

**REPORT WITH RESPECT TO THE APPLICATION
FOR REVIEW OF [REDACTED] IN RELATION TO INFORMATION
REQUESTED FROM THE CITY OF YORKTON**

By an Access to Information Request form dated May 1, 2000, [REDACTED] (the "Applicant") requested information on behalf of the Yorkton Professional Fire Fighters Association, regarding an equity payout to the City of Yorkton (the "Respondent") in lieu of shares resulting from the demutualization of Mutual Life.

The request was worded as follows:

1. Amount of shares and intrest [sic] gained from Mutual Life payout.
2. Report from CIBC Mellon regarding all plans.
3. Former Mutual Life master policy.
4. New or present master policy of Clarica.
5. Everything related to this issue."

In a formal Request for Review dated July 23, 2000, addressed to me, the Applicant indicated that he had not received a reply to his application, which he submitted 45 days prior to his Request for Review. In the Request for Review, he asked for the following information:

"Amount of shares and intrest [sic] from Mutual Life payout
Report from CIBC Mellon regarding all plans
Former Mutual Life master policy new or present
Master policy of Clarica
Consulting report related to this issue. (DUTCH COMPANY)"

In a letter dated July 26, 2000, I wrote to the City of Yorkton as follows:

"Enclosed is the following:

1. A copy of Request for Review forwarded to me by [REDACTED], of your City, and dated July 23, 2000;

2. A copy of Access to Information Request Form dated May 1st, 2000.

Would you please advise me if you received the original of the enclosed Access to Information Request Form, and, if so, when. At the same time, would you advise me if any written response has been provided to the applicant, as required by Section 7 of *The Local Authority Freedom of Information and Protection of Privacy Act*.

I look forward to hearing from you in this regard.”

By letter dated August 2, 2000, Laurie-Anne Rusnak, of the City of Yorkton, responded to my correspondence as follows:

“We received your letter of July 26th, 2000 respecting the above-captioned file on July 31st, 2000 and provide the following information:

- On May 1st, 2000, [REDACTED], on behalf of the International Association of Fire Fighters Local #1527, completed the application form referred to in your correspondence. At this time, I was away on annual vacation and became aware of the application in mid-May. I am enclosing a copy of the City of Yorkton’s policy pertaining to this matter and advise that the \$20.00 filing fee referred to was not submitted by the International Association of Fire Fighters.
- I am also attaching correspondence dated March 30th, 2000 wherein the Fire Fighters are threatening legal action with respect to this matter. Unfortunately, the City of Yorkton and the International Association of Fire Fighters have been in a contract dispute respecting their collective agreement for some time. In light of the threats of legal action, I felt that in the best interest of the City of Yorkton this matter should be referred for a legal opinion prior to any information being provided.
- I believe that the information requested, some of which does not exist, may not be accessible. The City of Yorkton did not undertake to complete in-depth reports with respect to the portion of premiums paid by individual employees, and rather reallocated 50% of the proceeds as outlined in my memorandum of April 28th, 2000 equally to all current full-time employees of the City of Yorkton. I am attaching a copy of this memorandum for your information to better explain the situation.

[REDACTED] called my office inquiring as to the status of the request and I verbally advised him that the matter had been referred to the City solicitor’s office and that I would provide him with a written response in due course. I also advised him that I felt the information requested was exempt.

The International Association of Fire Fighters were [sic] not provided with a written response with respect to this application as the City of Yorkton has not

received information from our solicitor pertaining to this matter and therefore we must rely on the following:

Section 7(4) of *The Local Authority Freedom of Information and Protection of Privacy Act* 'Where an application is made with respect to a record that is exempt from access pursuant to this Act, the head may refuse to confirm or deny that the record exists or ever did exist.'

Section 7(5) 'A head who fails to give notice pursuant to subsection (2) is deemed to have given notice, on the last day of the period set out in that subsection, of a decision to refuse to give access to the record.'

With respect to the policies referred to as 3 and 4 in the application, each employee was previously provided with a hand-book on the Mutual Life Policy and the City of Yorkton is still awaiting the completion of the policy with Clarica and are hoping to have this available for all employees towards the end of August. These policies are accessible to all employees and would not be subject to an application under *The Local Authority Freedom of Information and Protection of Privacy Act*.

If you wish to discuss this matter further, please do not hesitate to call me at (306) 786-1718."

Then, by letter dated October 4, 2000, the City of Yorkton outlined its position with respect to the information requested by the Applicant in this matter:

"The position of the City of Yorkton with respect to the information requested as set out in [REDACTED] letter dated September 6, 2000 is as follows:

1. Items 1 and 2

[REDACTED] letter clearly states that the Yorkton Professional Fire Fighters Association Local 1527 'are presently entering into final and binding arbitration with the city. Employee Benefits being one of the main issues.'

