SASKATCHEWAN

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

REPORT F - 2006 – 001

Saskatchewan Corrections and Public Safety

Summary: The Applicant sought access to personal information and other records pertaining to a fire investigation. The government institution in possession of those records refused to provide access to all records citing sections 15(1)(c), 13(2), and 29(1) of *The Freedom of Information and Protection of Privacy Act*. The Commissioner found that the government institution had not met the burden of proof with respect to the application of the exemptions in question and accordingly recommended the release of the record to the Applicant after severance of third party personal information.

Statutes Cited: *The Freedom of Information and Protection of Privacy Act* [S.S. 1990-91, c. F-22.01 as am.], ss. 15(1)(c), 13(2), 29(1), 23, 59 and 61; *The Local Authority Freedom of Information and Protection of Privacy Act* [S.S. 1990-981 as am.] s. 2; *The Health Information Protection Act*, S.S. 1999, H-0.021, ss. 2(b),(m),(t), 4, 30 and 56; *The Fire Prevention Act, 1992*, c.F-15.001, ss. 5(1), 9, 37 and 39.

Authorities Cited: **Reports & Orders:** Saskatchewan OIPC Report 2004-006, 2001-001, 93-021, 2002-039, 2004-003, 2005-003, 2003-046, 2004-005 and 2004-007; Ontario IPC Orders, HO-001, MO-1289, PO-2306, MO 1242, M-285, & M-315; Alberta IPC Orders 2000-021, 96-003; British Columbia IPC Orders No. 331-1999 and 02-19.

Court Decisions: *Lavigne* v. *Canada (Office of the Commissioner of Official Languages), Canada (Information Commissioner)* v. *Canada (Immigration and Refugee Board), R.* v. *Kelly*; *Royal Securities Corporation Ltd.* v. *Montreal Trust Company*; *Canada Post Corp.* v. *Canada (Minister of Public Works)*; *Penderville Apts. Development* v. *Cressey Development Corp*; *Sinclair Stevens* v. *Prime Minister of Canada*, *General Motors Acceptance Corp. of Canada* v. *Saskatchewan Government Insurance*.

Other Resources Cited: *Black's Law Dictionary, Eight Edition***;** Regina City Bylaw No. 2005-18; *The Law of Agency, Seventh Edition*; 2005-2006 Provincial Budget Performance Plan for CPS

I BACKGROUND

[1] The Applicant made application to the provincial government department known as Saskatchewan Corrections and Public Safety ("CPS") for access to the following:

> "*Fire investigation report for fire on* [date and time] *at* [location] *and any remedial orders given to the building owners. Records in possession of Fire Commissioner pursuant to s. 15(4) of The Fire Prevention Act, 1992*."

[2] This related to a November 2002 fire in a Regina apartment building that resulted in damage to property, injury to a number of persons and the deaths of two individuals. The deceased were survived by two children.

[3] The Applicant is a solicitor in the law firm acting for the estate of the two deceased persons. The Administrator of the estate of the two deceased persons is the mother of one of the two deceased and the guardian of the two children.

[4] On December 17, 2003, CPS responded to the access request made by the Applicant. The letter reads, as follows:

> "*Thank you for your inquiry on November 4, 2003, to have the Minister of Corrections and Public Safety direct the Fire Commissioner to release, "Fire Investigation Report for fire on* [date and time] *at* [location] *…", and your Freedom of Information Request which was received in this office November 17, 2003, requesting access to the same record.*
>
> *Your request to have the Minister direct the Fire Commissioner to release the Fire Investigation Report has been reviewed. Section 39 of The Fire Prevention Act, 1992, states that, "Where the minister considers it appropriate and in the public interest, the minister may direct the fire commissioner to release all or any part of any report respecting fires that is in the office of the fire commissioner." As we do not feel that the release of factual reports from individual fires, provided by the fire department or insurance companies, is in the broader public interest, it is not our practice to release individual reports under section 39 of The Fire Prevention Act, 1992.*
>
> *In terms of your Freedom of Information request, this information was obtained in confidence from a local authority. As well, if released the information would disclose information with respect to a lawful investigation. Finally, some of the information you requested contains personal information and cannot be disclosed. Therefore, access to these records is denied pursuant to sections 13(2),*

> *15(1)(c), and 29(1) of The Freedom of Information and Protection of Privacy Act."*

[5] By letter dated December 23, 2003, the Applicant requested that our office undertake a review.

[6] In the course of the review we received extensive written submissions from the Applicant and CPS. We also met with the Access Officer for CPS, the Justice Administrative Coordinator, the Justice FOIP Officer, the Executive Director of Protection and Emergency Services and the Supervisor/Fire Prevention Officer in the Office of the Fire Commissioner ("OFC") to discuss the issues raised in this review and to gather relevant information.

[7] The website for CPS has a section on the OFC at http://www.cps.gov.sk.ca/Safety/fire/investigating.shtml.

[8] The website describes the role and work of the OFC in a way that is consistent with the information we gathered in the course of this Review.

> "*Fire loss statistics are the primary tool used to identify or improve programs aimed at reducing fire losses….*
>
> *In Saskatchewan every fire must be reported. These statistics are so critical to improving fire loss reduction programs that it is mandatory in Saskatchewan for every Local Assistant to the Fire Commissioner to investigate and report the origin, cause and circumstances surrounding every fire that occurs in their jurisdiction."* [The Chief of the Regina Fire Department would be a Local Assistant to the OFC in this case.]

[9] The OFC has developed the following forms[1] to assist local authorities reporting the required information to the OFC:

> Form A –Basic Fire Incident Report
>
> Form B – Fire Department Response
>
> Form C – Casualty/Injury Report
>
> Form D – Smoke Alarm Profile
>
> Form D2 – Death/Injury Document
>
> Form E – Large Loss Impact Report

[1] Available online: http://www.cps.gov.sk.ca/Safety/fire/investigating.shtml

[10] The OFC typically receives not just these completed forms but an assortment of other information in recorded form from insurance adjusters, police and other sources. The OFC inputs information from the standard forms into its computer system and may use the additional volunteered information to double check the accuracy of the data in the forms. In fact, the OFC does not do 'investigation reports'. The mandated role of the OFC is to collect statistics with a view to reducing future fire loss in Saskatchewan.

II RECORD AT ISSUE

Summary:

Page No.	Document Title	Author/Originator	Sections
4a-4p	Regina Fire LIVE RMS FIELD INCIDENT REPORT – dated January 14, 2003	Regina Fire Department	13(2) – full report 15(1)(c) – full report 29(1) – pages 4b (bottom), 4c-4g (inclusive)
5a, 5b, 5c	Regina Fire LINE RMS FIELD INCIDENT REPORT – dated January 14, 2003	Regina Fire Department	13(2) – full report 15(1)(c) – full report
6a, 6b	Basic Fire Incident Report – Form A	Office of the Fire Commissioner	15(1)(c) – full report 29(1) – line 6-9 (inclusive)
7a, 7b	Smoke Alarm Profile – Form D	Regina Fire Department	13(2) – full report
8a	Rent for [date] from [location of fire]	Unknown – likely caretaker for [apartment complex]	29(1) – full report
9a, 9b	Basic Fire Incident Report – Form A	Insurance Adjuster	
10a-10j (inclusive)	Fire Casualty Report – Form C (total of 5) prepared regarding, [names of 5 related individuals]	Insurance Adjuster	29(1) – full report
11a-11m	25 pictures of fire taken [date]	Office of the Fire Commissioner	15(1)(c)

Detailed description:

4a Regina Fire LIVE RMS FIELD INCIDENT REPORT is a computer generated document that includes the following information:

> Location of fire, map number, dispatch zone, jurisdictional station ID, alarm source and alarm level;
>
> Date and time for the following events: *Dispatch, Enroute, Arrival* and *Clear*;
>
> Description of the platoon, map, fire district number, insp. District, general property use;
>
> Numbers for injured employee, employee fatality, injured other and other fatality;
>
> Numbers of vehicles by type responding;
>
> Cryptic comments opposite headings: *fire origin, ignition, material, forced entry?, Method of extinguish*; and,
>
> There are spaces for value of property and contents and "insured loss" that are blank.

4b is a single page computer generated document with skeletal information about the number of stories, construction type, detector, sprinkler, damage, and smoke. In addition it lists certain Fire department officers by name, number and assignment.

4c to 4g inclusive consists of five computer generated pages listing for the owner, occupants, police officers, relatives of the owner, the name, job, address, home and work numbers and a note with skeletal information about injuries or point when aware of fire. This includes individually identifying information about the persons represented by the Applicant.

4h is a single computer generated page with no individually identifying information about any person beyond reference to the headings: *problem, DOA, No pulse, not breathing, unconscious*. A large number of questions on the page have no answers including "*suspected abuse?, alcohol?, Drug?, Inquiry Rec'd" Medical Complaint, Trauma Complaint, Body Affected, Mechanism Injury, Skin colour, temperature, pulse character, respiration character, pupil size, reactivity, position, lung sound location, blood pressure read time, drugs admin? EKG? Defib?, treatment provided.* There is a letter symbol beside the word "Transported?". There is also some unit information including a Unit number, crew action taken with a four word response, dispatch date, time and "minutes@inicdent [sic]".

