FILE NO. – 2003/014

REPORT WITH RESPECT TO THE APPLICATION FOR REVIEW OF [redacted] IN RELATION TO INFORMATION REQUESTED FROM SASKATCHEWAN HEALTH

[1] An Access to Information Request form was initially filed by [redacted], and received by Saskatchewan Health ("the Respondent") on March 20, 2002. A copy of this form is attached hereto as Appendix A.

[2] Attached hereto as Appendix B, is the Respondent's reply to the initial Application, dated April 17, 2002.

[3] The initial Applicant was changed to that of the [redacted] Law firm. Attached hereto as Appendix C is the Respondent's letter to [redacted] dated July 25, 2002. Accompanying this letter was a binder of records that the Respondent was prepared to release to the Applicant.

[4] The Applicant replied to the Respondent by letter dated August 6, 2002, a copy of which is attached as Appendix D.

[5] In a letter dated November 12, 2002, which is attached as Appendix E, the Respondent provided a second binder of records which they were prepared to release, and as pointed out in this letter, the Respondent severed certain of the records, and in some instances, denied access to the entire record.

[6] By letter dated November 20, 2002, which is attached as Appendix F, the Respondent provided a further binder of records that they were prepared to release, again subject to severance, and denial of access of an entire record, as indicated therein.

[7] By letter dated November 25, 2002, which is attached as Appendix G, the Respondent provided a further binder of records subject to the same severance and denial of access to an entire record.

[8] By letter dated December 11, 2002, which is attached as Appendix H, the Respondent provided a final binder of records, with the same conditions as pertained to the previous binders.

[9] By letter dated February 27, 2003, hereto attached as Appendix I, the Respondent advised the Applicant that they were in possession of one outstanding record to which they were denying access.

[10] [redacted] (the "Applicant") forwarded to me a Request for Review dated March 3, 2003. Attached to the Request was a letter of the same date, and both the Request and letter are attached hereto as Appendix J.

[11] On March 13, 2003, I wrote to the Respondent, a letter which is attached hereto as Appendix K.

[12] I arranged to attend at the offices of the Respondent to review the number of documents to be reviewed and discussed with the Respondent the proposed method of identifying all of the documents to which access had been denied or severance of the document had taken place. Following this meeting, I received a letter from the Respondent dated April 17, 2003, a copy of which is attached hereto as Appendix L. Accompanying this letter was the first binder of documents for review.

[13] The second binder of documents was forwarded to me with their letter dated May 8, 2003, a copy of which is attached hereto as Appendix M.

[14] I wrote to the Applicant on June 3, 2003 advising as to the status of my Review to date, a copy of said letter is attached hereto as Appendix N.

[15] By letter dated June 11, 2003 I received a third binder of material, a copy of which letter is attached hereto as Appendix O.

[16] By letter dated July 8, 2003, I received the fourth and final binder of material, a copy of which letter is attached hereto as Appendix P.

[17] As indicated above, the Respondent provided my office with five binders full of edited materials in which it deleted sections on the basis of several exemptions contained in *The Freedom of Information and Protection of Privacy Act.* With each of these edited documents was an unedited copy that allowed me to determine if the exemption was validly claimed. Most of these documents consisted of internal emails, memoranda or correspondence between the Respondent's employees and other government employees. There were also briefing notes, position papers, analyses of recommendations and committee reports dealing with proposed tobacco restriction legislation. In much smaller numbers, there were also emails and correspondence between government employees or Ministers and outside parties and the minutes of a non-government committee.

[18] In most of these documents, sections were deleted based on the exemptions contained in section 17(1)(a) and (b) of the Act. Section 17 reads:

> "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;
(e) contents of draft legislation or subordinate legislation;
(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); or
(g) information, including the proposed plans, policies or projects of a government institution, the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision.

