

**REPORT WITH RESPECT TO THE APPLICATION  
FOR REVIEW OF ██████████ IN RELATION TO INFORMATION  
REQUESTED FROM CROWN INVESTMENTS CORPORATION OF SASKATCHEWAN**

[1] ██████████ (the “Applicant”) forwarded an Access to Information Request Form dated August 25, 2003 to the Crown Investments Corporation of Saskatchewan (the “Respondent”) whereby he requested the following:

“Please provide all information prepared by or for or held by CIC that shows the holdings of CIC [or related company] that are to be transferred to two new funds [managed by two fund managers], specifically:

1. The name of the investment
2. The goal of the investment
3. The nature of the investment [loan or equity advance]
4. The amount of the investment
5. The current status of the investment [any write-downs or outstanding balances due)
6. The initial date of the investment

Also, please provide all information prepared by or for or held by CIC that shows the holdings of CIC [or related company] that are to remain under CIC management, specifically:

7. The name of the investment
8. The goal of the investment
9. The nature of the investment [loan or equity advance]
10. The amount of the investment
11. The current status of the investment [any write-downs or outstanding balances due)
12. The initial date of the investment”

[2] The Respondent replied by letter dated September 23, 2003 which stated, in part:

“ . . . Your request is granted in part. With respect to the first part of your request, please find enclosed a copy of a news release dated August 18, 2003 announcing the transfer of some investments to two newly created corporations, along with a list of investments being managed by external managers. These investments are transferred to the two newly created corporations and will be managed by the named external managers.

The second part of your inquiry relates to those investments to remain under CIC management. Enclosed please find a list of investments, that was recently tabled with the Crown Corporations Committee, that addresses the information requirements of the second part of your inquiry. Please note that on September 2, 2003, the government announced that future management of CIC investments would be through the newly designated Crown corporation Investments Saskatchewan Inc. and not CIC.

Other aspects of your request involve records, access to which is refused for the following reasons:

1. Some of the records could reasonably expected [sic] to disclose a confidence of the Executive Council and, accordingly, access is refused pursuant to subsection 16(1) of The Freedom of Information and Protection of Privacy Act (the "Act").

2. Access is also refused as the records could reasonably be expected to disclose advice, proposals, recommendations, analysis of policy options developed by or for CIC. Accordingly, access is refused pursuant to clause 17(1)(a) of the Act.

3. Access to the records is also refused as they contain information, the disclosure of which could reasonably be expected to prejudice the economic interest of CIC and the Government of Saskatchewan or result in an undue benefit or loss to a person. Accordingly, access is refused pursuant to clause 18(1)(f) and (h) of the Act.

4. The records also may contain third party information. As there are other grounds for refusing access to this information we have not requested the consent of the third parties to provide access to these records.  
...

[3] The Applicant then submitted a Request for Review dated September 25, 2003, as a result of which I wrote to the Respondent on September 30, 2003, as follows:

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

I hereby advise you of my intention to conduct a review in this matter and would ask that you forward to me copies of the records in question together with your reasons for denying the applicant access to same.

If documentation is excessive, please contact me and I will make arrangements to attend at your office to examine same.

I make this request pursuant to the provisions of The Freedom of Information and Protection of Privacy Act. If you have any questions in this connection, kindly do not hesitate to contact the writer.”

[4] I subsequently spoke to the Respondent’s Access Officer who advised that the documents were voluminous. We agreed that he could categorize all of the documents and send me a typical document for each category. I then received a letter, dated October 16, 2003 from the Respondent enclosing the typical documents. The letter stated the following:

“I recently received your letter in which you indicate that you intend to conduct a review into our response in the above application.

The documentation that CIC has in its possession that relates directly to the exemptions relied on can be categorized into two categories. The first is briefing material, including books and notes to officials and members of Cabinet. The second category relates to the decision making process and includes submissions to CIC Board and Cabinet along with the Minutes resulting from those decisions.