4i is a single computer generated page which lists the name of Regina Fire Department personnel, their role and condition. There is an inventory of fire fighting equipment and the amount of time each was used. There is also a paragraph of narrative about actions of the fire fighters when they attended at the fire. There is a name of the officer who presumably authored the narrative and a suite number but otherwise there is no individually identifying information.

4j is a single computer generated page that is a continuation of the narrative from page 4i above. Names of individuals appear in the narrative including names of persons represented by the

Applicant. There is a further listing of Regina Fire Department personnel, their role and condition and an inventory of equipment used.

4k is a single computer generated page that lists Regina Fire Department personnel, their role and condition. There is an inventory listing a single piece of equipment and a 46 word narrative which includes no individually identifying information other than the surname and rank of the author.

4l is a single computer generated page that is a continuation of the inventory listing of equipment. There is an 80 word narrative that refers to two suite numbers and the name and rank of the author and the name of one other individual. There is also a list of personnel including role and condition.

4m is a single computer generated page that is a continuation from page 4l above. There is an inventory of equipment, a narrative of about 200 words with no individually identifying information other than the identity and rank of the author. There is also skeletal information about the unit, crew action taken and dispatch date, time, and "minutes @inicdent [sic]".

4n is a single computer generated page listing personnel, role and condition, an inventory of equipment and a 100 word narrative with no individually identifying information other than the name and rank of the author and the dispatch date, time.

4o is a computer generated page that is essentially blank save for identifying a unit by number, the rank of one fire service official, the dispatch time, and the same information for a second fire service official.

4p is a single computer generated page with a narrative section of approximately 240 words. The only individually identifying information relates to four fire service officials.

5a, 5b and 5c are a Regina Fire LIVE RMS FIELD INCIDENT REPORT which is a computer generated document with scant information similar to 4a above principally describing times, type of equipment, names and ranks of fire officials, name of one "other involved person" and unit information including crew action taken by way of a two word response and a narrative of 33 words including no individually identifying information other than the rank and name of the author.

6a Basic Fire Incident Report – Form A is a printed form with some information about insurance coverage and estimated damage, a skeletal description of the building.

6b is the second page of the 6a document. It includes a brief narrative under the heading "Remarks" and a suggestion of probable cause of the fire. There are check marks in response to questions about smoke alarms, fire alarms and fire extinguishers in the building in question. There is no individually identifying information other than the name of the Fire Commissioner.

7a is the Smoke Alarm Profile – Form D. This is a printed form that includes information about the fire location, date and time and number of casualties. There is information about the type, age, and power of the smoke alarm.

7b is the second page of 7a above. There is information about the type of fire and the cause although this is not detailed in any way. There is information in a box on the printed sheet entitled "Smoke Alarm Failure". There is also a 27 word narrative under the printed heading "Remarks". There is a name and identifying information about the author, an employee of the Regina Fire Department.

8a is a handwritten listing of tenants by name and suite number.

9a is the Basic Fire Incident Report - Form A. This printed form is identical to 6a above except there is some different information in the spaces on this printed form.

9b is the reverse side or second page of 9a above. There is a 37 word narrative under the heading "Remarks". There is individually identifying information about the author, an adjuster in the nature of contact information.

10a to 10j inclusive is a series of printed forms entitled Fire Casualty Report – Form C. Each form is one of a two piece document for one of five individuals who were either injured or who died in the fire. This includes the four persons (two deceased and two injured) for whom the Applicant acts. There is identifying information on the subject individual, including information about the condition of casualty, action of casualty, cause of failure to escape, ignition of clothing or other fabrics, injury observed, location of casualty at time of ignition, familiarity with structure, type of fabric or material ignited and the name with contact information of the author in each case. The author in each case was an adjuster.

11a to 11f is a series of colour photographs of fire damage without any identifying or descriptive information.

III ISSUES

Did CPS properly invoke section 15(1)(c) of *The Freedom of Information and Protection of Privacy Act*?

Did CPS properly invoke section 13(2) of *The Freedom of Information and Protection of Privacy Act*?

Did CPS properly invoke section 29(1) of *The Freedom of Information and Protection of Privacy Act*?

IV DISCUSSION OF THE ISSUES

Purpose of the Act

[11] I adopt and incorporate by reference the purpose that this office has ascribed to *The Freedom of Information and Protection of Privacy Act* ("the Act") in Report 2004-003 [5] to [13]. I accept the direction of the Saskatchewan Court of Appeal that the basic policy of the Act is that "*disclosure, not secrecy is the dominant objective of the Act*".

[*General Motors Acceptance Corp. of Canada* v. *Saskatchewan Government Insurance* [1993] S.J. No. 601 at [11]]

[12] The right of citizens to access records in the possession or under the control of public bodies is a quasi-constitutional right of the *"highest importance in the functioning of a modern democratic state"*. [Saskatchewan OIPC Report on *The Youth Drug Detoxification and Stabilization Act,* March 22, 2006, available online at www.oipc.sk.ca]

Does the Act apply to the Office of the Fire Commissioner?

[13] The 2005-2006 Provincial Budget Performance Plan for CPS explains that the units of the OFC and Building Standards were brought together under one unit within CPS now called Building and Fire Safety.[2]

[14] The Budget Plan document also describes the role of the OFC as follows:

> *"The Office of the Fire Commissioner, in accordance with The Fire Prevention Act, 1992, and Regulations, provides Saskatchewan communities, fire departments, and emergency service organizations with programs and services that protect people, property and the environment from fire."*[3]

[15] The OFC is a unit within CPS, a government institution to which the Act applies.

Did CPS properly invoke section 15(1)(c) of *The Freedom of Information and Protection of Privacy Act*?

[16] The applicable provision of the Act is 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*"

[17] By virtue of section 61 of the Act, the burden of proof is borne by the government institution. The provision reads as follows:

> *"61 In any proceeding pursuant to this Act, the burden of establishing that access to the record applied for may or must be refused or granted is on the head concerned."*

[2] Page 3; Available online: http://www.cps.gov.sk.ca/Publications/cps2005_06Performanceplan.pdf
[3] Ibid, page 4

[18] The response of CPS to the Applicant's access request included the following:

> "…*As well, if released the information would disclose information with respect to a lawful investigation. Finally, some of the information you requested contains personal information and cannot be disclosed. Therefore, access to these records is denied pursuant to sections 13(2), 15(1)(c), and 29(1) of The Freedom of Information and Protection of Privacy Act"*

[19] CPS also referred us to Report 2001-001 of former Saskatchewan Information and Privacy Commissioner, Mr. Gerald Gerrand, Q.C. Commissioner Gerrand considered the denial of access to documents described as the Basic Fire Incident Report and the Fire Department Response completed by the McLean Fire Department. Former Commissioner Gerrand found that the documents had been properly withheld by reason of a different exemption, namely section 13(2) of the Act. It does not appear that section 15(1)(c) was considered by Commissioner Gerrand.

[20] CPS further asserted as follows:

> *"Our use of clause 15(1)(c) of the Act is supported by the fact that although this investigation into this fire is completed, release of this report could also disclose information with respect to a lawful investigation. Our interpretation of 15(1)(c) of the Act does not only include current investigations, but those which are completed."*

a. Do the OFC's activities qualify as a "lawful investigation" under the Act?

[21] *The Fire Prevention Act, 1992* ("FPA, 1992") does not define "investigation" but does use the term "investigate" specifically in s. 5(1)(d).

> *"Duties of fire commissioner*
> *5(1) Subject to the other provisions of this Act and to the regulations, the fire commissioner shall:*
>
> *…*
>
> *(b) collect and disseminate information respecting fires in Saskatchewan;*
> *(c) keep records of all fires occurring in Saskatchewan, including the cause, origin and circumstances of each fire and other information respecting each fire that the fire commissioner considers appropriate;*
> *(d) investigate or cause to be investigated or hold inquiries into any fire whenever the fire commissioner considers it necessary to do so in order to ascertain the cause, origin and circumstances of the fire;*
> *…*
>
> *General powers of fire inspector*
> *9 A fire inspector may aid in the enforcement of any Act, regulation and municipal bylaw relating to fire safety and fire prevention."*

[22] The OFC has the authority to conduct investigations.

[23] The Act does not define either "investigation" or "lawful investigation."

[24] In Saskatchewan OIPC Report 2004-006, this office defined "lawful investigation."

