



# FOIP FOLIO



## ABANDONED HEALTH RECORDS

On March 23, 2011 our office seized patient files and records from a recycling bin in south Regina. We then undertook an investigation under *The Health Information Protection Act* (HIPA) to determine the source and circumstances of those records.

Despite widespread media reporting of that discovery, in April we were alerted by citizens to another four cases where patient files and records were improperly treated as trash or not properly stored or destroyed. This included one case in Saskatoon and three in Regina.

In response to these concerns our office wrote each of Saskatchewan’s health regulatory bodies and colleges requesting that they distribute to each of their members an [Advisory for Saskatchewan Health Trustees for Record Disposition](#). That advisory is now accessible on our website, [www.oipc.sk.ca](http://www.oipc.sk.ca) under the *What’s New* tab.

All trustees are reminded of their important obligations in sections 16, 17 and 18 of HIPA. This topic was also considered in previous FOLIO issues including March 2008, p. 2, April 2008, p. 7 and news releases on March 24, 2008 and April 6, 2008.

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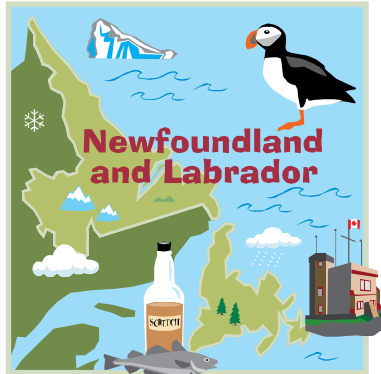
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## NEWFOUNDLAND OIPC CONSIDERS DUTY TO ASSIST

A very interesting development in Newfoundland and Labrador is [Report A-2011-002](#) from the Information and Privacy Commissioner (IPC) **Ed Ring**.

This deals with a Freedom of Information (FOI) response by Executive Council that it had no responsive record. A key recommendation was that Executive Council should attempt to develop an effective working relationship with applicants in order to facilitate the access to information process. After considering decisions from the Ontario, British Columbia and Alberta IPC offices, the Commissioner found that Executive Council had



failed to meet the duty in their legislation to assist applicants by not contacting the Applicant to seek clarification of the request. This Report is available at <http://www.oipc.nl.ca/>.

Although *The Freedom of Information and Protection of Privacy Act* (FOIP) and *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) in Saskatchewan do not include an explicit duty to assist applicants, our office has held that it is implicit in both statutes. This was considered by the OIPC in our Review Reports LA-2009-002, F-2004-003, F-2006-001, F-2006-002, F-2005-005, F-2004-007 and F-2004-005.

## SOUTH AFRICAN CONFERENCE ON TRANSPARENCY

A number of subscribers to the Saskatchewan FOIP FOLIO have expressed interest in the story last month about the recent access to information developments in Africa. You can access many of the materials from

the Johannesburg conference at Wits University by going to [http://journalism.co.za/index.php?option=com\\_content&Itemid=100120&catid=162&id=3963&view=article](http://journalism.co.za/index.php?option=com_content&Itemid=100120&catid=162&id=3963&view=article).

## MORE TRANSPARENCY MAY BE AN ANSWER TO VOTER DISENCHANTMENT



An interesting survey by the Pew Research Centre in the U.S. found that citizens are far happier with their local government in areas where government information is more accessible.

Citizens who viewed their local government as doing a “very” or “pretty good” job of sharing information were 38% more likely to view their municipal government as satisfactory. You can read the survey report at <http://pewresearch.org/pubs/1909/online-community-information-systems-civic-life-social-networks>.

<h1>Spring has sprung!</h1>	
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## ONTARIO HOSPITALS SHREDDING TO DEFEAT FUTURE ACCESS REQUESTS?

Unlike Saskatchewan, Ontario hospitals have not been subject to FOIP. This is about to change on January 1, 2012 when they will become fully subject to the Ontario *Freedom of Information and Protection of Privacy Act*.

