

**REPORT WITH RESPECT TO THE APPLICATION  
FOR REVIEW OF ██████████ IN RELATION TO INFORMATION  
REQUESTED FROM THE CITY OF REGINA**

[1] ██████████ (the “Applicant”) forwarded an Access to Information Request form to the City of Regina (the “Respondent”), dated February 5, 2003, in which he requested the following:

“Instructions (verbal and written) given to the working group that produced the report on pesticides.”

On the same date, he sent an email to various employees of the Respondent stating the following:

“My FOI request is that the following two questions be answered:

- Why did Administration not appoint representatives from the School Boards, the environmental disciplines and the medical disciplines to assist this Working Group in investigating all the issues surrounding the use of pesticides in Regina?

- What instructions, written and verbal, did Administration give to the Working Committee? Also what instructions were given to the “outside consultant”? I ask that you send me a copy of all communications between Administration, the Working Committee and the Consultant?”

[2] By a letter dated March 4, 2003, the Respondent replied as follows:

“Our response is provided in three parts:

1) The following do not apply under the authority of *The Act* because there is no written documentation:

- a) Verbal instructions given to the Working Group that produced the report on pesticides.
- b) Why did the Administration not appoint representatives from the School Boards, the environmental disciplines and the medical disciplines to assist this Working Group in investigation [sic] all the issues surrounding the use of pesticides in Regina?

2) Communications that are considered public are attached. (We understand that you may have already been provided with some of this information.)

3) To the extent that the instructions to the working committee and outside consultant constitute policy development, deliberations, and minutes of meetings surrounding this, they have been withheld pursuant to 16(1) of *The Act* which states:

“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 the local authority
- (b) consultations or deliberations involving officers or employees of the local authority”

To the extent that the instructions to the working committee and outside consultant are guidelines and terms of reference as contemplated in Section 16(2) of *The Act*, they have been provided. (See in particular the memo dated March 12, 2002 to the Mayor and Councillors regarding project methodology and schedules. This information was also provided in the parks and Recreation report PR02-51.) Section 16(2)(f)(i) states:

“This section does not apply to a record that is an instruction or guide-line issued to the officers or employees of a local authority.”

If you wish to have this response reviewed, the attached Request for Review form must be completed and a copy provided to the City Clerk’s Office, P.O. Box 1790, Regina, Saskatchewan S4P 3C8. The original copy must be sent to the Information and Privacy Commissioner, Mr. Richard Rendek at #208-2208 Scarth Street, Regina, Saskatchewan S4P 2J6 within one year of this notice.”

[3] On March 25, 2003, the Applicant filed a Request for Review with my office. Accompanying the Request was a letter from the Applicant outlining his reasons for wanting the requested information with attached copies of emails between himself and various employees of the Respondent.

[4] On March 26, 2003, I wrote to the Respondent as follows:

“RE: [REDACTED] – City of Regina  
Information Request [REDACTED] [REDACTED]  
File Reference: F 2003/018 RPR”

I have received a Request for Review from the above named a copy of which I enclose herewith together with copy of the Applicant’s letter to me which was attached to the Request for Review form.

Pursuant to the provisions of *The Local Authority 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 copies of the documents or records that are the subject matter of the Applicant’s request for access. If they are too voluminous would you kindly telephone me to make arrangements for my attending at your office to review same.

I make this request pursuant to the provisions of *The Local Authority Freedom of Information and Protection of Privacy Act* and in your response, if you wish to elaborate upon the grounds relied upon for declining to provide access, I would be pleased to receive such representations.

...

When responding would you please be good enough to provide me with a copy of [REDACTED] original Access to Information Request form.”

[5] On April 7, 2003, the Applicant sent me an e-mail enclosing various e-mails dealing with pesticide issues. On April 8, 2003, I wrote to him as follows:

“I acknowledge receipt of your memorandum dated Monday, April 7, 2003, with attachments.

I point out that my role as Freedom of Information Commissioner is to determine whether or not you should be entitled to access to certain documentation or records for which you have been refused access. I cannot deal with the merits and actual issues involved.”