> *"[26] The term "lawful investigation" is not defined in the Act. It was considered by Saskatchewan's first Information and Privacy Commissioner, Mr. Derril McLeod, in his Report 93-021. In that case, he chose to define "lawful investigation" to mean an investigation that is authorized or required and permitted by law. He received a submission from the government institution that "lawful investigation" should mean any investigation that is not contrary to or prohibited by law. Commissioner McLeod stated, in response,*
>
> > *However, if this were so, it would encompass any and every investigation of any matter whatsoever not prohibited by some specific law. I am unable to conclude that such a broad interpretation is intended or warranted. In my view, the expression "lawful investigation" means an investigation that is authorized or required and permitted by law. So also, the expression, "law enforcement" must, in my view, be considered to pertain to enforcement of laws of general or particular application by appropriate law enforcement agencies, and not to the determination of private issues or rights between parties to a contract as appears to be the case here. [page 6]"*
>
> *[27] We adopt the same definition of "lawful investigation".*
>
> *[28] It does not appear that this office has previously determined this question in connection with the activities of the Saskatchewan Human Rights Commission. This office has however characterized a number of other types of proceedings under other statutes as a "lawful investigation".*
>
> *[29] The North Battleford Water Inquiry was found to be a "lawful investigation" given the investigative powers conferred upon the Commission of Inquiry by virtue of the Terms of Reference in the Order-in-Council under The Public Inquiries Act. In addition, the following investigations were found to be lawful investigations by this office:*
>
> - *the investigation into a fire pursuant to The Prairie and Forest Fires Act and an insurance adjuster's report constituted a "lawful investigation" for purposes of the Act.*
> - *the investigation into a harassment complaint made by an employee to her public sector employer even though this was not done pursuant to any prescribed investigative process.*
> - *the investigation of a potential offence under The Securities Act, 1988.*
>
> *[30] Part IV of the Saskatchewan Code of Human Rights prescribes a comprehensive procedure for the investigation and resolution of complaints. This includes an expansive power to search and seize "books, documents,*

> *correspondence, records or other papers that related to or may relate to the complaint". There is provision for the appointment, by the Chief Commissioner, of a human rights tribunal panel. The tribunal panel may "establish rules requiring the parties to disclose, before an inquiry begins, any documentary or expert evidence the parties intend to use at an inquiry". In the event that the matter proceeds to an order by a human rights tribunal, a copy of any resulting order of the tribunal shall be entered "as a judgment of the Court of Queen's Bench and may be enforced as such."*
>
> *[31] I find that the investigation undertaken in this case by the Commission qualifies as a lawful investigation for purposes of section 15(1)(c) of the Act."*

[25] I find that the investigation of the OFC qualifies as a "lawful investigation" as that term is used in section 15(1)(c).

b. Does *The Freedom of Information and Protection of Privacy Act* capture records of an investigation undertaken by a body other than the OFC?

[26] The OFC collected the records in question from a variety of agencies in this case, including a municipal fire department, an insurance adjuster and an unknown source. In our Report 2004-006 we canvassed this issue in paragraphs [56] to [61]. We concluded that

> "*… a record may be "information with respect to a lawful investigation" in circumstances where the record in full or in part has been created by another body. I find no requirement in the Act that this exemption can only be invoked in circumstances where the investigation has been solely the work of the government institution. The key is whether the record is in the possession or under the control of the government institution."*

[27] As a consequence, all material received by the OFC to the extent that it is in the possession or under the control of CPS is subject to the access request in this case. In this case, the records in question are in the possession of the OFC and therefore in the possession of CPS. It follows that records of another body's investigation are not exempt because they are in the possession of CPS.

[28] The above would also apply in this circumstance to all material received by the OFC even if prepared by another entity.

c. Would an investigation have to be ongoing in order for section 15(1)(c) of *The Freedom of Information and Protection of Privacy Act* to apply?

[29] In Report 2004-006 at para [32] and [50], we determined that in order for a disclosure to "*interfere with a lawful investigation"*, the "lawful investigation" would have to be ongoing. This followed previous consistent findings of my predecessors in Reports 93-021 and 2002-039.

[30] What has not yet been resolved by this office is whether to "*disclose information with respect to a lawful investigation"* must relate to an active or ongoing investigation.

[31] CPS contends that I should interpret section 15(1)(c) so that it would apply to records relating to a lawful investigation including an investigation that has already been concluded.

[32] The Applicant argued as follows:

> "*Given the policies discussed above, the only reasonable interpretation of the language in Section 15(1)(c) is that it gives discretion to deny access to records with respect to ongoing or "live" investigations. The word "investigation" itself connotes an element of activeness. Once the investigation is concluded and no future investigation is anticipated, it ceases to exist and cannot be interfered with or compromised. This interpretation is consistent with the underlying purpose of Section 15 generally, which seeks to protect the privacy of information if its disclosure would prejudice law enforcement. It is also consistent with the view of our highest court."*

[33] The Applicant cited in support of this proposition the decision of the Supreme Court of Canada in *Lavigne* v. *Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53.

[34] The Applicant submitted as follows:

> *"In Lavigne v. Canada (Office of the Commissioner of Official Languages), 2002 SCC 53, the Supreme Court of Canada considered whether information collected in an investigation under the Official Languages Act was subject to disclosure or whether such disclosure could reasonably be expected to injure the conduct of the Commissioner of Official Languages' investigations. The Court interpreted "lawful investigations" to include investigations that were underway and future investigations "that are about to commence or take place" (at ¶52). In ordering disclosure of the information, the Court noted that the exemption was "not absolute" and "must be based upon concrete reason that meet the requirements imposed by the [provision]" (at ¶60). Since the investigations were concluded*

> *and there was no evidence that any future investigation would be harmed by such disclosure, it was not reasonable to withhold the information.*
>
> …
>
> *In any event, in the present case there is no possibility of prejudice to any investigation, law enforcement or otherwise. The investigation into the cause and circumstances of the fire that claimed* [names of two deceased] *is concluded. No further investigation is about to commence nor is it expected that one will take place in the future. The building owners,* [name of owners]*, pleaded guilty on* [date]*, to fire prevention bylaw violations and there no other charges awaiting prosecution. Quite simply the two policies under the FIPPA, access and privacy, are no longer competing in this instance. There are no more privacy interests to protect. For the province to continue to deny access to the fire investigation report is counter to the overarching purpose of the Act, i.e. wider public disclosure, and is without any rationale or lawful justification."*

[35] In fact, although there are many court decisions and orders from other Information and Privacy Commissioners that consider "*lawful investigation*", I have found that none of the comparable statutes in those jurisdictions have an exemption or exception to the right of access where this would "*disclose information with respect to a lawful investigation"*. I note also that in a number of other jurisdictions, the "law enforcement" exemption is expressly designed as a harm-based exemption.

[36] It is therefore necessary to interpret section 15(1)(c) without reliance on those authorities from other jurisdictions.

[37] The obvious kinds of harms that might be anticipated to flow from disclosure of records or information of a lawful investigation appear to have already been addressed in other subsections of section 15. For example, if the records would be injurious to the Government of Saskatchewan or a government institution in the conduct of existing or anticipated legal proceedings; or would reveal investigative techniques or disclose the identity of a confidential source; or would deprive a person of an impartial adjudication or would reveal law enforcement intelligence information; there is a specific subsection that justifies denial of access.

[38] I am therefore required to interpret the words "*disclose information with respect to a lawful investigation"* by giving them a meaning different than the other 13 specified circumstances enumerated in section 15(1). Many of the other 13 circumstances would be subsumed in the broad interpretation of section 15(1)(c) that is urged by CPS. If

section 15(1)(c) were to be given as expansive a meaning as urged by CPS and would capture "*information with respect to a lawful investigation"*, regardless of whether that investigation is current or has been completed, there would be little need for prescribing those 13 other circumstances.

[39] Our interpretation must reflect the purposes of the Act as defined in our Reports 2004-003, [5] to [11]; 2005-003, [10]. The purposes our office has ascribed to the Act have been reinforced by court decisions such as the decision of the Federal Court in *Canada (Information Commissioner)* v. *Canada (Immigration & Refugee Board)* (1998), 140 F.T.R. 140 (Fed. T.D.) at 150, that states:

> "*When Parliament explicitly sets forth the purpose of an enactment, it is intended to assist the court in the interpretation of the Act. The purpose of the Act is to provide greater access to government records. To achieve the purpose of the Act, one must choose the interpretation that least infringes on the public's right of access*."[4]

[40] The jurisprudence is clear that Canadian courts have consistently interpreted the exemptions to the right of access narrowly.

[41] We view both parts of section 15(1)(c) of the Act to denote the same meaning of lawful investigations. If the legislature had intended a different meaning, then different words would have been used. The two parts of the subsection will only apply if there is an active investigation underway.

[42] The submissions of both parties are clear that there is no active or pending investigation at this time. I therefore find section 15(1)(c) does not apply to the records in question.

[43] As CPS only invoked section 15(1)(c) to justify withholding the 25 pictures (pages 11a-11m of the record) taken of the fire and I have already determined that the exemption does not apply, these records should be released to the Applicant forthwith.

[4] Federal Access to Information and Privacy Legislation Annotated 2005, Colonel Michel W. Drapeau & Marc-Aurele Racicot. Toronto: Thomson Carswell, 1-28

Did CPS properly invoke section 13(2) of *The Freedom of Information and Protection of Privacy Act*?

[44] The section invoked by CPS reads, as follows:

> "*13(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*."

