

**REPORT WITH RESPECT TO THE APPLICATION
FOR REVIEW OF [REDACTED] IN RELATION TO INFORMATION
REQUESTED FROM SASKATCHEWAN AGRICULTURE AND FOOD**

[1] [REDACTED] (the “Applicant”) forwarded an undated Access to Information Request form to Saskatchewan Agriculture and Food (the “Respondent”) whereby he requested the following:

“All Broiler Industry Committee Records

Detailed Description of Record:

The Broiler Industry Committee was established by the Minister of Agriculture in or about May 1997 to develop a plan for the expansion of the poultry industry. We herein request all Broiler Industry Committee records from the time it was established until it was disbanded in the spring of 1999.”

[2] By letter dated October 4, 2002, the Respondent replied as follows:

“Your request for access to all Broiler Industry Committee records has been granted. A copy of the information is attached.”

The only document that was attached was entitled “CFS Board Orders and Pricing Policies Discussion Paper”.

[3] By letter dated October 20, 2002, the Applicant requested the Respondent further review the matter as follows:

“Further to your letter dated October 4, 2002, wherein you indicate that my request to access all Broiler Industry Committee records has been granted, and that those records were attached to that letter, I herein respectfully request that you re-inspect your files for additional documentation.

The basis for my request is that I have knowledge that notes and minutes of Broiler Industry Committee meetings were kept and that Broiler Industry Committee letters were posted or transmitted via facsimile to various

individuals or entities in the industry. In fact, I now possess some of this documentation but am interested in receiving a more complete record.

In the event that access to some or all of the information is denied, please provide a description of the documents(s) and the reason for the denial.”

[4] The Respondent replied in a letter, dated October 25, 2002 as follows:

“Thank you for your letter dated October 20, 2002, requesting a further review of our files regarding the Broiler Industry Committee.

The Broiler Industry Committee was represented by various segments of the industry. The Committee encouraged open discussions on all topics and aspects of the chicken industry. In order to attain an open discussion, the Committee members entered into a “Confidentiality Agreement” to ensure the Committee discussions remain in confidence.

I regret to inform you that the “Confidentiality Agreement” does not permit the release of any further information. Saskatchewan Agriculture, Food and Rural Revitalization also abide by the agreement.”

[5] In a letter dated November 4, 2002, the Applicant replied to the Respondent’s position as follows:

“The primary focus of my request is related to information presented by a member of the Broiler Industry Committee who was representing the hatching egg sector of the poultry industry which may have directly impacted [REDACTED] economical interests associated with fulfilling their 1998 hatching egg quota and the opportunity to participate in the Saskatchewan hatching egg quota expansion that took place in 1998.

In addition to the basis for my request as noted in my October 20, 2002 correspondence, we currently have document that a member of the Committee both took notes, and received questionable information concerning [REDACTED] at an April 17, 1998 Broiler Industry Committee meeting. Also, I attended part of a September 25, 1998 Broiler Industry Committee meeting at which

minutes were taken, and shortly thereafter, exchanged several letters with the Broiler Industry Committee.

Based on the foregoing, I again respectfully request that you review your file concerning my request and in the event that you again determine that you are not permitted to release any further information, I herein respectfully request that you comply with section 7(2)d of *The Freedom of Information and Protection of Privacy Act* . . .”

Section 7(2)(d) of the Act provides:

“(2) The head shall give written notice to the applicant within 30 days after the application is made:

(d) stating that access is refused, setting out the reason for the refusal and identifying the specific provision of this Act on which the refusal is based;”

[6] In a letter to the Applicant, dated November 25, 2002, the Respondent repeated that access was being denied on the basis of the Confidentiality Agreement. The Applicant responded by a letter dated December 4, 2002 as follows:

“Thank you for your letter dated November 25, 2002, wherein you are apparently responding to my November 4, 2002 request. Unfortunately, following a review of all our correspondence I have come to the conclusion that your responses are inconclusive and perhaps evasive.

My conclusion is based on the fact that:

- a) Your October 4, 2002 letter categorically states that I have been granted access to all Broiler Industry Committee records;
- b) Contrary to the representation of your October 4, 2002 letter, your subsequent letter dated October 20, 2002 states: “I regret to inform you that the “Confidentiality Agreement” does not permit the release of any further information”. Unfortunately, you fail to identify the provision of the *Act* used as the basis for the refusal;
- c) Under the authority of section 7(2) of *The Freedom of Information and Protection of Privacy Act*, every applicant that has been denied information under this *Act* is entitled to

- know the reasons for the refusal and the specific provision of the *Act* used as the basis for the refusal;
- d) In my November 4, 2002 letter I specifically requested that if you once again determine that you are not permitted to release the information requested, that you comply with section 7(2) of *The Freedom of Information and Protection of Privacy Act*;
 - e) It is evident by your response in a letter dated November 25, 2002, that for no apparent reason you have once again decided to ignore:
 - i. My inherent right to be heard pursuant to provisions of *The Freedom of Information and Protection of Privacy Act*;
 - ii. My legitimate and legal expectation and rights pursuant to provisions of *The Freedom of Information and Protection of Privacy Act*;
 - iii. Your obligations under the legislation that defines and delineates your duties and responsibilities.