Given the large volume of documents related to the request, CIC is providing examples of documents that fall within the above categories for review, in accordance with our conversation on October 7, 2003. In this regard, the documents that are enclosed are:

(a) Copy of a cabinet decision item related to Pangaea Systems Inc. This document is prepared for all submissions to Cabinet and is created to present advice, analysis and recommendation to Cabinet. This document is also presented to CIC’s board of directors.

(b) Copy of a CIC Board Minute related to Pangaea Systems Inc. This document is prepared to provide advice and recommendations to CIC board of directors as part of the decision making process. Once a decision is made copies of the minute, along with any comments made by CIC board members are sent to Cabinet along with the cabinet decision item for consideration by Cabinet.

(c) Copy of a quick summary report related to Pangaea Systems Inc. This document provides a one page summary of the submission and is prepared for CIC's board of directors.

(d) Copy of a CIC board minute recording the decision of CIC's board of directors related to Pangaea Systems Inc. Please note that the minute incorporates by reference the items listed in (a), (b), and (c) above.

(e) Copy of a Cabinet minute recording the decision of Cabinet related to Pangaea Systems Inc.

(f) Copies of briefing notes related to Farmgro Organic Foods Inc.

(g) Copy of briefing material related to Meadow lake Pulp Limited Partnership, extracted from an investment briefing book. This briefing book contains particulars of each investment formerly managed by CIC and now managed by Investment Saskatchewan Inc.

CIC's position is that the records listed as (a) through (e) would disclose a confidence of Cabinet. These records are created to present advice, recommendations and analysis to Cabinet and to CIC board of directors, which is a committee of Cabinet. In addition, some of the document records deliberations of Cabinet and its committee. Pursuant to section 16 of the Act, once the head reasonably determines that the records sought are Cabinet documents then the head is under a legislative duty not to disclose such records. Accordingly, CIC submits that the records listed as Cabinet documents would disclose confidences of Cabinet and the head is prohibited from granting access to the records.

With respect to the briefing material listed as items (f) and (g) CIC submits that such material is exempt from access under a number of provisions of the Act. Pursuant to clause 17(1)(a) of the Act, release of this material would disclose advice, recommendations, analysis and policy options developed by and for CIC.

Similarly, access to the briefing material would disclose information which could prejudice the economic interests of CIC and Investment Saskatchewan as shareholders, and would disclose information which could result in an undue benefit to competitors of these companies or result in an undue loss to the investee companies and their investors. Accordingly, CIC submits that

the briefing material is also exempt from access under clause 18(1)(f) and (h) of the Act.

In addition, CIC submits that, pursuant to section 19 of the Act, if the head reasonably concludes that the record sought contains third party information then the head is prohibited by the Act from giving access to the record. In the present case, the information contained in the briefing material contains financial and commercial information that is supplied in confidence by third parties, including investee companies and other investors, and also includes information which could result in a financial loss or prejudice the competitive position of those third parties. CIC reasonably concludes that the records contain third party information and that the records come within the ambit of section 19, in particular clause 19(1)(b) and (c). In this case the provisions of section 19 are mandatory and the head is under a legislative duty not to disclose such records.

Finally, some of the records sought may contain personal information related to the principals of investee companies as well personal information of some individual investors.

I trust the above sets out the position of CIC in regard to [REDACTED] Request for Review.”

[5] I then sent a copy of this letter to the Applicant and asked if he had any further submissions to make. On October 23, 2003, the Applicant replied that he had no further comments or representations.

[6] Crown Investments Corporation of Saskatchewan is prescribed as a “government institution” by The Freedom of Information and Protection of Privacy Regulations and is thus subject to the provisions of *The Freedom of Information and Protection of Privacy Act*. The relevant portions of the Act are as follows:

“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;

...

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;

...

(f) agendas or minutes of:

- (i) a board, commission, Crown corporation or other body that is a government institution . . .

18(1) A head may refuse to give access to a record that could reasonably be expected to disclose:

...

