

**REPORT WITH RESPECT TO THE APPLICATION
FOR REVIEW OF ██████████ IN RELATION TO INFORMATION
REQUESTED FROM SASKATCHEWAN ENVIRONMENT AND RESOURCE
MANAGEMENT**

[1] ██████████ (the “Applicant”) forwarded an Access to Information Request form to the Rural Municipality of Mervin No. 499, in which he requested the following:

“List of Records

1. All Reports and other records relating to the cause, origin or spread of the James fire at Turtle Lake which started on or about May 30, 2002.
2. If the fire started on privately owned land, any record disclosing the name of the land owner.
3. If the fire started as a result of the activities of a person or company:
 - (a) any record disclosing the name of the person or company; and
 - (b) a copy of any permit or authorization granted by the R.M. of Mervin #499 allowing those activities to take place.
4. All records evidencing the amount of fire fighting costs incurred by the R.M. of Mervin #499 for the fire fighting services it provided (as opposed to the fire fighting services provided by SERM).
5. All records relating to the amount of the fire fighting costs that SERM has charged to the R.M. of Mervin #499.
6. A copy of any agreement between the R.M. of Mervin #499 and the Village of Kivimaa-Moonlight Bay for the provision of fire fighting services by the R.M. of Mervin #499.
7. All records relating to the amounts collected by the R.M. of Mervin #499 to date on account of the fire fighting costs, including records indicating the party from whom each amount was collected and the amount that was collected from each party.”

[2] By a letter dated April 21, 2003, the Rural Municipality replied as follows:

“This is in response to your *Access to Information Request Form* under the *Local Authority Freedom of Information Act* [sic] and *Protection of Privacy Act*.

With respect to the list of records which you are requesting which was enclosed with your application, please be advised that items #1, 2 and 3 regarding the cause of the James fire, origin etc. have been forwarded to Saskatchewan Environment in accordance with Section 7(1)(b) and Section 11(1) of the *Local Authority Freedom of Information and Protection of Privacy Act*. A copy of your request pertaining to these 3 items was forwarded on April 21, 2003.

I trust that this will meet with your approval.

Yours truly,

Earl McKee
Reeve”

[3] Section 11 of *The Local Authority Freedom of Information Act* provides the following:

“11(1) Where the head of a local authority to which an application is made considers that another local authority or a government institution has a greater interest in the record, the head:

(a) may, within 15 days after the application is made, transfer the application and, if necessary, the record to the other local authority or government institution; and

(b) if a record is transferred pursuant to clause (a), shall give written notice of the transfer and the date of the transfer to the applicant.

(2) For the purposes of this section, another local authority or a government institution has a greater interest in a record if:

(a) the record was originally prepared in or for the other local authority or the government institution; or

(b) the other local authority or the government institution as the first to obtain the record or a copy of the record.

(3) For the purposes of section 7 and section 7 of *The Freedom of Information and Protection of Privacy Act*, an application that is transferred pursuant to subsection (1) is deemed to have been made to the local authority or the government institution on the day of the transfer.

(4) Where the application is transferred to a government institution, *The Freedom of Information and Protection of Privacy Act*, and not this Act, applies to the application.”

The first three items in the Applicant’s Request were then forwarded to Saskatchewan Environment and Resource Management (“the Respondent”). The remaining items requested by the Applicant were dealt with by the Rural Municipality. Based on the Rural Municipality’s response, the Applicant made a separate application to this office for a review of the Rural Municipality’s decision to withhold documents from the Applicant. I have dealt with that application on a different file with a separate report.

[4] By letter dated May 5, 2003, the Respondent advised the Applicant as follows:

“Re: Freedom of Information Request [REDACTED]

We received your application for access under *The Freedom of Information and Protection of Privacy Act* on April 8, 2003. Further to your telephone conversation with Linda Foster, Freedom of Information Coordinator, your application for access to information regarding the James fire has now been processed and the following is provided:

1. Your request for investigative reports, relating to the cause, origin or spread of the James fire at Turtle Lake, Saskatchewan has been denied for the following reasons:
 - It would interfere with a lawful investigation or disclose information with respect to a lawful investigation. Information of this nature is exempt from release under Section 15(1)(c) of the Act.
 - It would reveal investigative techniques or procedures currently in use or likely to be used. This exemption is provided for in Section 15(1)(e) of the Act.
 - It would disclose the identity of a confidential source of information or disclose information furnished by that source with respect to a lawful investigation. This information is exempt from access under Section 15(1)(f) of the Act.

