

**REPORT WITH RESPECT TO THE APPLICATION  
FOR REVIEW OF ██████████ IN RELATION TO INFORMATION  
REQUESTED FROM SASKATCHEWAN CORRECTIONS AND PUBLIC SAFETY**

[1] By letter dated June 4, 2002 written by solicitors on behalf of ██████████ (the "Applicant") an Access to Information Request form was directed to Occupational Health and Safety, Department of Labour requesting all available records of the make of boilers and the brand name of asbestos insulation and refractory of the following three mines in Saskatchewan:

- "- Allan Potash mine
- Duval mine, now known as Cory mine
- Potash Co. of America, mine near Saskatoon"

[2] As the Department of Labour does not maintain records of the nature requested by the Applicant, his Request was forwarded to the appropriate Department of the Saskatchewan Government, namely Corrections and Public Safety (the "Respondent").

[3] The Respondent replied to the Applicant's request by letter dated July 19, 2002 which reads in part as follows:

"Thank you for your Freedom of Information request which was received in this office July 2, 2002, requesting information regarding the make of boilers, insulation and refractory used at the Allan Potash Mine, the Cory Mine and the Potash Co. of America near Saskatoon. The latter company is now Potash Corporation of Saskatchewan Inc., Saskatoon.

Enclosed are screen prints from our pressure equipment database identifying the make of boilers installed in each of the facilities together with the applicable Affidavit of Manufacturer or Manufacturer's Data Report. We would note that the "Saskatoon Boiler Manufacturing Co. Ltd." boiler, serial #2023, installed at the Potash Corporation of Saskatchewan Inc., Saskatoon, while it was manufactured in 1966, was acquire and installed in 1989. We have no record of any earlier boilers.

We are unable to provide information regarding insulation or refractory. Access to the manufacturers technical design documents related to the boilers in question is exempt from access pursuant to section 19(1)(b) of *The Freedom of Information and Protection of Privacy Act.*"

[4] The Applicant then forwarded to me a Request for Review dated September 11, 2002 which I received on September 24, 2002 and which reads as follows:

“I requested information regarding insulation and refractory materials on boilers constructed at three potash mines in Saskatchewan. This was denied as confidential, since these boilers were built in the 1960’s, they can no longer contain confidential information. Also, I dispute this information was ever confidential.”

[5] I then wrote to the Respondent on September 25, 2002 as follows:

“On September 24, 2002 I received on behalf of the Applicant [REDACTED], a Request for Review regarding the above matter. I enclose a copy of the form of Request for Review together with the Applicant’s Solicitor’s letter which accompanied the request.

In accordance with the provisions of Section 51 of The Freedom of Information and Protection of Privacy Act I would advise that I intend to proceed with the review that has been requested. I note that by letter dated July 19, 2002 Mr. McIlmoyl wrote to the Applicant’s solicitors and enclosed screen prints identifying the make of boilers installed in each of the facilities and I would ask that you be good enough to forward to me a copy of those enclosures.

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

If you have any submissions, additional to those outlined in Mr. McIlmoyl’s letter I would appreciate receiving them at the time of receiving the documentation requested above.”

[6] The Respondent replied to my request by letter dated October 7, 2002 which reads as follows:

“Thank you for your letter dated September 25, 2002, regarding your intention to review Freedom of Information Application # [REDACTED].

I have enclosed a copy of the materials that were released to [REDACTED] on July 19, 2002. These are screen prints from the pressure equipment database which identify the make of boilers installed in each of the facilities together with the applicable Affidavit of Manufacturer or Manufacturer's Data Report.

Access was denied on the basis that the detailed design information submitted by a manufacturer is considered proprietary information. While asbestos refractory is listed in the bill of materials on the drawings related to the two Foster Wheeler boilers, the brand names are not (this was the requested information). Although the boilers were built in the 1960's, it is not our decision as to whether the detailed information of the design is still in use and proprietary.

Given this background, we feel that the documents that were not released to [REDACTED] fall within clause 19(1)(b) of *The Freedom of Information and Protection of Privacy Act*.

The information which access was denied is in microfiche format at the Licensing and Inspection Branch. In order to have this material put into paper format, the microfiche must be sent offsite, and can take a few weeks to process. I would be preferred if a time could be arranged for you to view the documents at the branch office. Please contact Nick Surtees, Executive Director, Licensing and Inspection Branch at 787-4509, to arrange a viewing.

If you require further information, please contact me at 787-5473.

Yours sincerely,

Sherri Fowler  
Co-ordinator, Freedom of Information"

[7] As suggested in the Respondent's letter I made arrangements to attend at their offices on October 18, 2002 to view the microfiche but unfortunately the microfiche format was not completely legible so I requested that the material in question be put into paper format.

[8] On October 30, 2002 the Respondent forwarded to me a set of prints reproduced from the microfiche along with the following letter:

“Further to our discussion and review of the microfiche drawings related to the subject file, please find enclosed a set of prints reproduced from the microfiche.