[45] CPS responded to the Applicant's original access to information request with the following:

> "*In terms of your Freedom of Information request, this information was obtained in confidence from a local authority…Finally, some of the information you requested contains personal information and cannot be disclosed. Therefore, access to these records is denied pursuant to sections 13(2), 15(1)(c), and 29(1) of The Freedom of Information and Protection of Privacy Act."*

[46] In its formal submission to our office, CPS argued that:

> *"In considering the applicant's Freedom of Information request, Corrections and Public Safety denied access based on sections 13(2), 15(1)(c), and 29(1) of The Freedom of Information and Protection of Privacy Act. In support of this decision, I would like to draw your attention to the enclosed review dated April 19, 2001, prepared by Mr. Gerald Gerrand, Q.C., former Information and Privacy Commissioner. On page 5 of this report, Mr. Gerrand states:*
>
> > *"With respect to the Basic Fire Incident Report and Fire Department Response to Fire Incident Report completed by the McLean Fire Department, to which the Respondent has denied the Applicant access pursuant to Section 13(2) of the Act, in my view, these documents properly fall within this exemption and as such, should not be disclosed to the Applicant. The McLean Fire Department, a body that comes within the definition of "local authority" pursuant to The Local Authority Freedom of Information and Protection of Privacy Act Regulations, provided these documents to the Respondents in confidence."*
>
> *The differing factor in the case of* [the Applicant's] *request and the McLean fire, was the local authority. In the former, it was the Regina Fire Department while in the latter it was the McLean Fire Department. In each case, the reports were provided in confidence by the local authority solely for the purposes of the Act and subject to release only if determined by the Minister to be in the public interest in accordance with section 39 of The Fire Prevention Act, 1992. Therefore, we felt that the same type of documents requested by* [the Applicant] *also fell within section 13(2) and were further supported by the decision of Mr. Gerrand."*

[47] The Applicant's arguments as to why the exemption is not applicable are as follows:

> *"2. The report was obtained in confidence from a local authority.*
>
> *The fire investigation report is clearly within the Province's personal possession and control, and is not subject to this exception in this case. The Fire Commissioner has duty under Section 5(1)(d) of The Fire Prevention Act, 1992, to investigate fires to ascertain their cause, origin and circumstances. While the Fire Commissioner can delegate the actual investigation of the fire to the Fire Department, it remains the Fire Commissioner's legal duty and the Fire Department is obligated under Section 8 to furnish the fire investigation report to the Fire Commissioner. Under these circumstances, to suggest that the Province obtained the fire investigation report in confidence from the Fire Department is a mischaracterization of the facts. The report does not belong to the Fire Department. Rather, it is the Province who has obtained the report through its own agent, the Fire Department."*

[48] On this point, we considered one of the supporting documents [Document 4] [see para 61 (p. 21)] provided by CPS that details what they consider the 'Team Concept' of fire investigation. Of interest are the following comments:

> "*The investigation of fires under The Fire Prevention Act, 1992, is an administrative, rather than judicial, function. The purpose is to gather statistical information regarding the origin, cause and circumstances surrounding fire losses. The OFC is mandated by the Act to collect and disseminate information respecting fire losses in Saskatchewan. In order to enhance fire safety, the OFC also has a discretionary mandate to investigate fires involving circumstances of special interest…*
>
> *Provincial interest in these essential statistics is focused on programs relating to fire loss prevention…*
>
> *Fire loss investigations under the authority of The Fire Prevention Act, 1992 are conducted in a way that supports the investigation work of other interested agencies, such as insurance and police… This information is normally readily available to other interested agencies, with the goal of assisting them in completing their investigations.*
>
> *…*
>
> *… Because municipal fire authorities hold both the duty and the authority to conduct fire investigations, they are free to follow whatever system of investigation management they choose…*
>
> *…*
>
> *The Fire Prevention Act, 1992 is the only legislation that assigns the specific duty of fire investigation, and assigns it to a fire authority (the local assistant and/or*

the OFC). The OFC responds to help local assistants in an investigation, or because the fire holds specific interest due to the nature of the loss…

…

The OFC does not investigate arson, insurance fraud or any other aspect of fire loss – other than the factors that will allow for the identification of the origin, cause and circumstances of the fire. While the OFC has no mandate or responsibility to identify responsibility, motive or opportunity in relation to a fire, it can be called upon to provide advice or assistance in these matters by agencies whose job it is to identify these aspects.

Where the OFC determines circumstances that may be of interest to other agencies (arson, fraud, product liability, etc) the OFC immediately notifies the responsible agencies and follows procedures to protect the integrity of the investigation to ensure that it is not compromised, for the OFC or any other agency.

…

A fire loss determined to involve suspicious or incendiary circumstances cannot be investigated under the authority of the Act. The Fire Prevention Act, 1992, is "administrative" legislation, designed to authorize the investigation of fires for the purpose of gathering statistical information about fire losses. An investigation for any purpose other than for the gathering of statistical information may not be conducted under the authority of the Act… Evidence for criminal activity may only be taken by a police officer under the rules and procedures established in the Criminal Code.

OFC policy and procedures require staff to support the investigations of other agencies..."

[49] In light of the submission of the Applicant that I should find there is an agency relationship between the OFC and the Regina Fire Department, I considered a number of authorities on that issue including the following: *The Fire Prevention Act, 1992*; *R.* v. *Kelly*[5]; *Royal Securities Corporation Ltd.* v. *Montreal Trust Company*[6]; *Canada Post Corporation (Applicant)* v. *Minister of Public Works and Michael Duquette*[7]; *Penderville Apts. Development* v. *Cressey Development Corp*[8]; Ontario IPC Orders HO-001, MO-1289, PO-2306, and MO-1242; Regina City's Bylaw No. 2005-18; *Black's Law Dictionary, Eighth Edition*[9]; and *The Law of Agency, Seventh Edition.*[10]

[5] 1992 CanLII (S.C.C.)
[6] et al. [1967] 1 O.R. 137-185, ONTARIO [HIGH COURT OF JUSTICE] GALE, C.J.H.C. 26th OCTOBER 1966.
[7] (Respondents) Indexed as: Canada Post Corp. v. Canada (Minister of Public Works) (T.D.) Trial Division, Rothstein J. "Toronto, April 1; Ottawa, June 3, 1993.
[8] (1990), 43 B.C.L.R. (2d) 57
[9] Garner, Byran A (Editor in Chief), Thomson West, 2004

[50] In light of our analysis and conclusion with respect to 'compulsory supply' that is discussed later in this Report, I have determined that it is not necessary to determine whether the relationship between the OFC and the Regina Fire Department can be characterized as one of 'agency'.

If the OFC has the statutory right to order the delivery of the records in question, can the records in question still be said to be "obtained in confidence" from a local authority'?

[51] In a previous Report of this office, Commissioner Rendek, in Report 2003-046, determined that records provided to the Saskatchewan Financial Services Commission by the Royal Canadian Mounted Police and the Manitoba Securities Commission, qualified for the exemption under section 13(1) of the Act. That Report reads, in part, as follows:

> *"[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."*

[10] Fridman, G. H. L., Butterworths Canada Ltd, Toronto: 1996

[52] We must ask a series of questions to determine if we are able to apply the same reasoning as Commissioner Rendek in this case.

1. Does the Regina Fire Department qualify as a "local authority"?

[53] In an earlier Saskatchewan Report 2001-001, that Saskatchewan Commissioner found that a different fire department qualified as a local authority under *The Local Authority Freedom of Information and Protection of Privacy Act* ("the LA FOIP Act").

> *"With respect to the Basic Fire Incident Report and Fire Department Response to Fire Incident Report completed by the McLean Fire Department, to which the Respondent has denied the Applicant access pursuant to Section 13(2) of the Act, in my view, these documents properly fall within this exemption and as such, should not be disclosed to the Applicant. The McLean Fire Department, a body that comes within the definition of "local authority" pursuant to The Local Authority Freedom of Information and Protection of Privacy Regulations, provided these documents to the Respondent in confidence."*

[54] The Regina Fire Bylaw No. 2005-18[11], Part I, section 1 reads, as follows:

> "*1. The purpose of this Bylaw is to:*
>
> *(a) continue the Department as an established department of the City;*
>
> …
>
> *2. The authority for this Bylaw is section 8 of The Cities Act and sections 8, 11 and 33 of The Fire Prevention Act, 1992*."

[55] I find for our purposes that the fire department is an established department of the City which qualifies as a local authority as defined under section 2 of the LA FOIP Act.

2. How did CPS determine that the records were "obtained implicitly or explicitly in confidence from a local authority"?

a. Were the records "obtained" from a local authority?

[56] We must first determine if the records in question were authored by or originated from the local authority. We asked CPS to clarify for us the following:

> *"Some of the records provide for our office to review appear to be prepared by different sources. Please verify the author of each prepared record and their purpose within the context of a fire investigation:*
>
> *1 Regina Fire LIVE RMS FIELD INCIDENT REPORT (16 pages)*
> *2 Regina Fire LIVE RMS FIELD INCIDENT REPORT (3 pages)*
> *3 Basic Fire Incident Forms (Form A)*

[11] Available online: http://www.regina.ca/pdfs/Bylaws/2005-18B05.pdf

4 Smoke Alarm Profile (Form D)
5 Basic Fire Incident Report (Form A)
6 Fire Casualty Report (Form C) for each casualty [5 separate forms for five different individuals]
7 Rent for [date] *from* [location]*"*

[57] In the Index of Records supplied by CPS, the government institution provided the requested breakdown for us. Those records originating from or created by the fire department include the following: Regina Fire LIVE RMS FIELD INCIDENT REPORT (16 pages); Regina Fire LIVE RMS FIELD INCIDENT REPORT (3 pages); and Smoke Alarm Profile – Form D (2 pages). As other sources provided the remaining records, we will not be considering them until later in this Report.