2. Your request for all reports prepared by Clay Paget General Insurance Adjusters Ltd. has been denied, as this information is part of the investigative report referred to in #1. Information of this nature is exempt from release under Section 15(1)(c), (e) and (f) of the Act.
3. Your request for any other records relating to the cause, origin or spread of the James fire, any record disclosing the name of the land owner, and any record disclosing the name of the person or company has been denied. This information is considered personal information and is exempt from release under Sections 24(1)(e) and 29(1) of the Act. We can advise that the origin of the fire was on private land and there were no government permits required.
4. Enclosed is a record showing the breakdown of the amount of fire fighting costs incurred by the department with regard to the James fire.
5. This will confirm the amount of fire fighting costs that have been charged to the R.M. of Mervin #499 with respect to the James fire is \$200,000.00. No other municipalities have been charged for fire fighting costs on the James fire.

...

Yours truly,

David Phillips
Access Officer
Freedom of Information”

Attached to this letter was a summary entitled “James Fire – C23052 Payables Detail Report As of November 30, 2002”.

[5] On May 22, 2003, the Applicant filed a Request for Review with my office. On May 29, 2003, I wrote to the Respondent as follows:

“RE: [REDACTED] and Saskatchewan Environment and Resource
Management
Application No. [REDACTED]
Our File: 2003/035 RPR

I am in receipt of a Request for Review from the above named and enclose herewith the yellow copy of same.

I am also in receipt of a copy of your letter to the applicant dated May 5, 2003 wherein you have responded to the requests from the applicant's original application which were not dealt with directly by the R.M. of Mervin #499.

I hereby advise you of my intention to conduct a review and would ask that you provide me with copies of the documents or records to which access has been denied together with your reasons and authority for refusing such access.

Please feel free to call me if you have any questions in this connection.”

[6] On June 25, 2003, the Respondent replied by letter enclosing the documents to which the Applicant had been denied access. These documents consisted of an investigative report, an insurance adjuster's report, five binders of documentation relating to the investigation and an internal email between the Respondent's employees. The Respondent's letter stated the following:

“REPRESENTATIONS WITH RESPECT TO THE DOCUMENTS:

- Section 15(1)(c) – The Investigative Report, Clay Paget General Insurance Adjusters Ltd. report, and Documentation report disclose information with respect to a lawful investigation conducted by Saskatchewan Environment (SE) under *The Prairie and Forest Fires Act 1982*.
- Section 15(1)(d) – As a result of this fire, numerous cabins and private residences were destroyed. It is likely that Saskatchewan Environment would be named as a party in any lawsuits. Release of the information contained in the Investigative Report, Clay Paget General Insurance Adjusters Ltd. report and Documentation report could be injurious to the Government of Saskatchewan in the conduct of possible legal proceedings.
- Section 15(1)(e) – The Investigative Report, Clay Paget General Insurance Ltd. report, and Documentation report contain information

on the investigative techniques or procedures currently in use or likely to be used by SE.

- Section 15(1)(f) – Investigative Report, Clay Paget General Insurance Adjusters Ltd. report, and Documentation report disclose the identity of a confidential source of information and/or information furnished by that source with respect to the lawful investigation.
- Section 15(1)(k) – Although charges have not been laid to date, this is considered to be a law enforcement matter. Release of the Investigative Report, Clay Paget General Insurance Adjusters Ltd. report and Documentation report would disclose information respecting a law enforcement matter.
- Section 19(1)(c)(i) – The Investigative Report, Clay Paget Insurance Adjusters Ltd. report, and Documentation report contain information about a third party. If the information were released, it could be used in any potential lawsuits which could result in financial loss to the third party.
- Section 24(1)(e), 24(1)(k), and 29(1) – The Investigative Report, Clay Paget General Insurance Adjusters Ltd. report, Documentation report and E-mail indicate the name and/or address of the landowner who allegedly caused the fire and the equipment owner who rented the skidder that had a faulty exhaust. This is considered personal information that is exempt from release.
...”