Unfortunately, the quality of film which created difficulty in reading the information when viewed on the microfiche reader, has resulted in extremely poor quality paper prints. We have been advised by our contractor that these prints are the best that can be produced based on the density and contrast of the original microfiche.

Should you require to again view the microfiche in conjunction with the related prints, please do not hesitate to call.”

[9] I had previously written to the Applicant’s solicitor on October 15, 2002 enclosing a copy of the Respondent’s letter of October 7, 2002 inquiring as to whether or not he wished to make any further representations or submissions to me with respect to this matter. He replied by letter dated October 29, 2002 as follows:

Thank you for your letter of October 15, 2002. You kindly invited me to make any comments concerning the October 7, 2002 letter of Ms. Sherri Fowler.

I would respectfully submit that asbestos-containing insulation and refractory products have been banned in the United States since the 1970’s (*i.e.*, for over 25 years) and I would presume the same has been banned in Canada for at least twenty years. Accordingly, the brand names of asbestos-containing insulation refractory products used in the 1960’s in the Foster Wheeler boilers could in no sense be considered proprietary. It is my understanding that boilers are overhauled usually on a five or at most seven-year time frame and thus boilers that were built in the 1960’s would no longer have the original refractory and insulation. Also, given the fact that asbestos-containing insulation and refractory has been phased out for decades, this could no longer be considered proprietary. Also, I would add that we have not asked for the brand names of the refractory and insulation products which were used to overhaul these boilers but only for the **original construction**. This would make this information 35 years old and impossible under the new environmental laws to still be utilized in the construction of similar boilers today. And finally as I mentioned, with the regular overhaul schedule, it would be impossible that the original insulation refractory is still in place in these boilers, even though these boilers would still be in use today.

I do not know if there is a balancing test that is employed under Canadian law. However, the company that installed these boilers, Stearns-Rogers, purged their

records approximately 20 years ago and thru this information cannot be obtained from Stearns-Rogers.

Thus, this may be the only source for this information and can no longer be considered proprietary.

The above are my respectful comments to any assertion of proprietariness. I would note that I would kindly wonder if Foster Wheeler, Ltd. would even maintain a claim of proprietariness under Canadian law?

Thank you for your continued consideration of this request.

[10] As indicated in the Respondent's letter of October 30, 2002, the prints of the microfiche are of extremely poor quality and in fact, in some cases, they are completely illegible, as they were when viewing the microfiche file itself.

[11] The records in question consist of a covering letter from Foster Wheeler Limited (Engineers, Manufacturers, Contractors) dated December 2, 1966 enclosing 22 drawings covering the make, design and specifications of the boilers in question which would include the information being requested by the Applicant.

[12] The Respondent's position is that the 22 drawings in question are exempt from production by virtue of Section 19(1)(b) of *The Freedom of Information and Protection of Privacy Act* which reads as follows:

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

"(b) financial, commercial, scientific, technical or labour relations information that is supplied in confidence, implicitly or explicitly, to a government institution by a third party;"

[13] In my view the records in question clearly contain technical information that is supplied to a government institution by a third party.

[14] My view is strengthened by the fact that each of the 22 drawings in question has stamped thereon a drawing description box which in each instance contains the following:

THIS DRAWING IS THE PROPERTY OF FOSTER  
WHEELER LIMITED  
ST. CATHERINES ONTARIO  
AND IS SENT WITHOUT CONSIDERATION OTHER  
THAN THE BORROWER'S AGREEMENT THAT IT  
SHALL NOT BE PROVIDED, COPIED, LENT OR  
DISPOSED OF DIRECTLY OR INDIRECTLY NOR  
USED FOR ANY PURPOSE OTHER THAN FOR  
WHICH IT IS SPECIFICALLY FURNISHED. THE  
APPARATUS SHOWN IN THE DRAWING IS  
COVERED BY PATENTS

[15] The records were forwarded to the Respondent on the distinct conditions set out above and there is no limitation on same so the fact that the boilers were built in the 1960's is irrelevant.

[16] The third party has not provided its consent to access to these records to the Applicant as required by Section 19(2) of the Act which reads as follows:

“19(2) A head may give access to a record that contains information described in subsection (1) with the written consent of the third party to whom the information relates.”

[17] The Applicant's solicitor, in his letter of October 29, 2002, raised the question as to whether or not Foster Wheeler, Ltd. would even maintain a claim of proprietaryness under Canadian law. Unfortunately, this is mere speculation and unless the written consent of the third party is obtained, the provisions of Section 19(1) must prevail as the language of this section is mandatory.

[18] Accordingly, I would recommend that the Respondent continue to deny access to the Applicant to the records requested.

[19] Dated at Regina, in the Province of Saskatchewan, this 8<sup>th</sup> day of November, 2002.

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