[58] In Alberta IPC Order 2000-021, "obtain" is defined as follows:

> "*[para. 26.] The Concise Oxford Dictionary (9th Edition) defines "obtain" as "[to] acquire, secure; have granted to one." Black's Law Dictionary (6th Edition) defines "obtain" as: "[t]o get hold of by effort; to get possession of; to procure; to acquire, in any way." Both definitions suggest that for the purposes of section 14(1)(b) a public body could "obtain" a record either intentionally or unintentionally. Further, the definitions suggest that a public body that obtains a record did not create it."*

[59] I adopt the same definition for purposes of section 13(2) of the Act. These records, although authored by the local authority, were subsequently acquired by CPS and are thus in the possession of CPS. Accordingly, I find these records were "obtained" from a local authority.

b. Is there evidence that the information obtained was provided "in confidence, implicitly or explicitly"?

[60] On this point, CPS originally offered the following:

> *"Your final question (3.e) asks how we can maintain that the documents forwarded to the OFC from a local authority were done so in confidence. Local Authorities (such as Fire Departments) are required by legislation to file statistical information regarding fires to the OFC. The manner in which they file the information may vary, (quite often being the Local Authorities confidential reports), with the understanding the OFC will not release the reports. In order to maintain an information sharing relationship with these local authorities, it is imperative that the OFC maintains these reports in confidence."*

[61] Additionally provided upon request from CPS was the following representation:

> *"Attached is an e-mail sent to Andrew Thomson, former Minister of Corrections and Public Safety, from* [the Applicant] *(dated November 4, 2003). In this e-mail,* [the Applicant] *identifies that he had formerly applied for this information from the City of Regina for the investigation report, but was denied access as the city was prosecuting the owners for bylaw violations. As such, we did not transfer this application to the city, as* [the Applicant] *had requested this information from their office already. This further supports our position not to release these reports pursuant to sections 13(2) of The Freedom of Information and Protection of Privacy Act (the FOIPP Act).*
>
> *I have attached copies of the following documents which should assist your office in preparing your recommendations report for this review:*
>
> 1. *A document which was part of the submission to the Deputy Minister of the former department of Municipal Affairs, Culture and Housing (MACH), regarding a policy on the release of documents.* [Document #1]
>
> 2. *A document entitled, "Office of the Fire Commissioner Policy Regarding Freedom of Information Requests". This document identifies why a new policy was implemented in June, 1998.* [Document #2]
>
> 3. *The original policy and memo explaining the new policy to staff of the Office of the Fire Commissioner (OFC). This was implemented as the former Information and Privacy Commissioner (OIPC) had agreed with the OFC that the release of reports gained in confidence from other agencies could be denied.* [Document #3]
>
> 4. *A document on fire investigation outlining Team Concept with information on sharing information (page 7). This document has been on the OFC website for a number of years. It has been updated from time to time for various reasons (for example when the OFC became part of Corrections and Public Safety). However, this document contains the same four principles of Team Concept developed in the 1980's by the OFC, Police and Insurance agencies. This has been used when training fire investigators and is delivered to persons such as the insurance industry during meetings regarding fire investigation. This has been widely distributed and is downloaded from the website periodically from external individuals and agencies.* [Document #4]
>
> 5. *The current policy on the FOIPP Act. This policy was developed when the OFC was with the department of MACH and was updated when the OFC became part of Corrections and Public Safety. Part 6 was added in March 2004, largely due to Mr. Oddie's request in November of 2003 to the Minister of Corrections and Public Safety (referenced in point 1). With the exception of the addition of Part 6, this policy is virtually identical to the policy from June 1998.* [Document #5]

> [We obviously need to assess the policy and expectations of the local authority and CPS at the time the access request was refused. It would be inappropriate to consider a new policy that was introduced after the access request was received and after notice of the decision was communicated to the Applicant.]
>
> *You have also referenced and wished a copy of the OFC report titled, "Confidential Report to the Fire Commissioner." For your information, the OFC fire reports were titled this prior to 1986-87. When the fire loss reporting system was changed in the 1980's, this heading no longer appeared on the report forms. Unfortunately, the OFC has been unable to locate a copy of the older confidential reports used prior to 1986-87.*
>
> *You have also requested any documentation that demonstrates the support of the past Commissioner or the OFC's present practices. In our submission to your office dated July 30, 2004, we included a copy of Information and Privacy Commissioner Report 2001/001, which was prepared by Mr. Gerald Gerrand, Q.C., former Information and Privacy Commissioner for Saskatchewan. In this report, Mr. Gerrand supports the Office of the Fire Commissioner in their decision not to release these confidential reports pursuant to section 13(2) of the FOIPP Act."*

[62] There was no cogent evidence from CPS to establish the intention or concerns of the local authority in providing the record to CPS. There was no evidence that the local authority provided the record explicitly in confidence to CPS. There certainly is evidence that CPS wished to treat this information "in confidence".

[63] Part of the package of materials provided by CPS discussed above was a new policy implemented by the OFC effective June 29, 1998 [Document 2]. In the document, it is stated,

> "*This information exchange is undertaken in confidence where reports from the coroner, RCMP, local police, fire insurance, gas and electrical safety inspectors, Occupational Health and Safety Officers and so on, are shared openly and willingly… Having to release complete files, where information obtained from other agencies has formed part of our records, may require us to give up information that was obtained in confidence.*"

[64] One of the documents [Document 3] referenced above is a memorandum dated June 28, 1998 regarding Fire Reports – Access by outside agencies. It provides,

> "*The reason for not releasing some part of the information held on file is limited as well, so it is difficult to honour the agreement of confidentiality we have made. There is a solution to this issue, but it has some problems as well. We can class fire investigations as "lawful investigations" under the Fire Prevention Act and thereby deny all access to this information under the FOI.*"

[65] The attached policy to the above mentioned memorandum states:

> *"Information as listed below is protected and as a general policy is not to be released by staff.*
>
> *Fire investigation reports or information on investigations,*
> *Information gathered by survey (Municipal or Fire Department),*
> *Information on individual's certified by the Office of the Fire Commissioner under IFSAC or NPQS,*
> *Local assistants and/or fire chiefs lists,*
> *Inspections, plan reviews or regulatory activities,**
> *Operations manuals or policy (except section 7).*"

[66] CPS also included a copy of a document [Document 1] "*which was part of the submission to the Deputy Minister of the former department of Municipal Affairs, Culture and Housing (MACH), regarding a policy on the release of documents*." I note that this document does not contain a footer, header, nor any other information that confirms when the document was created or by who or for whom. It reads, in part, as follows: "*The staff with the Office of the Fire Commissioner would like to have fire investigation reports fall within section 15(1)(c), (e), (f), (k) of the Freedom of Information Act (FOI) and deny applications for the release of reports."*

[67] The above paragraphs raise a sub-issue concerning the government's use of blanket policies to deny access to government records to which discretionary exemptions are applied.

[68] Subsection 15(1)(c) is a discretionary exemption. As such, the public body must exercise its discretion in consideration of the access principles underlying the Act. We have addressed this issue in earlier reports such as Saskatchewan OIPC Report 2004-006. The relevant paragraph is as follows:

> *"[24] This is a discretionary exemption. Even if this section applies, the government institution may still decide to disclose the information. To exercise its discretion properly, the government institution must show that it considered the objects and purposes of the Act (one of which is to allow access to information) and did not exercise its discretion for an improper or irrelevant purpose. The objects and purposes of the Act were considered by this office in Report 2004-03, [5] to [11]."*

[69] In Ontario IPC Order M-285, the Inquiry Officer considers blanket approaches when applying discretionary exemptions. The relevant portions of the Order are offered below:

> "*Section 12 of the Act is a discretionary exemption. It provides the head with the discretion to disclose the record even if the record meets the test for exemption.*
>
> *In response to a specific request for representations on the exercise of discretion, the City's Freedom of Information Coordinator states:*
>
> *The City Solicitor has advised that he relies on solicitor/client privilege in all instances where a claim against the City is involved or where there is an allegation of responsibility for damages.*
>
> *The Co-ordinator confirms that it was the City Solicitor who reviewed the records and made the decision with respect to access and that the head of the City merely adopted the City Solicitor's decision.*
>
> *Where access to disclosure is denied pursuant to a discretionary exemption, the head is required to decide whether the record falls within the exemption claimed. Having established that it does, the head must then decide whether the exemption should be applied.*
>
> *Guidance as to the general principles that apply to the exercise of discretion is found in "de Smith's Judicial Review of Administrative Action" (4th ed., Toronto: Carswell, 1980) at page 285:*
>
> *In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case.*
>
> *Further guidance is provided in Orders P-262 and P-344, in which former Assistant Commissioner Tom Mitchinson stated at page 7 of each order:*
>
> *In this appeal, the head's representations regarding the exercise of discretion do not refer to the particular circumstances of the appellant's situation. At most, they set out general concerns about the type of record at issue. The head has not explained why, in this case, the appellant's rights and interests are outweighed by these general concerns.*
>
> *[Order P-262]*
>
> *In my view, taking a "blanket" approach to the application of section 14(3) in all cases involving a particular type of record would represent an improper exercise of discretion. Although it may be proper for a decision maker to adopt a policy under which decisions are made, it is not proper to apply this policy inflexibly to all cases. In order to preserve the discretionary aspect of a decision under sections 14(3) and 49(a), the head must take into consideration factors personal to the requester, and must ensure that the decision conforms to the policies, objects and provisions of the Act.*
>
> *[Order P-344]*
> *I adopt the reasoning applied in both these orders and find that, in this case, the head acted under the dictation of the City Solicitor. Further, I find that the City applied a blanket approach in deciding whether section 12 of the Act applies.*

> *There is no indication in any of the correspondence from the City that it considered the merits of this particular appellant's case or that it considered whether, in this appeal, a departure from their general policy, as stated in their representations, would be warranted. Accordingly, in my view, the head has not properly exercised his discretion, and I order him to reconsider the question of discretion, in accordance with the requirements outlined above."*

[70] We view application of discretionary exemptions in the same fashion and caution government institutions to reconsider any ongoing use of policy for this purpose.