In anticipation of that legal change, a Toronto law firm that acts for a number of hospitals advised its clients on its website to “cleanse” files of anything that might embarrass them when the new transparency requirements go into force next year.

This advice has been the subject of strong criticism by the Ontario IPC **Ann Cavoukian** and by some legislators in Ontario.

This incident underscores the message that attitudes and organizational culture are essential features to achieving transparency and accountability. The strongest access law in the world simply isn’t sufficient if government leaders are not committed to those goals. In Saskatchewan, regional health authorities are subject to both LA FOIP and HIPA. You can view both of these laws at [www.oipc.sk.ca](http://www.oipc.sk.ca) under the *Legislation* tab.



## EPSILON PRIVACY BREACH



Epsilon is a very large internet service provider which sends each year about 40 billion emails. It has been recently reported in the U.S. that someone has stolen from

Epsilon a large volume of names and email addresses of individuals. The concern is that this stolen information will lead to major phishing attacks and proliferation of malware. Phishing means that you receive emails that are cleverly designed to appear to

be legitimate emails coming from a trusted business. You might then provide further information about yourself that is exploited for purposes of identity theft or other kinds of fraudulent activity.

More information is available at [http://www.epsilon.com/News%20&%20Events/Press\\_Releases\\_2011/Epsilon\\_Notifies\\_Clients\\_of\\_Unauthorized\\_Entry\\_into\\_Email\\_System/p1057-13](http://www.epsilon.com/News%20&%20Events/Press_Releases_2011/Epsilon_Notifies_Clients_of_Unauthorized_Entry_into_Email_System/p1057-13)

## EUROPEAN UNION (EU) DIRECTIVE ON COOKIES

In May, 2011 a new EU directive comes into force that applies to businesses and organizations that operate websites that track their users’ cookies. This will require that those organizations must obtain the explicit consent from visitors to their websites for the use of cookies. Cookies are a device that allows an organization to track and record what a visitor views when they explore a website. This new law doesn’t

outlaw the use of cookies but rather is an attempt to enhance transparency and consumer control. More information is available at <http://www.research-live.com/news/government/eu-cookie-rule-passes-but-ambiguous-still-unclear/4001388.article>





## PUBLIC INTEREST CONSIDERATIONS RESULT IN 50% DECREASE IN ACCESS FEE



An applicant in Australia was told that the cost to obtain a video showing guards removing asylum seekers from a detention centre after attending funerals of a boat tragedy would be \$53,093.

Unfortunately, because of a curious feature in Saskatchewan’s FOIP Act, this kind of reduction could not even be recommended by the Saskatchewan OIPC. Our FOIP Act requires that in order to get a fee waiver the Applicant must show that records sought would be in the public interest **AND** that the applicant cannot afford the fee [Section 9(5) and FOIP Regulation 9]. That effectively eliminates a fee waiver request from any major media organization no matter how compelling the public interest. This dual test appears to be a feature unique to our province.

The Information Commissioner for Australia, **Dr. James Popple**, determined that providing access to the documents was in the public interest and reduced the charges by 50%. More information is available at <http://www.oaic.gov.au/about/exec.html>.

## ONTARIO COURT PROTECTS WORK COMPUTER CONTENT

The Ontario Court of Appeal determined that a teacher had a reasonable expectation of privacy with respect to personal files located on his laptop computer supplied by his employer vis a vis police.

The school’s computer technician discovered nude images of a student. The school principal was alerted and the disk made by the technician was turned over to police. At issue in this case was whether the search and seizure by police without a warrant offended the provision in section 8 of the *Charter of Rights and Freedoms*.

The Court of Appeal found that both the laptop and the image on the hard drive taken by the police should be excluded from the evidence. Interestingly, the Court found that the school had the power to search the

computer and that the seizure of the laptop was permitted and did not violate any Charter rights.