(f) information, the disclosure of which could reasonably be expected to prejudice the economic interest of the Government of Saskatchewan or a government institution;

...

(h) information, the disclosure of which could reasonably be expected to result in an undue benefit or loss to a person.

19(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;

(c) 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; . . .

[10] The first sample document that the Respondent provided me was a “Decision Item” addressed to the Cabinet. This document clearly consists of recommendations, advice and proposals with respect to possible investment in a particular company. The document was clearly produced for presentation to Executive Council for a decision on the possible investment. The portions of this document containing proposals, recommendations, analyses and policy options are exempt from disclosure pursuant to section 16(1)(a). Portions of this document are described as “Background”. The question is therefore whether these background portions should be deleted from the exempt remaining portions and released.

[11] In *Weidlich v. Saskatchewan Power Corporation* (1998), 164 Sask. R. 204, Mr. Justice Geatros of the Saskatchewan Court of Queen’s Bench dealt with an appeal of SaskPower’s decision to withhold certain documents despite the Information and Privacy Commissioner’s recommendation that they should be released. Mr. Justice Geatros examined the meaning of “analyses” under section 17 of the Act and held:

“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.

The court also found that where facts and opinions are so intertwined in a document that they cannot be intelligently separated, the documents “must be disclosed *in toto* or not at all”.

[12] Following the *Weidlich* decision, I find that the portions of the document that are described as “Background” information really contain analyses as these sections provide counsel and opinion for the Executive Council to assist in making its decision. If there are purely factual references in these portions, those facts are so intertwined with the analyses as to make it impossible for them to

be severed from the rest of the document. I therefore find that the document called “Decision Item” is entirely exempt from disclosure under section 16(1)(a).

[13] The next sample document provided to me by the Respondent is a minute of a meeting of the Crown Investments Corporation Board of Directors. The minute contains analysis and background and a financial report is attached. The minute itself is clearly exempt pursuant to section 17(1)(f) as an agenda or minute of a Crown Corporation. The analysis and background is mostly analysis which is exempt pursuant to section 17(1)(a). The remaining portions contain facts that are either so intertwined with the opinions and analysis as to make their severance impossible or contain financial and commercial information given in confidence by a third party and exempt pursuant to section 19(1)(b). All of this document is therefore exempt from disclosure.

[14] The third sample document provided by the Respondent is a “Quick Summary” prepared for the Crown Investments Corporation Board Meeting at which the investment would be determined. It is clearly exempt pursuant to section 17(1)(a) as being analysis and recommendations prepared for the corporation.

[15] The fourth document is a minute of a Crown Investments Corporation Board Meeting and is clearly exempt pursuant to section 17(1)(f).

[16] The fifth document is a “Record of Cabinet Decision” which outlines a decision made by Executive Council and is therefore exempt pursuant to section 16(1)(b) as an agenda or minute of a meeting of Executive Council.

[17] The sixth and seventh documents are briefing notes relating to particular companies and which were prepared to determine whether an investment should be made by Crown Investments Corporation. Most of these documents contain analysis, proposals and recommendations and would be exempt pursuant to section 17(1)(a). The remaining portions of these documents contain detailed financial or commercial information from the particular company seeking funding. It is a logical



assumption that any company seeking financing or investment would only provide its financial information to the potential investor in confidence. This information is therefore exempt from disclosure pursuant to section 19(1)(b). In addition, the disclosure of much of this information could reasonably be expected to result in a financial loss to the company seeking funding or prejudice its competitive position. The information would therefore also be exempt pursuant to section 19(1)(c). Since I have found that section 19(1) applies, I do not need to address the Respondent's claim to exemptions under section 18.

[18] I therefore find that any documents held by the Respondent that are the same type as these samples should be exempt from disclosure.

[19] For the reasons outlined above, it is my view that the Respondent was justified in denying access to the document and I would accordingly recommend that the Respondent continue to deny access to the Applicant to the information requested.

[20] Dated at Regina, in the Province of Saskatchewan, this \_\_\_\_\_ day of October, 2003.

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