[71] There is another circumstance that appears to be inconsistent with the assertion that the record in question consists of material obtained in confidence. I note that in FOIPPA policy for CPS [Document #5] provides an alternate method to release some information if a requester qualifies as an individual with a "vested interest." Page 2 of 6 reads, in part:

> "*The requester will be contacted by the Supervisor or Fire Commissioner to determine if the request is from an individual with a Vested Interest, the details of the request, and the appropriate means to release information.*
>
> *Person(s) with a Vested Interest identifies individuals, or parties, that may receive information on a fire loss, at the discretion of the Fire Commissioner. Individuals or parties deemed to have a Vested Interest include:*
>
> - *owners and/or occupants of a property damaged in a fire or explosion,*
> - *victim(s) of exposure losses (who can verify their loss),*
> - *persons injured in a fire,*
> - *the immediate next of kin or a representative of a deceased fire victim,*
> - *public utilities (where their equipment was involved),*
> - *municipal authorities (where the incident occurred),*
> - *agencies involved in the investigation, and;*
> - *insurance companies (who can verify insurance coverage has been provided or with written authorization of the owner/occupant).*
>
> *NOTE: Requests for information from media agencies must be forwarded or referred to the Communications Branch. Release of information to the media will be conducted in consultation with the Communications Branch. (see policy 3 e), Media Inquiries).*
>
> - *If the request is for origin, cause and circumstance of a fire, the information may be released by letter.* The caller should be requested to send a letter identifying the date, location and property owner's name and requesting the origin, cause and*

> *circumstances of the fire and appropriate documentation to demonstrate their vested interest.*
>
> …
>
> *While reports generated by the Office of the Fire Commissioner are "not normally released", the outright refusal of every request for a report is not permitted to be strict policy.*. Each request must be considered separately to determine if the release of the report would involve a circumstance identified by section 15. Where the report does not involve a circumstance identified by section 15, release may be granted under an Access to Information Request Form."*

[72] The above policy demonstrates that the government institution provides an alternate method of making some information available within limited circumstances. This practice appears to be a form of routine disclosure. However, when an individual makes application for access under the Act, he/she does not have to provide a reason for seeking the information, as access is an unqualified fundamental democratic right subject to limited and specific exceptions. The right of access is to the source documents.

[73] It is not reasonable for CPS to claim that a record is confidential because it is provided by a local authority with a general understanding that the record is to be treated as confidential but to then assert that the Fire Commissioner may, in his discretion, disclose such a record to someone who qualifies with a "vested interest". Interestingly, the list of those who are "deemed to have a vested interest" includes the immediate next of kin or a representative of a deceased fire victim and persons injured in a fire and occupants of a property damaged in a fire.

[74] This suggests that the real concern is not whether certain information needs to be kept confidential but a question of control in terms of who will be permitted access to the records and under what conditions. CPS is prepared to provide victims of a fire with access to the so-called confidential records but on the basis of conditions dictated by the OFC. This approach and policy of the public body must seriously undermine the claim to confidentiality.

[75] Most jurisdictions do not use "obtained in confidence" as provided by section 13(2) of the Act but instead use the language, "received or supplied in."

[76] British Columbia's Order 331-1999 discusses "in confidence" on page 8:

> "*…use variations on the phrase "supplied in confidence". I do not think that Order M-844, or other orders referred to above, should be taken to focus exclusively on the intention of the supplier of information for the purposes of Ontario s. 15(b). In any case, s. 16(1)(b) of the British Columbia Act should not be interpreted in that way. Section 16(1)(b) requires public bodies to look at the intentions of both parties, in all circumstances, in order to determine if the information was "received in confidence."*
>
> *What are the indicators of confidentiality in such cases? In general, it must be possible to conclude that the information has been received in confidence based on its content, the purpose of its supply and receipt, and the circumstances in which it was prepared and communicated. The evidence of each case will govern, but one or more of the following factors – which are not necessarily exhaustive – will be relevant in s. 16(1)(b) cases:*
>
> 1. *What is the nature of the information? Would a reasonable person regard it as confidential? Would it ordinarily be kept confidential by the supplier or recipient?*
> 2. *Was the record prepared for a purpose that would not be expected to require or lead to disclosure in the ordinary course?*
> 3. *Was the record in question explicitly stated to be provided in confidence?...*
> 4. *Was the record supplied voluntarily or was the supply compulsory? Compulsory supply will not ordinarily be confidential, but in some cases there may be indications in legislation relevant to the compulsory supply that establish confidentiality. (The relevant legislation may even expressly state that such information is deemed to have been supplied in confidence.)*
> 5. *Was there agreement or understanding between the parties that the information would be treated as confidential by its recipient?*
> 6. *Do the actions of the public body and the supplier of the record – including after the supply – provide objective evidence of an expectation of or concern for confidentiality?*
> 7. *What is the best practice of the recipient public body respecting the confidentiality of similar types of information when received from the supplier or other suppliers?"*

[77] In *Sinclair Stevens* v. *Prime Minister of Canada*[12], it was stated: "*Thus, "where a statute requires disclosure, e.g., of a report, no voluntariness is said to be present..." (See: Manes and Silver, Solicitor-client Privilege in Canadian Law, supra at 191)."*

[12] *Stevens* v. *Canada (Prime Minister)* (T.D.) [1997] 2 F.C.

[78] Even if the local authority provided the information voluntarily, it is obligated to provide it even if it had objected. Accordingly, unless otherwise provided by statute, confidentiality cannot be built in by agreement, informally or formally.

[79] The FPA, 1992 does speak to limit access to records in the following manner:

> *"39 Where the minister considers it appropriate and in the public interest, the minister may direct the fire commissioner to release all or any part of any report respecting fires that is in the office of the fire commissioner."*

[80] However, the FPA, 1992 is not paramount to the access provisions in the Act by reason of section 23 of the Act.

[81] Ontario IPC Order M-315 explains that, "*In my view…there must be an expectation of confidentiality on the part of the supplier and the receiver of the information.*" Even if we could discount the fact that the information in question is under compulsory supply, CPS has offered no evidence as to the expectations of the local authority that the information would be provided only if considered to be done so in confidence. CPS has only offered its own internal memorandums and policy on this point.

[82] The final argument posed by CPS in the material [Document 1] offered is that if the information is released, those preparing the record would not do their job knowing the information is open for disclosure later. Its arguments are as follows:

> *"During the course of an investigation, the investigator may gain information from a wide variety of sources, including the fire department, police, insurance and other agencies. The exchange of documents and information is done in the spirit of cooperative effort to meet our mandate, reduce fire losses. The information that is exchanged is typically in written form and is exchanged with the understanding it will not be released without the permission of the provider. The FOI does not "recognize" these informal confidentiality or cooperative agreements between agencies. If the document is on the file, and there is no other provision in the FOI to deny the release of the information, then it is released. This seriously effects our ability to gain cooperation from other agencies on an investigation. They will cease providing information to us.*
>
> …
>
> *The majority of requests are made to allow the requester to use information to prosecute or defend… Worse, information is requested so that an outside consultant can "review" the documents and then "interpret" for the individual requesting the report. This is unacceptable. Not only can we not "defend" our investigation process, procedures or reporting, we are not afforded to same*

opportunity to review and interpret the consultants review and interpretation of our investigation as would happen in a criminal proceeding…

This can make note taking and report writing difficult as Officers mostly know when a fire investigation is going to be controversial. It can be intimidating to take notes and write a report that cannot be misinterpreted or reinterpreted by an outside agency. This is not supposed to be an issue we consider, but some individuals have a great deal of problems with this.

A final concern is that once released, documents can be distributed (and are) without restriction by the person requesting/receiving the information. Information could be distributed quite widely… Further information may be received at some later date (and after the release of the original document) that significantly changes the results of an investigation or part thereof, but there is no opportunity or means to track who has erroneous information…

…

To resolve the issue of FOI appeals because requests for the release of reports or other documentation is denied, it is still possible to release information when requested. Our mandate includes the collection and dissemination of information on fire losses. This can be accomplished by numerous means, beside releasing reports or other documentation. A person requesting information on a fire loss can be provided a written document identifying conclusions and even specifically requested information.

The general FOI requests being made are not asking for specific information, but tend to ask for every piece of documentation. This is a "hunting" expedition rather than a request for information.

As stated previously, the intent of our policy is not to deny information, just the release of reports and other documentation. Section 10 of The Freedom of Information Act allows a person to view a record, rather than receive a copy of it. Section 8 also permits the release of some information from a record while other parts of the same record may be refused. The manner of release is not proscribed, and thus any manner of release (ie. a letter) should be acceptable."