I again respectfully request that my right to have access to all Broiler Industry Committee records, which was granted and confirmed in your October 4, 2002 letter, be respected and honoured. If you again decide to deny access to the information requested please identify the section of the *Act* that supports your decision to retract my right. In the event that by December 11, 2002 we have not been provided the information requested or your identification of the section of the *Act* that prohibits you from providing it, we will have no alternative but to appeal to a higher authority for relief.”

[7] On December 6, 2002, the Respondent replied to the Applicant’s request by stating:

“Thank you for your letter dated December 4, 2002, requesting a further review of our files regarding the Broiler Industry Committee.

Access to further records regarding the Broiler Industry Committee is being denied in accordance with clause 19(1)(b) of *The Freedom of Information and Protection of Privacy Act*.”

[8] The Applicant then sent a letter to the Minister of Agriculture, Food and Rural Revitalization repeating his requests made in his December 4, 2002 letter. On January 8, 2003, the Minister replied:

"The records that are subject to release have been provided to you. Certain records are not available for release pursuant to Section 19 of The Freedom of Information and Protection of Privacy Act which provides that records from third parties, provided in confidence, do not have to be released.

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 SK S4P 3N6 [sic]."

[9] On February 27, 2003, the Applicant filed a Request for Review with my office. Accompanying the Request was a letter from the Applicant dated February 24, 2003 providing his lengthy submissions on this matter. After repeating much of the above correspondence, the Applicant stated several "conclusions". The following are the only "conclusions" given by the Applicant that are relevant to the issue in this application:

"...5. Neither [REDACTED] [REDACTED] have a confidentiality agreement with the BIC [Broiler Industry Committee], but even in the event that we had, does the *Act* allow the Access Officer or the head to deny access to BIC records that involve me?

According to my understanding the moment that [REDACTED] submit an Access to Information Request Form any third party status that we may have had is lost, and thus, access to information cannot be denied on the basis of third party confidentiality.

...

7. Can the views or opinions offered by a BIC officer that pertain to [REDACTED] be protected under Section 19 of the *Act*?

It is my understanding that:

- a) According to Section 2(j) of *Act*, perhaps the views or opinions of the BIC officers cannot be considered third party information.
- b) Even in the event that personal views or opinions of the BIC officers qualify as third party information, records containing BIC officers' views or opinions about [REDACTED] [REDACTED] lose their privileged status as I am the applicant.
- c) According to Section (25) of the *Act*, any personal information collected by the BIC that is related to [REDACTED] [REDACTED] must fulfill the condition of being "related to an existing or proposed program or activity of the BIC."
- d) One of the BIC activities that are identified in a document entitled "Broiler Industry Committee Terms of Reference" indicates that the BIC will establish a Consultation Program with the stakeholders of the poultry industry. Perhaps the mandate that the BIC establish an open communication with the producers and other stakeholders is based on the Minister of Agriculture's desire to ensure that every stakeholder has the opportunity to be heard and be informed of problems and opportunities facing the industry.
- e) During BIC's existence there was neither a general meeting between the BIC and hatching egg producers nor between the BIC and the BHE board. Further, there was no communication or updates to the producer body through newsletters or general correspondence.

Notwithstanding that early in 1998 I communicated with several of the BIC officers via telephone and transmitted written communication via facsimile to the BIC expressing some urgent concerns related to my 1998 hatching egg marketing process, the BIC did

not take the initiative to formally investigate or respond to my concern.

Therefore I must conclude that the views or opinions of the BIC's officers cannot be protected by Section (19) of the *Act*. This rationale is based on my understanding that the government of Saskatchewan through the *Act*, is also obliged to protect the rights and privileges of those that may be the subject of views or opinions of officers of a Saskatchewan government institution.