(2) This section does not apply to a record that:

(a) has been in existence for more than 25 years;
(b) is an official record that contains a statement of the reasons for a decision that is made in the exercise of a discretionary power or an adjudicative function;
(c) is the result of product or environmental testing carried out by or for a government institution, unless the testing was conducted:
(i) as a service to a person, a group of persons or an organization other
than a government institution, and for a fee; or
(ii) as preliminary or experimental tests for the purpose of:
(A) developing methods of testing; or
(B) testing products for possible purchase;
(d) is a statistical survey;
(e) is the result of background research of a scientific or technical nature undertaken in connection with the formulation of a policy proposal; or
(f) is:
(i) an instruction or guide-line issued to the officers or employees of a government institution; or
(ii) a substantive rule or statement of policy that has been adopted by a government institution for the purpose of interpreting an Act or regulation or administering a program or activity of a government institution.

(3) A head may refuse to give access to any report, statement, memorandum,

> recommendation, document, information, data or record, within the meaning of section 35.1 of *The Saskatchewan Evidence Act*, that, pursuant to that section, is not admissible as evidence in any legal proceeding.

In examining the documents, I found that these particular deleted sections all clearly contained advice, proposals, recommendations, analyses or policy options developed by employees of a government institution or consisted of consultations and deliberations involving employees of a government institution or staff or members of Executive Council. All of the sections that were deleted based on either section 17(1)(a) or (b) were properly withheld from the Applicant.

[19] One document, labelled PHB-52Q was edited on the basis of 17(1)(e). Upon examining the unedited document, I am satisfied that the edited portion contains a portion of draft legislation and was thus properly deleted. The deleted portion of PHB-52Q was also properly withheld from disclosure under section 17(1)(a). The document labelled PHB-4H had portions deleted on the basis of 17(1)(f)(ii). I am not satisfied that the edited portions contain an agenda or minutes nor is the committee named therein a "prescribed committee" as required under section 17(1)(f)(ii). However, the deleted portion is validly withheld from disclosure based on section 17(1)(a) as it contains analyses and advice of government employees. The Respondent edited Document PHB-10D on the basis of section 17(1)(g). On examination, I am satisfied that the deleted portion would disclose pending policy or a budgetary decision and was therefore properly withheld under section 17(1)(g).

[20] On several occasions, the Respondent deleted portions of the documents contained in these binders based on section 16 which states:

> "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;
>
> (b) agendas or minutes of the Executive Council or any of its committees, or records that record deliberations or decisions of the Executive Council or any of its committees;

> (c) records of consultations among members of the Executive Council on matters that relate to the making of government decisions or the formulation of government policy, or records that reflect those consultations;
>
> (d) records that contain briefings to members of the Executive Council in relation to matters that:
>
> (i) are before, or are proposed to be brought before, the Executive Council or any of its committees; or
> (ii) are the subject of consultations described in clause (c)."

With many of these documents, the deletion based on either 16(1)(a), (b) or (c) was valid and the record properly withheld from disclosure. In these instances, the information contained proposals to Executive Council, deliberations of a committee of Executive Council or consultations between members of Executive Council that relate to the formulation of government policy. The remaining documents that were edited based on section 16 do not contain the information required by this section. However, in each of those cases, the deleted sections were properly withheld from disclosure on the basis of section 17(1)(a) or (b) because the deleted sections contained advice developed by and for a government institution or contained consultations and deliberations of government employees.

[21] The Respondent edited four emails contained in the binders based on section 13(1)(b) of the Act. Section 13 provides:

> 13(1) A head shall refuse to give access to information contained in a record that was obtained in confidence, implicitly or explicitly, from:
> (a) the Government of Canada or its agencies, Crown corporations or other institutions;
> (b) the government of another province or territory of Canada, or its agencies, Crown corporations or other institutions;
> (c) the government of a foreign jurisdiction or its institutions; or

> (d) an international organization of states or its institutions;
> unless the government or institution from which the information was obtained consents to the disclosure or makes the information public.
> (2) A head may refuse to give access to information contained in a record that was obtained in confidence, implicitly or explicitly, from a local authority as defined in the regulations.

