

**REPORT WITH RESPECT TO THE APPLICATION FOR REVIEW OF [REDACTED]  
[REDACTED] IN RELATION TO INFORMATION REQUESTED FROM SASKENERGY**

[1] By Access to Information Request Form dated January 2, 2003, [REDACTED] (the "Applicant") requested the following from SaskEnergy (the "Respondent"):

"Please provide the following, as it relates to the benefit provided to executives of the company known as the "Flexible Spending Account",:

- 1.) a description of the benefit, and any policies or rules or guidelines regarding the benefit, and the number of people entitled to this benefit
- 2.) any record showing how the company disclosed or described or provided information about this benefit to CIC and/or the cabinet
- 3.) any record showing who approved this benefit
- 4.) the amount or value of the benefit, in aggregate, for all those entitled to the benefit
- 5.) the expenditures, in aggregate, for 2002, for all those entitle to the benefit
- 6.) a listing of all the items and/or services obtained through the expenditure of the benefit in 2002

Although I have asked, in numbers 4, 5, and 6, for aggregate information I would be happy to receive the information as it relates to each individual who is entitled to the benefit, if that is okay with you. And, finally, I would be happy to receive a "mix" of aggregate and "individualized" information, if that is all that is available."

[2] The Respondent replied by letter dated January 31, 2003, a copy of which is attached to this report as Appendix "A".

[3] The Applicant wrote further to the Respondent by letter dated February 5, 2003 which stated:

"Thank-you for your letter of January 31st, 2003.

While I do not doubt the veracity of anything you wrote, I was wondering if you would be agreeable to providing me access to any documents and/ or records and/or other written material which support the narrative you prepared.”

[4] The Respondent replied by letter dated February 13, 2003, a copy of which is attached to this report as Appendix “B”.

[5] On February 24th, 2003 I received a Request for Review from the Applicant as a result of which I wrote the Respondent the following letter:

SaskEnergy  
1000-1777 Victoria Avenue  
Regina, Saskatchewan  
S4P 4K5

Attention: Mr. Mark Guillet, Access Officer

Dear Sir:

RE: [REDACTED] and SaskEnergy

Application no. [REDACTED]

File Reference: F 2003/011 RPR

I have received a request for review from the above named and enclose herewith the yellow copy of same.

I hereby notify you of my intention to conduct a review with respect to this matter and I would request that you be good enough to forward to

me copies of the records or information that you are refusing to disclose together with your reasons for such refusal.

This request is made pursuant to the provisions of the *Freedom of Information and Protection of Privacy Act*

If you have any questions in this connection kindly do not hesitate to contact me.

[6] The Respondent replied by letter dated April 1, 2003, a copy of which is attached to this report as Appendix "C". As indicated in their letter there was enclosed a package of documents as listed therein.

[7] On April 2, 2003 I wrote to the Applicant as follows:

██████████  
██████████  
Regina, Saskatchewan

Dear ██████████:

Re: ██████████ and SaskEnergy  
Application No. ██████████  
File Reference: F 2003/011 RPR

Further to our previous correspondence, I enclose herewith copy of SaskEnergy's response dated April 1, 2003.

Before proceeding with my review, I would appreciate your advising if you wish to make any further submissions to me with respect to this matter.

Do you think a meeting with Mr. Guillet would be of any assistance in this regard?

[8] The Applicant replied as follows:

Apr. 9'03

Regina

Richard P. Rendek, Q.C.

Acting Freedom of Information Commissioner

Province of Saskatchewan

208 – 2208 Scarth Street

Regina, SK., S4P 2J6

Dear Sir:

Re: File Reference: F 2003/011 RPR

Thank-you for your letter of April 2, 2003. I look forward to receiving your considered analysis and report and recommendations, if any, on the matter.

I must leave it up to you to determine if a meeting with Mr. Guillet would be of any assistance, as you are in the best position to determine how to proceed with your review.

[9] Telephone conversations with both parties indicated that a meeting would not be of any benefit so I then arranged to attend at the Respondent's offices on April 24, 2003 to review the

records referred to as item No. 2 in the second last paragraph of the Respondent's letter of April 1, 2003 (Appendix "C).

[10] As indicated in the attached correspondence, the Respondent denied access to two of the Applicant's requests, namely:

1. "Any record showing who approved this benefit"
2. "A listing of all the items and/or services obtained through the expenditure of the benefit in 2002."

[11] Regarding the first item, the Respondent enclosed with their letter of April 1, 2002, a package of documents which are outlined in said letter. Basically, these records consist of minutes of the Respondent's Board of Directors or minutes of the HR Corporation Committee of the said Board, with certain attachments.

[12] The Respondent is denying access to this first set of documents, claiming they are exempt from production by virtue of section 17(1)(f) of the Freedom of Information and *Protection of Privacy Act* which reads 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:

...

(f) agendas or minutes of:

- (i) a board, commission, Crown corporation or other body that is a government institution; or
- (ii) a prescribed committee of a government institution mentioned in subclause (i);

[13] The Board and Committee minutes set out above fall clearly within this exemption and the Respondent could properly refuse disclosure.

[14] The attachments to said minutes consist of analysis proposals, strategies and recommendations by the HR Corporation Committee to the Respondent's Board of Directors and accordingly they are exempt from disclosure pursuant to section 17(1)(a) of the Act which states:

“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;”

[15] As indicated in paragraph [9] hereof, I attended at the Respondent's offices on April 24, 2003 to review the records described as item No. 2 in the Respondent's letter of April 1, 2003

[16] These records consisted of a binder of individual executive's files for health care benefits for the year 2002.

[17] Each file would have claim terms entitled “FLEXIBLE SPENDING ACCOUNT PLAN” – “claim for Health Care Spending Account Expenses”. A copy of this form is attached hereto as Appendix “D”. Attached to this form were the claimant's receipts or vouchers for the expenses incurred.

[18] Each file would also contain “cheque Requisition” forms which would indicate the amount of the cheque paid to the claimant for re-imburement of his or her health care expenses. A copy of this form is attached as Appendix “E” with the name of the party deleted.

[19] The Respondent is denying access to this binder of claim files by virtue of the provisions of section 24(1)(c) and 29(1) of the Act. These sections read as follows:

“24(1) Subject to subsection (2), “personal information” means personal information about an identifiable individual that is recorded in any form, and includes:

...

(c) information that relates to health care that has been received by the individual or to the health history of the individual;”

“29(1) No government institution shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to who the information relates except in accordance with this section or section 30”

[20] Clearly, the information contained in the form “Appendix A” and the invoices attached contain personal health information as well as personal information described in section 24(1)(a) of the Act which reads as follows:

“24(1) Subject to subsection (2), “personal information” means personal information about an identifiable individual that is recorded in any form, and includes:

(a) information that relates to the race, creed, religion, colour, sex, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;”

[21] As all of the executives whose files are contained in the binder have refused to consent to the release of this personal information by the Respondent to the Applicant, the Respondent is bound by the provisions of Section 29(1) and has no choice but to refuse access to this information.

[22] As to the form described as “Appendix E”, in my view if the names of the “Requester” in the forms were deleted in each case, then in my view the balance of the form would not contain their personal information and would be capable of being released.

[23] Accordingly, I would recommend that the Respondent continue to deny access to all of the records contained in the files located in the aforementioned binder with the exception of the forms described as Appendix “E” with the appropriate deletions to prevent identification of the claimant.

[24] Dated at Regina, in the Province of Saskatchewan, this 30th day of April, 2003.

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