Pursuant to Section 17(1)(d) of *The Local Authority Freedom of Information and Protection of Privacy Act*, this is information, the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of the local authority. Secondly, pursuant to subparagraph (f) of the said Section, this is information, the disclosure of which could reasonably be expected to prejudice the economic interests of the local authority.

2. Items 3 and 4

[REDACTED] can make an appointment with his office to review the information requested;

3. Item 5

The description of the information requested is too ambiguous.”

The Applicant provided me with his response to the October 4, 2000 correspondence from the City of Yorkton in his letter to me dated November 27, 2000. This correspondence stated as follows:

“City response Letter dated August 2 2000 page 2 para 3

Section 7(4) of *The Local Authority Freedom of Information and Protection of Privacy Act* ‘Where an application is made with respect to a record that is exempt from access pursuant to this Act, the head may refuse to confirm or deny that the record exists or ever did exist.’

Firefighter Response

The City has failed to support his claim by failing to show that this record is exempt from access pursuant to this Act Section 7(4).

City response Aug 2 2000 page 2 para 3

Section 7(5) 'A head who fails to give notice pursuant to subsection (2) is deemed to have given notice, on the last day of the period set out in that subsection, of a decision to refuse to give access to the record.'

Firefighter Response

The head has failed to give notice pursuant to subsection (2)(d) by failing to state the access is refused or by failing to identify stating that the access is refused setting out the reason for the refusal and identifying a specific provision of this Act on which the refusal is based.

The City has failed to support this claim by failing to show that this record is exempt from access pursuant to this Act Section 7(5).

7(2)(d) The head shall give written notice to the applicant within 30 days after the application is made stating that the access is refused setting out the reason for the refusal and identifying a specific provision of this Act on which the refusal is based.

The City has failed to meet the time constraints or support this claim by failing to show that this record is exempt from access pursuant to this Act Section 7(2)(d).

City response Letter dated Sept 27 2000

'Further to your letter of September 14, 2000 I have referred this matter to our City Solicitor and have requested that he provide a response to me no later than October 2, 2000 I apologize for this delay.'

We have not received a response to this date

The City has failed to meet the time constraints or support this claim by failing to show that this record is exempt from access pursuant to this Act Section 7(2)(d).

Fire Fighters support for claim.

After realizing the Demutualization had occurred, the city was approached. Following several months of negotiations we were then reimbursed by the city. We received a letter Dated [sic] April 28 2000 RE: Demutualization-Mutual Life of Canada. (Enclosed previously) The letter explains everything in percentages with no mention of the total allocations or shares. This letter also refers to the CIBC mellom [sic] report.

We feel due to the gravity of this situation and the substantial financial implications our requests fall under the following specific areas pursuant by [sic] the Act.

16(2)(b) is an official record that contains a statement of the reasons for a decision that is made in the exercise of a discretionary power or an adjudicative function.

16(2)(f)(ii) a substantive rule or statement of policy that has been adopted by a local authority for the purpose of interpreting an Act, regulation, resolution or bylaw or administering a program or activity of the local authority.

The spirit of this act "The Local Authority Freedom of Information and Protection of Privacy Act" focuses directly upon our requests and with the powers of this Statute I therefore request that this be applied to our application full and complete disclosure regarding this concern.

Request For the following

1. Amount of shares and Interest and dollar value from Mutual life Payout.
2. Report from CIBC Mellon regarding this issue.
3. Former Mutual Life Policy.
4. New or present master policy of Clarica
5. Everything related to this issue."

I then determined that I would undertake the review as requested by the Applicant and I determined that for the purposes of carrying out my review, it would be necessary for me to personally inspect the materials in question. I requested that the Respondent provide me with copies of the following documents:

- (a) Any and all documents related to the decision of the City of Yorkton respecting the division of the dollar value from Mutual Life payout and the calculation of that payout; and
- (b) Report from CIBC Mellon with respect to this issue.

I requested the materials by letter dated April 12, 2001 addressed to the City Clerk with the City of Yorkton, Laurie-Anne Rusnak. On May 17, 2001, I received the requested materials from the City of Yorkton. The covering letter from the City of Yorkton stated in part:

“Section 15 of *The Local Authority Freedom of Information and Protection of Privacy Act* states that a head may refuse to give access to a record that discloses agendas or the substance of deliberations of a meeting of a local authority if an Act authorizes holding the meetings in the absence of the public. Under the authority of *The Urban Municipality Act*, the City has passed Procedure Bylaw No. 19/98 providing for the following matters to be held in private:

- (a) matters related to litigation or communications respecting the Solicitors/Client relation;
- (b) personnel matters;
- (c) collective bargaining matters.