[7] The Respondent has objected to disclosing the documents on the basis of various subsections of section 15, section 19(1)(c)(i) and 29(1) of *The Freedom of Information and Protection of Privacy Act*. These sections read as follows:

“15(1) A head may refuse to give access to a record, the release of which could:

...

(c) interfere with a lawful investigation or disclose information with respect to a lawful investigation;

(d) be injurious to the Government of Saskatchewan or a government institution in the conduct of existing or anticipated legal proceedings;

(e) reveal investigative techniques or procedures currently in use or likely to be used;

(f) disclose the identity of a confidential source or information or disclose information furnished by that source with respect to a lawful investigation or a law enforcement matter;

...

(k) interfere with a law enforcement matter or disclose information respecting a law enforcement matter;

...

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

...

(c) information, the disclosure of which could reasonably be expected to:

(i) result in financial loss or gain to;

...

a third party.

...

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 whom the information relates except in accordance with this section or section 30.”

Section 24(1) of the Act defines “personal information” to include:

“(e) the home or business address, home or business telephone number, fingerprints or blood type of the individual;

...

(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.”

[8] For section 15(1)(c) is a very broad exemption that provides a government institution may refuse to disclose any information with respect to a “lawful investigation”. The Respondent has submitted that it conducted a lawful investigation pursuant to *The Prairie and Forest Fires Act, 1982*. Section 34 of that Act provides:

“34. The minister or any departmental officer may investigate the cause, origin and circumstances of any forest or prairie fire with a view to ascertaining whether the fire was the result of negligence, carelessness, accident or otherwise, and in doing so may exercise any of the powers conferred upon the Fire Commissioner by *The Fire Prevention Act, 1980.*”

I am satisfied that the Respondent had the power to investigate the cause of the James fire and therefore this is a “lawful investigation” for the purposes of section 15 of *The Freedom of Information and Protection of Privacy Act*.

[9] Upon reading the Investigative Report, it is very clear that it is information with respect to the investigation and is therefore exempt from disclosure pursuant to section 15(1)(c). Similarly, the insurance adjuster’s report relates to the cause of the fire and was used to assist the Respondent’s investigators in determining the cause. The adjuster’s report is therefore also information relating to the investigation and is exempt under section 15(1)(c).

[10] The documentation binders consist of numerous documents including maps, photographs, witness statements, investigators’ notes, minutes of fire team meeting and a fire behavior analysis. All of these documents relate directly to the investigation and were used by the investigators in reaching their determinations about the cause of the James fire. The documentation binders therefore wholly contain information with respect to a lawful investigation and are exempt from disclosure pursuant to section 15(1)(c).

[11] The Respondent has also claimed that these documents are exempt from disclosure pursuant to subsections 15(1)(d), (e), (f) and (k). Although I find that some of the documents contained in the documentation binders likely could disclose investigative techniques or confidential sources and could be injurious to the Respondent’s conduct of a civil action, I do not intend to rule on these grounds because the broader exemption under section 15(1)(c) so clearly applies. The disclosure of these documents within any civil action will be determined by the Rules of Court for the Court of Queen’s Bench. I also find it unnecessary to rule on the Respondent’s submission that these documents should be exempt pursuant to section 19(1)(c) of the Act.

[12] The only remaining document is the internal email that has been withheld from disclosure because it would disclose personal information. This email indicates a legal description of property where the fire might have started and gives the name of contact persons. Pursuant to section 24(1)(e), the legal description constitutes an address and is therefore exempt from disclosure. The remainder of the email is related to the investigation and ensuing report. It would therefore also be exempt pursuant to section 15(1)(c).

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

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

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