[83] Helpful on this point is Alberta IPC Order 96-003:

"I want to emphasize that police officers should not feel threatened by the fact that their investigative reports might be subject to disclosure under the Act. It is to their benefit that the public know how well they do their jobs. Where harm could result from disclosure, exemptions such as section 19, are available to protect their records."

[84] Also, British Columbia's IPC Order 02-19:

"*[61] I will deal here, in passing, with the City's argument, at para. 26 of its initial submission, that the "continued effectiveness of the City's relationship" with the RCMP would be jeopardized "if the City were unable to communicate with the RCMP in a confidential manner." This is a general argument that a*

need or desire for confidentiality should be sufficient to trigger s. 16(1)(b). The same argument could be advanced by any municipality in relation to a municipal police force established and operated directly by the municipality under the Police Act, e.g., the Vancouver Police Department or the Victoria Police Department. It is not enough to assert confidentiality is essential to ensure good working relationships between municipalities and their police forces, in whatever manner their police forces are constituted. Any protection of information, where confidentiality is considered essential, must be found in the Act's specific exceptions to the right of access."

[85] I am of the same mind.

[86] I find that section 13(2) is not applicable to the reports from the Regina Fire Department in the circumstances of this review.

[87] However, the fire department did not supply all the records in question. There are records prepared by an Insurance Adjuster and an unknown source to which CPS has invoked no exemptions except for section 29(1).

[88] In the case of insurance companies, the FPA, 1992 stipulates that:

"Reports by insurance companies and adjusters
37(1) On or before the twenty-first day of each month, every fire insurance company that is licensed pursuant to The Saskatchewan Insurance Act shall furnish the fire commissioner with a statement relating to the preceding month of every fire that occurs in Saskatchewan in which it is interested as an insurer.

(2) On or before the seventh day of each month, every fire insurance adjuster shall furnish the fire commissioner with a statement relating to the preceding month, of every fire that occurs in Saskatchewan in which the fire insurance adjuster is interested as an adjuster.

(3) The statements described in subsections (1) and (2) shall be in the form prescribed in the regulations and shall contain:
(a) the name and address of the insured;
(b) the location of the risk;
(c) the value and contents of the buildings, structure or premises;
(d) the amount of insurance carried; and
(e) the amount of the loss sustained.

(4) In the case of a fire of suspicious origin, the insuring company shall make a preliminary report as soon as possible showing:
(a) the names of the owner and occupant;
(b) the location, use and occupancy of the burnt premises
(c) the date of the fire; and
(d) any facts and circumstances that the company receives knowledge of tending to establish the cause, origin or circumstances of the fire.

> *(5) The report mentioned in subsection (4) is in addition to, and not in lieu of, any report that the company may be required to make pursuant to any other law of Saskatchewan."*

[89] As CPS has not invoked an exemption to withhold the records prepared by the Insurance Adjuster, and these records too are under compulsory supply, I find that these should be released to the Applicant subject to any necessary severing of third party personal information to which the Applicant is not authorized to access.

Did CPS properly invoke section 29(1) of *The Freedom of Information and Protection of Privacy Act*?

[90] The applicable section of the Act is as offered below:

> "*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.*"

[91] There is a preliminary matter to address before we can determine if the records in question contain personal information or personal health information as defined under the Act and *The Health Information Protection Act* ("HIPA").

[92] We note that in the response of CPS to the Applicant dated December 17, 2003, CPS does indicate that one of the reasons why access is denied is that *"…some of the information you requested contains personal information and cannot be disclosed"*. Reference is also made in that communication to section 29(1) of the Act. The reference is cryptic. Although the CPS communication was obviously with the Applicant as solicitor for persons related to a deceased person, no question was raised directly or indirectly at that time by CPS as to whether the Applicant had authority to act on behalf of the persons identified by the Applicant as clients.

[93] It was not until July 30, 2004 that in a letter to our office, CPS raised for the first time concerns about the right of the Applicant to seek the personal information in question. That letter included the following:

> "*In* [the Applicant's] *original request, he had requested fire investigation reports and did not specifically request the personal information of the deceased individuals…*

> [The Applicant is] *not the deceased's next of kin, nor was a consent form enclosed for* [the Applicant] *to request personal information on behalf of the deceased's family. If either would like to obtain access to the deceased's personal information, a consent letter must be submitted from the deceased's next of kin, and only then the head could consider releasing the personal information of the deceased prior to the 25 years elapsing."*

[94] I do not understand the assertion that a request for fire investigation reports in respect of a specific fire in which there were fatalities would not presumably capture information about those fatalities. Unless one takes an unreasonably narrow view of the access request, information about fatalities should have been seen as relevant and responsive to the access request.

[95] This is a curious exchange since CPS clearly invoked section 29(1) of the Act in its initial response to the Applicant and therefore must have realized that there was personal information that would be responsive to the request. Since the names, job titles and opinions of local authority employees or provincial government employees would not typically be treated as personal information by reason of section 24(2) of the Act, it is not clear what other personal information CPS was contemplating when it responded to the access request if not information about the deceased and those injured in the fire.

[96] Furthermore, our office has consistently stated that every government institution has an implicit duty to assist Applicants by responding to every access request openly, accurately and completely. [Saskatchewan OIPC Reports 2004-003, [12] to [15]; 2004-005, [19]; 2004-007, [13] to [17]]

[97] This duty is explicit in HIPA.

[98] In the circumstances, if there was a question about the legitimacy of the representative status of the Applicant, this should have been raised at the time CPS first responded to the Applicant and not eight and one-half months later.

[99] Furthermore, if a solicitor makes a representation to a public body that he or she has authority to act for a particular client, in my view, it would not normally be necessary for the public body to require documentation to support that authority. Unless there are circumstances which reasonably raise questions about the authority of a solicitor to act for an Applicant, I would anticipate that the public body would be fully entitled to accept

that representation of authority and act on that representation. Parenthically, if a solicitor makes false representations of authority to act for anyone, this would be a serious matter for the Law Society of Saskatchewan to address. The Law Society has extensive powers to discipline members of the Law Society. My hope is that in Saskatchewan we can avoid unnecessary documentation and barriers to the processing of access requests wherever possible.

[100] In any event, since CPS has explicitly challenged the authority of the Applicant to request access to personal information of the deceased, I will consider if the Applicant (law firm) or the mother of the deceased (client) may act as a surrogate for the estate of the deceased in question.

[101] With respect to CPS's concern that the Applicant is not the deceased's next of kin, CPS has contended as follows:

> "[The Applicant is] *not the deceased's next of kin, nor was a consent form enclosed for* [the Applicant] *to request personal information on behalf of the deceased's family. If either would like to obtain access to the deceased's personal information, a consent letter must be submitted from the deceased's next of kin, and only then the head could consider releasing the personal information of the deceased prior to the 25 years elapsing. If this were to happen, our office would like to stress that the deceased's personal information would be considered only within reports which do not fall within the local authority exemption (section 13(2) of the Act).*"

[102] Early on in the review process, the Applicant wrote our office:

> "*We act for the Estates of* [deceased couple] *who died from a fire at* [address] *on* [date] *around* [time]…*In this respect, we advise that* [name of client] *is the executrix of the Estates of* [the deceased couple] *and the guardian of their two orphaned children. We are her solicitors. We would be happy to provide her consent for disclosure of any personal information that relates to the deceased or their children. We also note that, in accordance with Section 30(2), the disclosure of the deceased's personal information to* [the client], [deceased daughter's] *mother, would not constitute an unreasonable invasion of privacy in these circumstances. Any further information can be severed under Section 8 by blacking out the names of the persons whose information requires protection (see General Motors, infra, at ¶15).*"

[103] In order to verify the above claim, we requested and obtained copies of the Letters of Administration from the law firm which were provided for the deceased couple (parents of the infant children). The law firm also indicated that "*we act for the infant children,* [first child] *and* [second child]". Personal information of both children is contained in

different parts of the record at issue with respect to this review. The client and the infant children are "next of kin" of the deceased couple.

[104] The surrogacy provision in the Act reads, as follows:

> "*59 Any right or power conferred on an individual by this Act may be exercised:*
>
> *(a) where the individual is deceased, by the individual's personal representative if the exercise of the right or power relates to the administration of the individual's estate;*
>
> …
>
> *(e) by any person with written authorization from the individual to act on the individual's behalf.*"

[105] The surrogate section of HIPA is section 56 that reads, as follows:

> "*56 Any right or power conferred on an individual by this Act may be exercised:*
>
> *(a) where the individual is deceased, by the individual's personal representative if the exercise of the right or power relates to the administration of the individual's estate;*
>
> …
>
> *(f) by any person designated in writing by the individual pursuant to section 15.*"

[106] The law firm's client is one of many individuals whose identifying information is contained in the record. We have confirmed that the Applicant is a surrogate and may access the personal information of the client and the other four family members, but not of those that are unrelated.

Are we dealing with personal information under the Act or personal health information under HIPA?