8. Was the head's January 8, 2003 decision to only provide access to a six-page BIC document within the provisions of the *Act*?
 - a) It is my understanding the head has not yet rescinded his October 4, 2002 decision to grant access to all BIC records.
 - b) Notwithstanding that when rendering his January 8, 2003 decision the head:
 - i. acknowledges the existence of more BIC records, he decided to classify all those documents under the third party category and thereby protect them under the provisions of Section 19 of the *Act*.
 - ii. had been advised that on September 25, 1998 I had attended a BIC meeting and shortly thereafter exchanged several letters with the BIC, he decided to classify those documents under the third party category and thereby protect them under the provisions of Section 19 of the *Act*.
 - c) Section 8 of the *Act* states: **"Where a record contains information to which an applicant is refused access, the head shall give access to as much of the record as can be severed without disclosing the information to which the applicant is refused access."** My understanding of Section 8 of the *Act* is that it:
 - i. Authorizes the head to grant access to partial and/or specific parts of records created by, or presented to, a government institution.
 - ii. Gives an applicant the right to be granted, and have access to, parts of records created by, or presented to, a government institution.

...

Finally, I can say that:

- a) According to my understanding and the information presented to all hatching egg producers, it is clear that a member of the Executive Council appointed the BIC officer that will represent all hatching egg producers licensed in Saskatchewan.
- b) According to my understanding the BIC is a government institution formed or established by the Minister of Agriculture and Food.
- c) According to the *Act*, any information provided by the officers of a government institution is not considered third party information.
- d) According to the *Act*, any information created by a government institution is not considered third party information.
- e) Any information provided by the BIC officers does not constitute information provided by a third party.
- f) Any information created or elaborated by the BIC does not constitute information created or elaborated by a third party.
- g) As licensed hatching egg producer, resident of Saskatchewan and Canadian citizen, I am also entitled to protection of my rights and privileges under the *Act*. Thus, I herein request that access be granted to every record of the BIC that is implicitly or explicitly related to Pedigree Poultry Ltd. or myself. . . .”

[10] On February 28, 2003, I wrote to the Respondent as follows:

“RE: [REDACTED] – 2003/013

Application Number: [REDACTED]

We are in receipt of a request for review from the above named, dated February 27, 2003, a copy of which is attached hereto.

Pursuant to the provisions of Section 51 of The Freedom of Information and Protection of Privacy Act, I hereby advise you of my intention to conduct a review.

Would you please provide me with a copy of the information and records requested by the applicant and which you have declined to disclose. This request is made pursuant to Section 54 of the Act.

In your response, you may wish to make submissions as to your reasons for declining the applicant request.

I look forward to your response.”

[11] The Respondent replied to my request by letter dated March 10, 2003 enclosing the following:

- “1. Saskatchewan Agriculture, Food and Rural Revitalization records dealing with the Broiler Industry Committee.
2. The correspondence with [REDACTED] regarding the Freedom of Information application and response to each inquiry.
3. A copy of the “Confidentiality Agreement” under which we denied access to the files.”

[12] I reviewed this enclosed documentation and would classify the documents to which the Respondent has denied access as follows:

1. Confidentiality Agreement;
2. Court documents, including a transcript, relating to an action commenced by the [REDACTED] against the Saskatchewan Broiler Hatching Eggs Producers’ Marketing Board and others;
3. Correspondence from and to the solicitors of various parties to a review, all dated 2002;
4. A letter to producers from the Saskatchewan Broiler Hatching Egg Producers Marketing Board;
5. A letter from the Marketing Board to the Applicant;
6. Various Minutes of the Marketing Board and of the Broiler Industry Committee from 1998 to 2001;
7. Three letters to and from the Marketing Board, specific producers, including the Applicant and the Respondent, dated in 2000;

8. Court documents and related correspondence with respect to an action commenced by the Applicant's company against the Marketing Board in 2000;
9. Letter from the Applicant's lawyer to Saskatchewan Agriculture in 1999;
10. Fax from Saskatchewan Agriculture to the Applicant, dated August 26, 2002;
11. Saskatchewan Agriculture and Food inter-office memos, emails and briefing notes from 1998 and 1999; and
12. Memos from and to Industry Committee members in 1998.

[13] As a preliminary matter, I note that the Broiler Industry Committee is not included in *The Freedom of Information and Protection of Privacy Regulations* as a prescribed "government institution" and therefore the Committee itself is not a government institution and is not subject to the provisions of *The Freedom of Information and Protection of Privacy Act*. However, the request for information in this application has been made to Saskatchewan Agriculture and Food which is a government institution pursuant to section 2(1)(d) of the Act and any information held by the department relating to the Broiler Industry Committee is subject to the access provisions of the Act.

[14] As a second preliminary matter, I also note that had the Access Officer been considerably clearer about the Respondent's position in his original letter of October 4, 2002 and specified that other documents were not being released due to the exemption available under section 19(1)(b) of the Act, much of the correspondence that followed would have been unnecessary and the Applicant could have been spared much of his frustration. That being said, the Respondent is still entitled to claim an exemption from access.