[6] The Respondent replied to my request by letter dated April 28, 2003, enclosing the documents that the Respondent objected to disclose. The letter stated, in part:

“ . . .4. Next are included seven documents which we object to disclosing to [REDACTED]. These will be described individually as follows:

- (a) Memo dated January 31<sup>st</sup>, 2002 to City Manager from [REDACTED], Director of Community Services: this document is five pages in length, and as it says in its first sentence, it contains the proposed process and schedule for handling this matter. We object to disclosing it, however, because it is from one of the Directors within the City of Regina to the City Manager. Under *The Local Authority Freedom of Information and Protection of Privacy Act* – section 16(1)(a) and (b) “Advice from officials,” records that could disclose advice, proposals, recommendations, analyses or policy options developed by or for the local authority, or consultations or deliberations involving officers or employees of the local authority are included in the exemptions for documents which are required to be disclosed under the *Act*.
- (b) A document of six pages, being the Minutes of the Pesticide Working Group from their meeting of February 5<sup>th</sup>, 2002 with attached project methodology and schedule. We decline to disclose this to [REDACTED] on the basis of section 15(1)(b) of the Act, in that it discloses the substance of deliberations of meetings of a local authority in that the matters discussed at the meetings are of such a nature that access to the records could be refused pursuant to section 16 of the Act referred to above.
- (c) A one-page record of Minutes of the Pesticide Working Group meeting of February 28<sup>th</sup>, 2002, which we object to disclosing for the same reason as outlined for (b) above.
- (d) A one-page email correspondence to [REDACTED] from [REDACTED], City Manager: this we object to produce on the basis of Advice from officials: section 16(1)(a) and (b), as discussed above.
- (e) A memo dated March 8<sup>th</sup>, 2002 to the Director of Community Services from the General Manager, Parks and Open Space Management, which is one page in length, with attached emails for a total of six pages. Again, this is communication between officers and employees of the local authority and involves advice, proposals, recommendations, analyses or policy options, and consultations or deliberations between these people. You will note from these communications that they involve discussions about engaging the

services of a research group to do public consultation, and discussions between members of the Working Group, who should be included.

- (f) A memo dated March 18<sup>th</sup>, 2002 which is two pages in length, and again involves policy development and confidential communication within members of the Working Group as they are going about their deliberations (section 16(1)(a) and (b), and section 15(b)(ii)).
- (g) Finally, there is a series of emails between members of the committee totalling seven pages, and these again are intra-committee communications, involved in policy development. We decline the production of them to [REDACTED] on the basis of section 15(1)(b)(ii) and section 16(1)(a) and (b).

We do not believe that the exceptions to withholding the advice from officials found in section 16(2) of the Act apply to the above documents we decline to disclose to [REDACTED]. You will note that, to the extent that some of the information contained in the file was, as contemplated in section 16(2)(f)(i) "an instruction or guideline issued to officers or employees of a local authority" we have made that available to [REDACTED]. However, from the standpoint of the necessity of officials and employees within the City of Regina being able to discuss policy development in private, to seek and receive advice, proposals, recommendations, analysis or policy options developed by or for the local authority in a confidential manner, and to have consultations or deliberations in the process of policy development kept confidential, we decline to make these records available to [REDACTED].

Some of the information [REDACTED] seeks cannot be supplied, as is pointed out in the March 6, 2003 letter to him, because there are no "records" in existence regarding it, as records are defined in section 2(j) of the *Act*. You will also see that most if not all, of the actual substantive information that is available anywhere in the file in answer to [REDACTED] questions has been made available to him in the documents he has received. However, we feel a very dangerous precedent would be set if records of communications containing advice from officials would be disclosed in this situation: it would mean that such exchange of information between officials in policy development would not be able to take place as freely as we feel it is necessary to be for proper operation of this local authority.

We are enclosing a copy of one of the most relevant cases from Saskatchewan on issues similar to this application. It is *Weidlich v. Saskatchewan Power Corp.*: (1998) 164 Sask. R. 204. In that case, Mr.

Weidlich of the Canadian Broadcasting Corporation sought copies of studies conducted for SaskPower on public attitudes toward power rates in Saskatchewan. SaskPower declined to produce the records on the basis that they could reasonably be expected to disclose advice, proposals, recommendations, analyses or policy options (section 17(1)(a) of *The Freedom of Information and Protection of Privacy Act*, the section which is parallel to section 16(1)(a) of *The Local Authority Freedom of Information and Protection of Privacy Act*.) As well, access was refused on the basis that it could prejudice the economic interests of SaskPower and that the records contained third party information. The Privacy Commissioner did not allow SaskPower the exemptions it had claimed, but SaskPower declined to give the applicant access to the reports and the matter was then resolved at the Court of Queen's Bench.

Mr. Justice Geatros discussed at paragraphs 10 and 12 respectively, the meaning of "advice" and of "statistical survey." Of most importance to our situation, however, is a recognition of the importance of confidentiality in the process of policy development. As the court says at paragraph 22 "there is a kind of information to which bodies, SaskPower in the instant case, should be privy without interference in the decision-making process to the formation of policy." Access was denied under section 17(1)(a) of *The Freedom of Information and Protection of Privacy Act*, referred to above. ..."