None of the information provided herein was ever presented at an open meeting. Some of the information enclosed is also third party information (Section 18 and Section 21). Article 17(g) notes that a head may refuse to give access to a record that could reasonably be expected to disclose information which could reasonably be expected to result in an undue benefit or loss to a person. As outlined in our letter of October 4, 2000, the City of Yorkton is still in negotiations with our fire fighters.”

The requested material consists of approximately 35 pages of correspondence, minutes of meetings, reports, statements and memoranda.

The relevant provisions of *The Local Authority Freedom of Information and Protection of Privacy Act* are as follows:

“15(1) A head may refuse to give access 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 or Part IV.

(2) Subject to section 29, a head shall not refuse to give access pursuant to subsection (1) to a record where the record has been in existence for more than 25 years.”

“16(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

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

...

(2) This section does not apply to a record that:

- (a) has been in existence for more than 25 years;
- (b) is an official record that contains a statement of the reasons for a decision that is made in the exercise of a discretionary power or an adjudicative function;
- (c) is the result of product or environmental testing carried out by or for a local authority, unless the testing was conducted:
 - (i) as a service to a person, a group of persons or an organization other than the local authority, and for a fee; or
 - (ii) as preliminary or experimental tests for the purpose of:
 - A. developing methods of testing; or
 - B. testing products for possible purchase;
- (d) is a statistical survey;
- (e) is the result of background research of a scientific or technical nature undertaken in connection with the formulation of a policy proposal; or
- (f) is:
 - (i) an instruction or guide-line issued to the officers or employees of a local authority; or
 - (ii) a substantive rule or statement of policy that has been adopted by a local authority for the purpose of interpreting an Act, Regulation, resolution or a bylaw or administering a program or activity of the local authority.

(3) A head may refuse to give access to any report, statement, memorandum, recommendation, document, information, data or record, within the meaning of section 35.1 of *The Saskatchewan Evidence Act*, that, pursuant to that section, is not admissible as evidence in any proceeding.”

“17(1) Subject to subsection (3), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

- (g) Information, the disclosure of which could reasonably be expected to result in an undue benefit or loss to a person.”

"18(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:

...

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

...

(2) A head may give access to a record that contains information described in subsection (1) with the written consent of the third party to whom the information relates.

(3) Subject to Part V, a head may give access to a record that contains information described in clauses 1(b) to (d) if:

(a) disclosure of that information could reasonably be expected to be in the public interest as it results to public health, public safety or protection of the environment; and

(b) the public interest in disclosure could reasonably be expected to clearly outweigh in importance any:

- (i) financial loss or gain to;
- (ii) prejudice to the competitive position of; or
- (iii) interference with contractual or other negotiations of;

a third party."

"21 A head may refuse to give information to a record that:

(a) contains information that is subject to solicitor-client privilege;

(b) was prepared by or for legal counsel for the local authority in relation to a matter involving the provision of advice or other services by legal counsel; or

(c) contains correspondence between legal counsel for the local authority and any other person in relation to a matter involving the provision of advice or other services by legal counsel."

The City of Yorkton claims that many of the requested documents are exempt from production on the basis that they were supplied by a third party in confidence. With respect to this potential exemption relied upon by the Respondent, as enunciated in Section 18(b), it is my view that there is nothing in those materials that indicates that such material was supplied by the third parties in a manner that was intended to be confidential by the writers of those communications. As such, I recommend that the following materials be disclosed to the Applicant:

1. Cheque payment confirmation received by the City of Yorkton, July 27, 1999;
2. Letter from the City of Yorkton to CIBC Mellon Trust dated January 4, 2000;
3. Letter from Clarica to the City of Yorkton dated January 17, 2000 with attachments;
4. Letter from CIBC Mellon Trust to the City of Yorkton dated January 25, 2000.

With respect to the balance of the materials sought to be exempted by the Respondent, it is my view that the remainder of these documents should not be disclosed to the Applicant, as they either contain solicitor-privileged materials (and as such, are exempt pursuant to Section 21 of the Act) or they reflect consultations or deliberations between the Respondent's officials and employees regarding the issues at hand (and as such, are exempt pursuant to Section 16 of the Act).

Dated at Regina, in the Province of Saskatchewan, this 3rd day of July, 2001.

GERALD L. GERRAND, Q.C.
Commissioner of Information
and Privacy for Saskatchewan