What was key was that although the computer was supplied by the employer, the teachers were allowed to use the computer for personal purposes, they could store personal content on the hard drive and they could use passwords to exclude others from the laptops. This decision also underscores the need for employers to have a clear and appropriate computer use policy for all staff. The decision is [R. v. Cole, 2011 ONCA 218](#).



**Our Mission:**  
The people of Saskatchewan shall enjoy the full measure of information rights that have been affirmed by the Legislative Assembly of Saskatchewan



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## NO COMMON LAW RIGHT TO SUE FOR BREACH OF PRIVACY IN ONTARIO

Unlike Saskatchewan, Newfoundland and Labrador, Manitoba and British Columbia, Ontario has no statutory right to sue for breach of privacy. In a recent Ontario decision, **Mr. Justice Kevin Whitaker** of the

Ontario Superior court has declared that Ontario also has no tort (action for a civil wrong) for breach of privacy. You can view this decision at [Jones v. Tsighe](#) 2011 ONSC 1475 (CanLII)

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## ONTARIO COURT ORDERS DISCOVERY OF SOCIAL NETWORKING PERSONAL INFORMATION

On March 4, 2011 the Ontario Superior Court ordered the defendant in an action for personal damages to make available to the Plaintiff's counsel the relevant portions of his Facebook account and contents.

Furthermore, the defendant was ordered to preserve his Facebook page just as any litigant is required to preserve potentially relevant



documentation. The court also declared that the pages at a social networking site or internet site including a Facebook page are documents for the purpose of discovery and must be listed in a party's affidavit of documents, if relevant. The citation is [Ottenhof v. Ross](#), Kingston Police Services Board et. al. 2011 ONSC 1430 (CANLII).

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## YOUR SOCIAL NETWORKING SITE ISN'T SECRET



A recent decision by the New York Supreme Court concluded that in a lawsuit brought by a plaintiff who sought compensation for injuries, the defendant's right to discovery of documents included the right to access not only the private information on the Plaintiff's social networking accounts but also to historical information that was previously deleted.

This recent decision is [Romano v. Steelcase, Inc.](#), 907 N.Y.S. 2d 650 (N.Y. Sup. Ct. 2010). The New York Supreme Court was influenced by a Canadian case discussed in past issues of the FOIP Folio namely, [Leduc v. Roman](#), [2009] O.J. No. 681 (O.S.C.J Feb. 20, 2009).

On the U.S. west coast however a federal Court quashed subpoenas from the defendant to social network providers insofar as they requested private, access-restricted content. The citation for this California decision is [Crispin v. Audigier, Inc.](#), 717 F. Supp. 2n 965, 970 (C.D. Cal. 2010).



## THE PUBLIC INTEREST IN IN-HOSPITAL DEATH REVIEW

There has been a good deal of fallout from the recent decision of the Right to Information Commissioner in Queensland, Australia.

**Commissioner Clare Smith** determined that documents that detail reviews of in-unit deaths in emergency departments of specified hospitals during a defined period (not including particulars of either patients or staff) are not exempt from disclosure under the access legislation.

The Commissioner stated that:

*“Disclosure of the information in issue will provide details of the type and scope of review of specific emergency department incidents. It will better inform the public about review practices when deaths occur in public hospitals and contribute to debate on the performance of QH emergency departments. In this*

*regard I note that the word ‘positive’ is construed broadly in the context of access to information legislation and encompasses various effects that disclosure might have including enlivening public debate, generating criticism or leading legal process”.*

The health department has gone to court to prevent release of this information. This important decision warrants consideration by Canadians since in Canada any quality of care information is often treated as privileged information that is not normally available to the public.



## INJURIES TO CANADIAN SOLDIERS DISCLOSED THROUGH ACCESS REQUEST



An access to information request has uncovered information about a high rate of domestic violence involving troops recently returned from a combat tour in Afghanistan in 2007.

This is an interesting example of important information becoming public even though the federal government had not

otherwise disclosed this information. Such information, once in the public domain, allows citizens to better understand the high costs both emotionally and mentally borne by our soldiers.