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

1. Memoranda between various employees of the Respondent dealing with details of handling a proposed pesticide study.
2. Minutes of the Pesticide Working Group formed by the Respondent.
3. E-Mails between various members of the Pesticide Working Group dealing with policy development by the Group.

[8] The Respondent has objected to disclosing the Memoranda and E-Mails on the basis of section 16(1)(a) and (b) of *The Local Authority Freedom of Information and Protection of Privacy Act* as they are advice from officials. The Respondent objects to disclosing the Minutes on the basis of section 15(1)(b) of the Act. These sections read as follows:

“15(1) A head may refuse to give access to a record that:

- (a) contains a draft of a resolution or bylaw; or
- (b) discloses agendas or the substance or deliberations of meetings of a local authority if:
  - (i) an Act authorizes holding the meetings in the absence of the public; or
  - (ii) the matters discussed at the meetings are of such a nature that access to the records could be refused pursuant to this Part or Part IV.

...

16(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 the local authority;
- (b) consultations or deliberations involving officers or employees of the local authority; . . .

(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 local authority, unless the testing was conducted:
  - (i) as a service to a person, a group of persons or an organization other than the local authority, 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 local authority; or

(ii) a substantive rule or statement of policy that has been adapted by a local authority for the purpose of interpreting an Act, regulation, resolution or bylaw or administering a program or activity of the local authority.

[9] In *Weidlich v. Saskatchewan Power Corp.* (1998), 164 Sask. R. 204, Mr. Justice Geatros of the Saskatchewan Court of Queen's Bench dealt with section 17 of *The Freedom of Information and Protection of Privacy Act*. This exempts disclosure of "advice, proposals, recommendations, analyses or policy options" developed for Executive Council and is similar to section 16 of *The Local Authority Freedom of Information and Protection of Privacy Act*. In his decision, Mr. Justice Geatros held that two focus group analyses were covered by the section and did not have to be disclosed. At page 209, he defined "advice" as follows:

"I suggest that the meaning of "advice" in ordinary parlance is to be adopted here, meaning "primarily the expression of counsel or opinion, favourable or unfavourable, as to action, but it may, chiefly in commercial usage, signify information or intelligence, : per Rand, J., in *Moodie (J.R.) Co. v. Minister of National Revenue*, [1950] 2 D.L.R. 145 (S.C.C.), at p. 148. It is apparent, in my view, that the Reports, "... could reasonably be expected to disclose ... analyses ... policy options developed," for SaskPower. The views and opinions in the focus group participants disclosed in the Reports would obviously be analysed by SaskPower in determining the direction it should take as regards the matters discussed in the Reports, including concerning power rates."

[10] I find that this definition is relevant to the present case. The Memoranda and E-Mails withheld from disclosure by the Respondent contain advice and recommendations of officers and employees of the Respondent or deliberations of the same with respect to pesticide issues. All could be used to determine the policy direction the Respondent would take with respect to these issues. None of the exceptions to the exemption contained in subsection 16(2) apply to these documents. I therefore find that the Respondent was justified in denying access to the Memoranda and E-Mails pursuant to section 16(1)(a) and (b) of *The Local Authority Freedom of Information and Protection of Privacy Act*.

[11] The Respondent has argued that the Minutes of the Pesticide Working Group are exempt pursuant to section 15 of the Act. Section 15(1)(b) allows the head of the local authority to refuse to give access to records containing agendas or deliberations of “meetings of a local authority”. Section 2(f) defines “local authority” to include any board, commission or other body “appointed pursuant to *The Urban Municipality Act, 1984*”. Section 51(1) of *The Urban Municipality Act, 1984* provides the following:

“(1) A council may, by bylaw, provide for the appointment of any board, association, commission or other organization that it considers desirable for the purpose of managing and operating or advising in the management and operation of any activity of the urban municipality and in the extension and improvement of its service.”

I am satisfied that the Pesticide Working Group is such a committee and is thus covered by section 15(1)(b)(ii) of *The Local Authority Freedom of Information and Protection of Privacy Act*. Clearly, the Minutes of the Pesticide Working Group consisted of deliberations that formed the advice, proposals and policy options that are exempt from disclosure under section 16(1)(a) and (b). I therefore find that the Respondent was justified in denying access to the Working Group Minutes pursuant to both section 15(1)(b)(ii) and section 16(1)(a) and (b) of the Act.

[12] For the reasons outlined above, it is my view that the Respondent was justified in denying access to all of the documents.

[13] Dated at Regina, in the Province of Saskatchewan, this 7<sup>th</sup> day of May, 2003.

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