I am satisfied on the reading of each of these documents that the information deleted was obtained in confidence from a government or government agency in other Canadian provinces. The deleted sections were therefore properly withheld from disclosure pursuant to section 13(1)(b).

[22] Document PHB-4L which consists of minutes of a meeting of a third party committee had portions deleted based on section 19(1)(a). Section 19(1) of the Act provides:

> "19(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:
>
> (a) trade secrets of a third party;
>
> (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;
>
> (c) financial, commercial, scientific, technical or labour relations information that is supplied in confidence, implicitly or explicitly, to a government institution by a third party;"
>
> (d) 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;

On examination, I found that the deleted portion did not contain a trade secret of the third party committee. It did however contain financial information of the third party and it is clearly implied that such information was given to the government institution in confidence. The section was therefore properly deleted.

[23] Documents PHB-29R, PHB-10L and PHB-14L were all edited by the Respondent to delete portions based on section 19(1)(b). On reading the unedited copies of PHB-29R and PHB-14L, I am satisfied that the deleted sections contained financial information of the third party and the clear implication is that this information was given to the government institution in confidence. However, the deleted sections in PHB-10L do not all contain financial information. The deletions in section 6.2 of the documents were proper in that financial information of the third party was involved. However, the deletions in sections 5.1 and 6.1 located on the second page of the minutes do not relate to any financial information or any other exemption under section 19. These two portions of the document should not have been deleted and should be disclosed to the Applicant.

[24] In several instances, the Respondent has relied on section 22(a) as the basis for deletions. Section 22(a) provides:

> "A head may refuse to give access to a record that:
>
> (a) contains information that is subject to solicitor-client privilege;"

Not all of these edited documents should have been deleted on that basis because they do not consist of a communication between solicitor and client. Since there is no definition in the Act with respect to "solicitor-client privilege", the common law definition should be adopted. In *Susan Hoisery Ltd. v. Minister of National Revenue,* [1969] 2 Ex. C.R. 27, the Exchequer Court adopted the following definition of solicitor-client privilege:

> (a) all communications, verbal or written, of a confidential character, between a client and a legal adviser directly related to the seeking, formulating or giving of legal advice or legal assistance (including the legal adviser's working papers, directly related thereto) are privileged; and
>
> (b) all papers and materials created or obtained specifically for the lawyer's "brief" for litigation, whether existing or contemplated are privileged.

Following this definition, I find that many of the instances when solicitor-client privilege was claimed as basis for deleting portions of the documents did not involve a communication between solicitor and client but instead involved advice and analyses provided by various government employees to government institutions. Therefore, although these deleted sections may not be validly withheld from disclosure on the basis of solicitor-client privilege, they were validly deleted on the basis of section 17(1)(a).

[25] The remaining deletions in the documents contained in the binders were made on the basis of section 29 of the Act and the prohibition against disclosing "personal information". Section 24(1) of the Act defines "personal information" as:

> (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, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;
> > (b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;
> > (c) information that relates to health care that has been received by the individual or to the health history of the individual;
> > (d) any identifying number, symbol or other particular assigned to the individual;
> > (e) the home or business address, home or business telephone number, fingerprints or blood type of the individual;

> (f) the personal opinions or views of the individual except where they are about another individual;
> (g) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to the correspondence that would reveal the content of the original correspondence, except where the correspondence contains the views or opinions of the individual with respect to another individual;
> (h) the views or opinions of another individual with respect to the individual;
> (i) information that was obtained on a tax return or gathered for the purpose of collecting a tax;
> (j) information that describes an individual's finances, assets, liabilities, net worth, bank balance, financial history or activities or credit worthiness; or
> (k) the name of the individual where:
> (i) it appears with other personal information that relates to the individual; or
> (ii) the disclosure of the name itself would reveal personal information about the individual.

In the documents contained in the binders, the Respondent properly deleted the home or business addresses and telephone numbers of third parties named in these documents pursuant to sections 24(1)(e) and 29. I believe "address" in section 24(1)(e) is sufficiently wide to include personal and business email addresses and therefore I find that the email addresses were properly deleted from the documents.