The revelation raises important questions about whether there is an appropriate range of necessary services for returning soldiers. In Saskatchewan de-identified statistical or aggregate information is not “personal information” and is releasable under FOIP and LA FOIP.

## NOVA SCOTIA REVIEW OFFICER CHIDES UNIVERSITY FOR LACK OF COMMITMENT TO OPENNESS

On March 7, 2011 Nova Scotia Review Officer **Dulcie McCallum** issued her report with respect to Mount Saint Vincent University ([Report FI-08-108](#)). Ms. McCallum made the following statement in her

Report:

*“I want to premise my Recommendations with the*

*(Continued on page 7)*



(Continued from page 6)

following. I am concerned that this case may show a lack of commitment to FOIPOP at the Mount. This not just about the person responsible as the delegated authority under the Act. Some of the findings in this Review point to serious problems, which can only be resolved by the Mount's leadership. When applicants under the legislation are advised the Act does not

apply while at the same time not being told they have a right to file a Request for Review, this is very problematic. The commitment to the right to access information must come from the university as a matter of principle and it must support the important work of the FOIPOP Administrator in practice.”

The full report is available at [http://foipop.ns.ca/rep\\_recent.html](http://foipop.ns.ca/rep_recent.html).

## IS YOUR DRIVER'S LICENCE AND LICENCE PLATE NUMBER YOUR PERSONAL INFORMATION?

In the province of Alberta, the recent majority decision of the Court of Appeal was that although the driver's licence was personal information, the vehicle plate number did not qualify as "personal information" since it was linked to a specific vehicle and not a particular person. Also, the plate number is openly available for all to see it.

The dissenting judge found that since the licence plate information traces back to an identifiable individual, it did qualify as personal information in context. This decision involved that province's *Personal Information Protection Act*.

As privacy commentators have observed, this decision could have profound implications for privacy

protection particularly in the context of IP addresses that have been held by the Privacy Commissioner of Canada to qualify as personally identifiable information even though they are openly available. We understand that leave to appeal to the Supreme Court of Canada is being sought. This Alberta decision is consistent with a much earlier decision of the Saskatchewan Court of Appeal in **GMAC v. SGI** [1993] S.J. No. 601.



## HEALTH INFORMATION IN BRITISH COLUMBIA



For anyone interested in health information issues in the province of British Columbia, there is a new website designed to provide information to the broad BC public. The URL is <http://www.healthinfoprivacybc.ca/home/>.

- Your health information privacy rights
- When you can block people from seeing your health information
- Where personal health information flows within the health system
- What health care providers in BC are allowed to do with personal health information.

This includes useful information about the health care system in that province and includes:



## FEDERAL POLITICAL LEADERS URGED TO ADDRESS AN ACCESS TO INFORMATION SYSTEM IN CHAOS

Newspapers Canada, the BC Freedom of Information and Privacy Association and the Canadian Taxpayer Federation have challenged all national party leaders to discuss what they will do to remedy an access to information system that is badly broken.

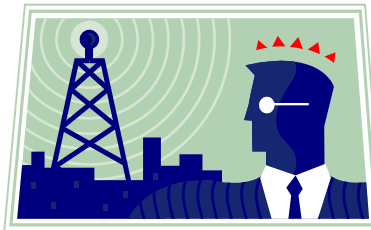
Our 28 years of experience with the federal *Access to Information Act* (ATIA) has provided plenty of evidence that reform of ATIA is long overdue. This is a point that has been repeatedly made by successive Information Commissioners of Canada, the Canadian Bar Association, public advocacy groups, academics,

journalists, task forces and Parliamentary committees. For more information see: [http://fipa.bc.ca/library/News\\_Releases/Joint\\_News\\_release\\_April\\_6\\_2011-\\_eng3.pdf](http://fipa.bc.ca/library/News_Releases/Joint_News_release_April_6_2011-_eng3.pdf).