[107] On the issue CPS submitted the following:

> "*We had further exempted the information from release in the reports 4a-4p, and 6a and 6b as parts of the report contained personal information about an identifiable individual, pursuant to section 29(1) of the FOIPP Act. However, as other exemptions apply to this record in full, it would not be necessary to identify each case of personal information (as per section 29(1)).*
>
> *In the reports containing page numbers 8a and 10a-10j, these reports were exempt from release pursuant to 29(1) of the FOIPP Act as they contained personal information about an identifiable individual(s) as defined by section 24(1) of the FOIPP Act."*

[108] CPS provides references to the location of personal information data elements, but nothing further as to how these data elements qualify as personal information or personal health information under HIPA belonging to the Applicant's next of kin or to others. We requested that the department provide a response to the following:

> *"In the December 23, 2003 letter to our office,* [the Applicant] *states, "We also note that, in accordance with Section 30(2), the disclosure of the deceased's personal information to* [the client], [deceased daughter's] *mother, would not constitute an unreasonable invasion of privacy in these circumstances." What is your counterargument to this point?"*

[109] The Department's response, is as follows:

> "*In question 3.a, you have asked questions regarding personal information contained in these records. Questions 3.a.i and 3a.ii, asks us to identify the personal information we are claiming the records contain and which records contain that information. In response, I have outlined in the index which page numbers contain the personal information as exempted by section 29(1) of the Act. The personal information in these records would contain information defined as personal pursuant to section 24(1) of the Act.*
>
> [The Applicant] *has asked why this personal information could not be severed (Question 3.a.iii). I have noted on the index that the personal information is contained in page series' 4, 6, 8 and 10. Notwithstanding, in the case of the report pages numbered 4a to 4p (Regina Fire LIVE RMS FIELD INCIDENT REPORT – dated January 14, 2003), sections 13(2) and 15(1)(c) of the Act have been applied to exempt the full report from access. Further, for the report labeled pages 6a and 6b (Basic Fire Incident Report Form A, prepared by* [employee], *the OFC), section 15(1)(c) of the Act has been applied to exempt the full report from access. In both of these cases, there is personal information contained in the reports. Severing the personal information in these reports would be futile as the remainder of the reports are exempt from access pursuant to other exemptions.*
>
> *Page 8a (Rent for* [date], [location]*) has fully been exempted from access pursuant to section 29(1) of the Act. This report lists the suite numbers (1 through 24), monthly rent owing for the suite, the tenants names, and if payment has been received. In this document, the tenant's names would be severed, as well as the suite number, since that could also identify the tenant. As it could be assumed by* [the Applicant] *that* [description of order of data elements]. *That would only leave in the column outlining monthly rent fees, which would make this document severed beyond usefulness. The OFC could also argue that this document does not constitute a fire investigation report.*
>
> [The Applicant] *states in his letter to your office dated December 23, 2003, "We also note that, in accordance with section 30(2), the disclosure of the deceased's personal information to* [the client], [deceased daughter's] *mother, would not constitute an unreasonable invasion of privacy in these circumstances." (your question 3.a.iv). In* [the Applicant's] *original request, he had requested fire*

> *investigation reports and did not specifically request the personal information of the deceased individuals. Subsection 30(2) of the Act states:*
>
> > *"Where in the opinion of the head, disclosure of the personal information of a deceased individual to the individual's next of kin would not constitute an unreasonable invasion of privacy, the head may disclose that personal information before 25 years have elapses after the individual's death."*
>
> [The Applicant] *are not the deceased's next of kin, nor was a consent form enclosed for* [the Applicant] *to request personal information on behalf of the deceased's family. If either would like to obtain access to the deceased's personal information, a consent letter must be submitted from the deceased's next of kin, and only then the head could consider releasing the personal information of the deceased prior to the 25 years elapsing. If this were to happen, our office would like to stress that the deceased's personal information would be considered only within reports which do not fall within the local authority exemption (section 13(2) of the Act)."*

[110] Details on the record labelled by CPS as 8a, "Rent for [date], [location]" qualifies as personal information under the Act. These include the names of all tenants in the building, suite numbers, and totals of rent and how paid. The Applicant does not act as a surrogate for any of the individuals listed except for one. Only the one line item relating to this individual is releasable to the Applicant. We have indicated to CPS how to sever the document in question.

[111] So far we have been considering personal information about the Applicant and persons represented by the Applicant. There is also however information in the record that relates to named individuals employed by the Regina Fire Department and others.

[112] I will first deal with the information about those employees of the local authority.

[113] In determining which information should be severed as "personal information", we have considered the following:

> (1) Personal information subject to the Act does not include information that can be described as "work product". This concept is discussed at some length in our Report on *The Health Information Protection Act Draft Regulations*[13], page 16. By "work product" we mean information prepared or collected by an individual or

[13] Available on www.oipc.sk.ca

group of individuals as a part of the individual's or group's responsibilities or activities related to the individual's or group's employment or business.

The information in the record that shows the opinion or comments of a fire fighter who completes a report about a particular fire intended to be furnished to the OFC would be "work product" information and therefore not "personal information" of that public sector employee.

(2) Although the definition of what is or is not to be considered "personal information" in section 24 (2) of the Act mirrors section 23(2) of the LA FOIP Act, each section refers only to an employee of a government institution or an employee of a local authority but not to both. I do not expect that the Legislative Assembly would have intended to create a loophole that meant by transferring records from one level of government to another that the character of the records would change from non-personal information to personal information and therefore exempt from an access request. I find that the intention of the Assembly would have been that if the record of an opinion or view of a local authority employee given in the course of employment is transferred from a local authority to a government institution, the character of that record would not change to be "personal information".

[114] There also appears to be names of other third parties that qualify as personal information that require severing from the records in question.

[115] Personal health information in HIPA is defined as follows:

"*2 In this Act:*

…

(m) "personal health information" means, with respect to an individual, whether living or deceased:

(i) information with respect to the physical or mental health of the individual;

(ii) information with respect to any health services provided to the individual;

…

(iv) information that is collected:

(A) in the course of providing health services to the individual; or

> *(B) incidentally to the provision of health services to the individual;*"

[116] In order for HIPA to apply three things must be in place. The information in question must (1) qualify as personal health information under HIPA, (2) be in the custody or control of (3) a "trustee".

[117] CPS is a government institution that qualifies under section 2(t) of HIPA as a trustee.

[118] HIPA provides further that,

> "*4(3) Except where otherwise provided, The Freedom of Information and Protection of Privacy Act and The Local Authority Freedom of Information and Protection of Privacy Act do not apply to personal health information in the custody or control of a trustee."*

[119] Although CPS did not invoke HIPA in its submissions, I will consider the provisions of HIPA insofar as there may be personal health information in the custody or control of CPS.

[120] The word "collect" is defined under section 2(b) of HIPA to mean "*to gather, obtain access to, acquire, receive or obtain personal health information from any source by any means.*"

[121] Some of the records in question contain information about injuries sustained or specifics about those who died, but were collected by other parties and also by the OFC. This information would include personal health information.

[122] I find that it does not matter what the source of the personal health information may be since it would qualify as personal health information in the custody or under the control of CPS once collected.

[123] Some of the records contain personal information or personal health information of parties unrelated to the client and in respect of whom the Applicant does not act in a surrogate capacity. We will provide a severed version of the records in question to CPS to clarify which identifying data elements to withhold in preparation of the record for release.

[124] As noted earlier, those records labelled 4i, 4j, 4k, 4l, 4n, and 5b include information under the heading "Condition" which consists of an indication of minutes of exposure for different fire fighters. This would not be personal health information for the reasons described in our Report 2005-001 at [41] to [45].

CONCLUSION

[125] As noted earlier in this Report, I find that section 15(1)(c) of the Act does not apply in this case since any information with respect to a lawful investigation must relate to an ongoing investigation and not one already concluded.

[126] I find that the Office of the Fire Commissioner approached the subject access request under the Act on the basis of the class of information requested rather than assessing the specific facts of this case and applying the exemption provisions to those specific facts. I find, on the relevant authorities, that it is not a proper exercise of the discretion conferred on the government institution by reason of sections 13(2) of the Act to treat records in a particular fashion because of the general character of those records rather than considering the specific contents of the records responsive to the access request.

[127] I find that, although there may well be circumstances in other cases involving records of the OFC where one or more of the mandatory or discretionary exemptions in the Act would operate to deny access, the Office of the Fire Commissioner and by extension CPS has not met the burden of proof of establishing the exemptions in sections 15(1)(c), 13, and 29 of the Act that were invoked by CPS when it denied access to the Applicant.

[128] I understand that there are a number of concerns in the OFC about access requests under the Act and how they should be handled. I am hopeful that this Report will be of assistance to the OFC in clarifying a number of issues. Now that the Department of Justice has created an Access and Privacy Division for the purpose of training all government staff with respect to the Act, it would be useful if the OFC worked with that office and our office to expedite comprehensive training of all staff in the OFC of the implications of the Act and best practices for full compliance with the Act.

[129] I find that CPS did not properly invoke section 15(1)(c) of the Act.

[130] I find that CPS did not properly invoke section 13(2) of the Act.

[131] I find that CPS did not properly invoke section 29(1) of the Act save for those portions that are marked on the copy of the record provided directly from us to CPS.

[132] I acknowledge and appreciate the thorough and detailed submissions received from the Applicant, the OFC and CPS throughout this lengthy review.

RECOMMENDATIONS

[133] I recommend the release of all of the records in question to the Applicant forthwith after severing in accordance with our direction to CPS.

Dated at Regina, in the Province of Saskatchewan, this 31st day of March, 2006.

R. GARY DICKSON, Q.C.
Information and Privacy Commissioner for Saskatchewan