

REPORT WITH RESPECT TO THE APPLICATION FOR REVIEW OF [REDACTED]

**[REDACTED] IN RELATION TO INFORMATION REQUESTED FROM SASKATCHEWAN
FINANCIAL SERVICES COMMISSION**

[1] [REDACTED] (the "Applicant") forwarded an Access to Information Request form to Saskatchewan Financial Services Commission (the "Respondent"). The Respondent received it on June 18, 2003. The Applicant requested access to all records, correspondence, files, and any documentation which the commission or commission employees or associates may possess concerning the Applicant.

[2] By letter dated July 8, 2003, the Respondent replied as follows:

"Thank you for your Access to Information request which was received in this office on June 18, 2003, requesting access to all records, correspondence, files and any documentations which the Commission or Commission employees or associates may possess concerning you, [REDACTED]

This is to advise you that your request has been denied pursuant to clauses 15(1)(c) and (f) of *The Freedom of Information and Protection of Privacy Act*. Clauses 15(c) and (f) state:

"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;

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

If you wish to have this decision reviewed, you may do so within one year of this notice. To request a review, you must 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 Acting Information and Privacy Commissioner at #208-2208 Scarth Street, Regina, Saskatchewan, S4P 2J6.

If you have any questions, please contact Sherri Fowler, Freedom of Information Co-ordinator, at (306) 787-5473.

Yours sincerely,

Dave Wild
Access Officer
Freedom of Information”

[3] The Applicant then forwarded to me a Request for Review dated July 11, 2003, as a result of which, I wrote to the Respondent on July 15, 2003 as follows:

“Financial Services Commission
6th Floor, 1919 Saskatchewan Drive
Regina, Saskatchewan
S4P 3V7

Attention: Dave Wild

Dear Sir:

Re: [REDACTED] and Financial Services Commission

Your File: [REDACTED]

Our File: F 2003-046 RPR

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

For your assistance, I am also enclosing a copy of your letter to the applicant dated July 8, 2003.

I hereby advise you of my intention to conduct a review in this matter and would ask that you forward to me copies of documents to which access has been denied together with your reasons for refusing to grant access to the applicant.

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 regard please feel free to contact the writer.

Yours truly,

Richard P. Rendek, Q.C.
Acting Freedom of Information
and Privacy Commissioner
Province of Saskatchewan

[4] The Respondent replied to my request by letter dated July 31, 2003, which states as follows:

“Thank you for your letter of July 15, 2003, with respect to your intention to conduct a review in this matter.

We appreciate your offer to review the files in our offices due to the volume of material involved. Of course, if you subsequently determine that you would like to examine copies of the documents, we would be pleased to co-operate. This will confirm that you will examine the documents in our offices on Wednesday, August 6, 2003, at 2:00 p.m.

The request for access to information was denied pursuant to clauses 15(1)(c) and (f) of the *Freedom of Information and Protection of Privacy Act*. Clauses 15(1)(c) and (f) state:

“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;

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

The documents in question were created in the course of investigating a potential offence under *The Securities Act, 1988*.

Furthermore, section 13(1) of *The Freedom of Information and Protection of Privacy Act* provides:

“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 jurisdictions;

unless the government or institution from which the information was obtained consents to the disclosure or makes the information public”

Most of the documents in question were provided to the Saskatchewan Financial Services Commission by either the Royal Canadian Mounted Police or the Manitoba Securities Commission. We do not have their consent to disclose the records.

If you have any questions, please contact our offices. Thank you.

Sincerely,

Dave Wild, Chair
Saskatchewan Financial Services Commission”

[5] The Respondent forwarded to me, a further letter dated August 6, 2003 which states:

“Further to the letter of Dave Wild, Chair, dated July 31, 2003 and specifically further to the last paragraph of his correspondence, the documents in question were obtained from the Manitoba Securities Commission as a result of a joint investigation they conducted with the RCMP in that province.

This date [REDACTED], legal counsel at the Manitoba Securities Commission advised that they object to the release of any material they have provided staff of this Commission in respect to this investigation. They consider all material in respect to their investigations as confidential and such is released to other regulators and law enforcement officials with the understanding it will be kept confidential.

This is common practice and understanding among enforcement agencies and violation of this confidentiality would lead to a situation where information required to fulfil our mandate would no longer be provided to us by other regulatory and law enforcement agencies.

Should you deem it necessary, I would be pleased to answer any questions you may have in this regard.

Sincerely,

Vic Pankratz
Deputy Director
Enforcement”

[6] On August 6, 2003, I attended at the offices of the Respondent, in order to review the documents and records to which access by the Respondent had been denied to the Applicant. The documents or records in question are described in Appendix A, attached to this Report.

[7] In denying access to the documents or records in question, the Respondent has relied on the provisions of Sections 15(1)(c) and (f) of *The Freedom of Information and Protection of Privacy Act* and as well, Section 13(1) of the Act. These provisions are set out in the Respondent’s letter to me of July 31, 2003, set out above.

[8] It is my view, that with the exception of the records described as administrative documents in number 1(b) of Appendix A, and the five page personal search report, listed as document two in Appendix A, all of the remaining documents clearly fall within the purview of both Section 15 and 13 of *The Freedom of Information and Protection of Privacy Act*. Those documents described in 1(a) of Appendix A disclose information with respect to a lawful investigation, as would the records contained in items three and four of Appendix A.

[9] In addition, said documents were obtained from an agency of the Government of Canada, and the Government of another province of Canada, in confidence, and as such, refusal to give access to such documents is mandatory pursuant to Section 13(1) of the Act.

[10] The records listed as administrative documents, and corporations branch search report, in my view are public documents, and are not governed by the provisions of the sections relied upon by the Respondent.

[11] With regard to documents contained in numbers three and four of Appendix A, I have not named the parties that were interviewed as Section 15(1)(f) prevents their disclosure.

[12] For the above reasons, I would recommend that the Applicant be granted access to the administrative documents listed as 1(b) in Appendix A, and the five page personal search report listed as item 2, in Appendix A, and with respect to all the remaining records or documents, the Respondent continue to deny access of same to the Applicant.

[13] Dated at Regina, in the Province of Saskatchewan, this 8th day of August, 2003.

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