To add insult to injury, a recent analysis of access regimes in the UK, Australia, New Zealand and Ireland found Canada ranked dead last. This is detailed in [Assessing the Performance of Freedom of Information](#) by **Robert Hazell** and **Ben Worthy** in *Government Information Quarterly* Vol. 27, Issue 4, October 2010, pp. 352-359.

## RADIO FREQUENCY IDENTIFICATION (RFID) PRIVACY FRAMEWORK ADOPTED BY EUROPE

The European Network and Information Security Agency (ENISA) have now endorsed the [Privacy and Data Protection Impact Assessment Framework for RFID Applications](#).



This is available at: [http://ec.europa.eu/information\\_society/policy/rfid/documents/info-so-2011-00068.pdf](http://ec.europa.eu/information_society/policy/rfid/documents/info-so-2011-00068.pdf).

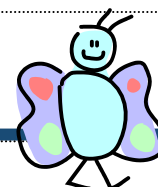
## DATA AT YOUR FINGERPRINTS



[Data at your Fingertips: Biometrics and the Challenges to Privacy](#) is an excellent primer produced by the Privacy Commissioner of Canada on biometrics and the systems that use them. It also describes some of the privacy implications identified in this

emerging field, as well as measures to mitigate the risks.

The term “biometrics” applies to a range of techniques, devices and systems that enable machines to recognize individuals or confirm or authenticate their identities. Such systems measure and analyze people’s physical and behavioural attributes, such as facial features, voice patterns, fingerprints, palm prints, finger and palm vein patterns, structures of the eye (iris or retina) or gait. This document is available at [www.priv.gc.ca](http://www.priv.gc.ca).





## DEADLINE APPROACHING FOR CULLITON AWARD NOMINATIONS



Your organization can join a number of Saskatchewan organizations that have distinguished themselves in terms of innovation and creativity in meeting FOIP requirements. Organizations that have been honoured in the past include the City of Regina, Saskatchewan Health Quality Council, Saskatoon Regional Health Authority and the Saskatchewan Institute for Applied Science and Technology (SIASST).

The Right to Know (RTK) steering committee is again seeking nominations for the *Chief Justice E.M. Culliton Right to Know Award*. The intent of the award is to celebrate and to recognize leadership in promoting open and accountable government.

To be eligible, the body must be a Saskatchewan government institution (provincial government Ministry, Crown corporation, board, commission or agency) or a local authority (e.g. regional health authority, municipality, library, school, university or college).

The nominee should be an agency that has demonstrated some or all of the following qualities:

- Leadership in promoting public access to the agency’s information;
- Creativity in building public awareness of access to information;
- Excellence in orientation of, and service training in, employee access to information responsibilities; and/or
- Innovation in the development of tools to promote or facilitate access to information.

The **deadline** for nominations is **June 30, 2011** and can be self-initiated or third party. Nominations should include a letter of nomination (up to 1,000 words), and samples of materials relevant to the nomination (testimonials or other material).

The award will be presented during Right to Know Week which will be held September 26—30, 2011

Nominations can be sent to the Right to Know Steering Committee, c/o # 503, 1801 Hamilton Street, Regina, SK S4P 4B4 or fax (306) 798-1603 or email [shickling@oipc.sk.ca](mailto:shickling@oipc.sk.ca).

## MARK YOUR CALENDAR!



**May 26, 2011:** PSA Expo 2011, hosted by the Government of Saskatchewan’s Privacy and Security Awareness Month Planning Committee, Regina, SK. This event is open to all Saskatchewan government employees. For more information visit <http://www.justice.gov.sk.ca/psaexpo2011>

**June 15 — 17, 2011:** Access & Privacy Conference 2011, Edmonton Marriott at River Cree Resort, Edmonton, Alberta. For more information visit [accessandprivacyconference2011](http://accessandprivacyconference2011).



## Employment Opportunity at the OIPC!

### Portfolio Officer (Term)

For more information, please visit our website at [www.oipc.sk.ca](http://www.oipc.sk.ca) or click on the following links.

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