[15] The Respondent's position is that the information requested was not available pursuant to section 19(1)(b) of *The Freedom of Information and Protection of Privacy Act* which reads as follows:

“(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”

Subsection 19(2) may also be relevant to this application and states:

“(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.”

[16] The Confidentiality Agreement relied upon by the Respondent is an agreement made between the various participants in the Broiler Industry Committee and the Province of Saskatchewan. It provides that all information disclosed by any party to the Agreement to any other party and relating to its business will remain confidential except:

- (i) information which was also in the public domain at the time of its disclosure to such party; or
- (ii) information which, although originally Confidential Information, subsequently becomes part of the public knowledge or literature through no fault or responsibility of the recipient as of the date of it becoming apart of the public knowledge or literature; or
- (iii) information which, although Confidential Information, is or subsequently is received by any party without Binder of Secrecy from a third party who is free to disclose such information as of the date of such third party disclosure, provided, however, that it can be shown that the third party did not acquire such information from any party hereto.

The parties to the agreement agreed not to disclose any other information except to further the objectives of the Chicken Industry Task Force.

[17] Section 19(1)(b) of the Act provides that access to the information may only be denied if it relates to “financial, commercial, scientific, technical or labour relations information” provided to

the government in confidence. Confidential information that does not relate to those types of information will not be exempt under the subsection nor will any documents that were given to the Respondent for purposes other than the Broiler Industry Committee.

[18] Section 20(1)(b) of the federal Access to Information Act is similar to section 19(1)(b) of our Act. This federal section was considered by the Federal Court Trial Division in *Canada (Information Commissioner v. Canada (Minister of External Affairs)*, [1990] 3 F.C. 665. The Court found that where an undertaking was given by the government to the third party to keep information confidential, the information should be kept confidential and not released on an access to information application. The Court found that the public has an interest in ensuring that the government act in good faith regarding confidential information received by it. It is therefore a valid reason for the Respondent to deny access but each classification of documents must be examined to determine if they are covered by the Confidentiality Agreement.

[19] I find that the documents that I have classified in numbers 2 and 8 above are clearly public documents as they are available to the public on the court file at the Court of Queen's Bench. All of these documents have already been made available to the Applicant as either he or his company were parties to these court actions. The documents classified in numbers 3 and 7 were created after the Broiler Industry Committee disbanded and therefore are not subject to the Confidentiality Agreement. Document number 5 was sent to all producers in the Province and therefore has been widely circulated and was never intended to be confidential.

[20] Document Number 9 was sent by the Applicant's lawyer directly to Saskatchewan Agriculture and was therefore not covered by the Confidentiality Agreement because it did not come from another party to that agreement. Document 10 was sent directly to the Applicant by the Respondent and is not protected by the Confidentiality Agreement.

[21] I therefore find that all of the documents I have classified in numbers 2, 3, 4, 5, 7, 8, 9 and 10 should be released to the Applicant. Since most of these documents are likely already in the Applicant's possession, it is unlikely the release of them will be of much use to him.

[22] The terms of the Confidentiality Agreement are however broad enough to protect the documents I have classified in numbers 1, 6 and 12. The Confidentiality Agreement itself was given by the parties to the Respondent and involves the use of financial and other information to be given to the Committee and to the Respondent. The minutes contained in classification number 6 detail various financial and commercial information given by the parties to the Confidential Agreement to the Respondent, as a member of the Committee. The documents included in my classification number 12 were clearly given by the parties to the Confidentiality Agreement to the Respondent with respect to the Committee and are thus covered by the Agreement. These documents are clearly exempt from disclosure and the Respondent acted properly in denying access to them to the Applicant.

[23] The only remaining documents are those contained in my classification number 11. These documents were not given by any party to the Confidentiality Agreement to the Respondent. They are instead inter-office communications and briefing memos. They are not covered by the Confidentiality Agreement. However, they are protected by section 17(1)(a) and (b) of *The Freedom of Information and Protection of Privacy Act* which reads:

- “(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;”

None of the exceptions to the exemption listed in subsection 17(2) apply.

[24] All of the documents classified in classification number 11 were created by employees of the Respondent as recommendations, analyses or policy options or were the result of consultations involving employees of the Respondent. For this reason, these documents were properly withheld by the Respondent from the Applicant.

[25] For the reasons outlined above, it is my view that the Respondent was justified in denying access to the documents I have classified as numbers 1, 6, 11 and 12 but was not justified in denying access to the documents I have classified as numbers 2, 3, 4, 5, 7, 8, 9 and 10 and I would accordingly recommend that the Respondent provide access to the latter documents.

[26] Dated at Regina, in the Province of Saskatchewan, this 31st day of March, 2003.

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