter is correspondence from [REDACTED] dated August 7, 2002, which outlines [REDACTED] further representations together with the excerpt of Hansard referred to in his letter.

CIC's position remains that, pursuant to section 19 of the Act, if the head of a government institution reasonably concludes that the information sought is third party information then the head is prohibited by the Act from giving access to such information. This is a legislated duty and the Act does not grant to a Minister of the Government of Saskatchewan the power to override the decision of the head of a government institution. As such, CIC maintains that the information sought in the present case is in fact third party information and the head is therefore under a legislative duty not to disclose such information.”

[9] A copy of this letter was forwarded to the Applicant who advised by letter dated September 12, 2002 that he had no further representations to make on this matter.

[10] I then obtained a copy of the Agreement between the Respondent and Minds Eye Pictures which I have now reviewed and I have confirmed that the Agreement does contain several clauses dealing with confidential financial information of Minds Eye Pictures. It also contains provisions dealing with respect to revenue targets and penalties to be paid if targets are not met.

[11] I should point out that I also received a letter, dated October 8, 2002 from legal counsel to Minds Eye Entertainment Ltd. which stated the following:

“We reiterate the position of CIC that pursuant to section 19 of *The Freedom of Information and Protection of Privacy Act*, the information that is requested cannot be released. The disclosure of this information could reasonably be expected to result in financial loss, prejudice the competitive position of, or interfere with the contractual or other negotiations of Minds Eye Entertainment Ltd. as a third party.”

[12] The position of the Respondent is that it refused access pursuant to Section 19(1)(c) and 18(1)(h) of The Freedom of Information and Protection of Privacy Act. Section 19(1)(c) reads as follows:

“19(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:

- (c) information, the disclosure of which could reasonably be expected to:
 - (i) result in financial loss or gain to;
 - (ii) prejudice the competitive position of; or
 - (iii) interfere with the contractual or other negotiations of; a third party;

[13] I am of the view that the disclosure of this information could reasonably be expected to prejudice the competitive position of a third party and accordingly, since the language of Section 19 is mandatory, the Respondent was justified in denying access.

[14] The Respondent also relies on Section 18(1)(h) of the Act which reads as follows:

“18(1) A head may refuse to give access to a record that could reasonably be expected to disclose:

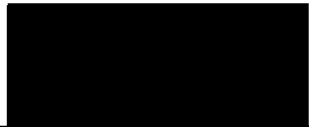
- (h) information, the disclosure of which could reasonably be expected to result in an undue benefit or loss to a person;

[15] Clearly, if the competitive position of the third party could be prejudiced, as I have indicated above, then this subsection is applicable.

[16] The Applicant submits that the Minister responsible to the Respondent released the requested information in the Legislature and enclosed a copy of Hansard to support this position. I have reviewed this document and although the Minister did disclose that the third party made revenue commitments, he made no reference to the clauses in the Agreement dealing with revenue targets, penalties and other financial information.

[17] In any event, regardless of the Minister's actions, the department head is under a legislative duty, pursuant to Section 19, to deny access to the information being requested and I would accordingly recommend that he continue to deny such access.

[18] Dated at Regina, in the Province of Saskatchewan, this 11th day of October, 2002.



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