[26] The remaining deletions involved names of third parties who either corresponded with the government or provided input to the government in the decision-making process. Pursuant to section 24(1)(k), the name by itself is not personal information. Where a name appeared in these documents and was deleted, it was done so incorrectly. These names should have been disclosed. The information with the names, other than the addresses and telephone numbers, is not personal information under section 24 nor would disclosure of the names reveal personal information about the individual. Once the addresses, email addresses and telephone numbers were deleted, the names should remain in the documents. I therefore recommend that the names be re-inserted into the following documents:

> PHB-38R, PHB-39R, PHB-33Q, PHB-38Q, PHB-60Q, PHB-61Q, PHB-62Q, PHB-65Q, PHB-67Q, PHB-68Q, PHB-69Q, PHB-70Q,

PHB-71Q, PHB-72Q, PHB-74Q, PHB-75Q, PHB-77QPHB-78Q, KP-42, KP-51, PHB-11M, PHB-17M, PHB-7P, PHB-3E, PHB-4E, PHB-11E, PHB-12E, PHB-13E, PHB-16E, PHB-17E, PHB-51E, PHB-60E, PHB-76E, PHB-79E, KP-45, PHB-1I, PHB-14I, PHB-15I, PHB-1L, PHB-4L, PHB-5L, PHB-6L, PHB-9L, PHB-10L, PHB-12L, PHB-13L, PHB-14L, PHB-14M, PHB-14D, PHB-15D, PHB-10B, PHB-8J, PHB-1H, PHB-4H, PHB-7H, PHB-12H, PHB-31H, PHB-2G and PHB-15G

[27] The only remaining document with a deletion based on section 29 is PHB-15Q which is an internal email. The last sentence was deleted on the basis it contained personal information. On examining the unedited email, I find that the deleted information cannot be classified as personal information. However, the deleted information contains consultations or deliberations involving government employees and thus can properly be withheld on the basis of section 17(1)(b).

[28] There were also several documents in the binders that had been edited to remove sections on the basis that they were not relevant to the Applicant's request. I have examined each of these documents and found that the sections are irrelevant to the Applicant's request and were thus properly deleted.

[29] The Respondent also provided for my review, copies of 103 documents or records to which access had been denied in its entirety. In most instances, the denial was based upon the provisions of Sections 13, 16(1), 17(1) or 22(a). The provisions of these sections have been set out previously in this report.

[30] I have reviewed each of the 103 documents in question, and I am of the view that in each instance, the reasons for non-disclosure of the document or record in its entirety was valid by virtue of the provisions of the above referred to sections since all of the documents in question could be classified as one of draft legislation prepared for cabinet, information subject to

solicitor-client privilege, documents created to present advise, proposals, recommendations, analysis or policy options to the executive counsel or any of its committees, records of consultation among members of the executive counsel or records containing briefings to members of the executive counsel, draft cabinet decision items, advice, proposals or recommendations, analysis or policy options developed for a government institution, consultations or deliberations involving officers or employees of a government institution, or documents falling within the ambit of section 13 of the Act.

[31] The Respondent advised me that they had provided the Applicant with copies of correspondence to and from individuals relating to *The Tobacco Control Act* that it had deleted the names of the individuals who wrote the letters, or received the letters pursuant to the provisions of Section 29 of the Act which prohibits the disclosure of personal information. As indicated earlier in this report, an individual's name by itself is not personal information unless disclosure of the name would reveal personal information about that individual. Again, the e-mail addresses and telephone numbers should remain deleted but the name should remain in the letters and I would accordingly again recommend that the names be re-inserted into the letters in question.

[32] In summary for the reasons outlined above, and subject to the disclosure recommendations above, it is my view that the Respondent should continue to deny access to all of the documents in question.

[33] Dated at Regina, in the Province of Saskatchewan, this 21st day of July, 2003.

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