

**REPORT WITH RESPECT TO THE APPLICATION
FOR REVIEW OF [REDACTED] WITH RESPECT TO INFORMATION
REQUESTED FROM SASKATOON DISTRICT HEALTH**

[REDACTED] applied to Saskatoon District Health for access to records under *The Local Authority Freedom of Information and Protection of Privacy Act* (the "Act") which he identified as follows:

"Recently, the president of the Saskatoon and District Health Board resigned. I am requesting the following information regarding, (Mr. John Malcom's), (1) salary while employed; (2) the financial arrangements of his separation; and (3) the termination pension he received; (4) bonus he may have received."

By letter dated October 28, 1996 the Applicant was advised that:

"The exact, yearly salary paid to Mr. Malcom was \$125,000. The balance of the requested information or record falls within the exemptions contained in the Local Authority Freedom of Information and Protection of Privacy Act ("the Act"), specifically Sections 15(1)(b), 16(1)(b) and 18(1)(b) which generally exempt the disclosure of deliberations with employees and confidential labour relations information provided by a third party. Further, Sections 23(1)(b) and 23(1)(j) protect personal information relating to financial transactions or that would describe an individual's finances."

Having received a request for review from [REDACTED] I asked for and obtained copies of the records in dispute and was supplied with a copy of a Separation Agreement dated June 12, 1996 made between Saskatoon District Health Board and John Malcom as well as a copy of the Employment Contract entered into between the Board and Malcom dated August 30, 1993.

The Act provides that access shall be granted to all records unless they fall within some specific exemption contained in the Act. The burden of establishing that access for the record applied for may or must be refused lies with the Board (Section 51). If a third party is affected, notice of the Request for a Review must be given by the Board to the third party, in this case John Malcom. I am advised by the Board that this has, in fact, been done.

Provisions in the Act for the protection of the privacy of an individual place constraints on the disclosure of "personal information" but Section 23(2)(a) specifically provides that "personal information" does not include information that discloses:

"(a) the classification, salary, discretionary benefits or employment responsibilities of an individual who is or was an officer or employee of a local authority."

Section 10 of the Regulations made pursuant to Section 38(2)(s) of the Act provides that personal information may be disclosed:

“(g) to any person where the information pertains to:

(ii) the terms or circumstances under which a person ceased to be an employee of a local authority, including the terms of any settlement or award resulting from the termination of employment;”

However, records may fall under more than one exemption, and accordingly it is still necessary to consider the further exemptions claimed by the Board.

Section 15(1)(b) provides that access may be refused to a record that:

“(b) discloses agendas or the substance of deliberations of meetings of a local authority if:

(i) an Act authorizes holding the meetings in the absence of the public; or

(ii) the matters discussed at the meetings are of such a nature that access to the records could be refused pursuant to this Part of Part IV.”

Part IV deals with withholding personal information, and as indicated above would not be the basis for refusing access to any of these records. There is nothing in the records themselves to indicate that they were the subject of deliberations at a meeting of a local authority, and in any event the documents themselves do not constitute deliberations of any sort. They are, on their face, negotiated agreements, and of course the negotiations have long since been completed.

Section 16(1)(b) allows the Board to refuse access to a record which could reasonably be expected to disclose:

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

There may have been consultations or deliberations leading up to the conclusion of these agreements, but this is not to say that any such consultations or deliberations are disclosed by the Agreement which represents the conclusion of negotiations between John Malcom and a representative or representatives of the Board.

Section 18(1)(b) provides that access must be refused if a record contains:

“(b) financial, commercial, scientific, technical or labour relations information that is supplied in confidence, implicitly or explicitly, to the local authority by a third party;”

These agreements do not, in my view, contain any information of the sort contemplated by this subsection, i.e. information supplied in confidence by a third party, in this case Mr. Malcom. As previously stated, the documents are negotiated agreements and whatever information they contain was not supplied by Mr. Malcom but was created as a result of negotiation between the parties. It is quite impossible to examine these records and to identify any “Information supplied by a third party to the local authority.”

I have concluded that the Board is not entitled to the exemptions which it has claimed, and accordingly I recommend that the Applicant be given access to these records in accordance with the provisions of the Act.

Dated at Regina, Saskatchewan this day of January, 1997.

**Derril G. McLeod, Q.C.,
Commissioner of Information and
Privacy for Saskatchewan**