

FOIP FOLIO

April 2004

A New Milestone

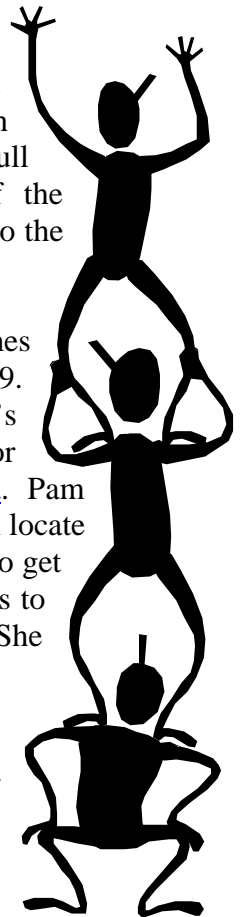
We are delighted to announce that we now have approximately 1000 subscribers to this little newsletter. Our most remote subscriber is the office of the New Zealand Privacy Commissioner! Thanks to all of you for your support and interest in Saskatchewan access and privacy developments. This newsletter and all past newsletters are also available on our website: www.oipc.sk.ca.

Meet Our OIPC Team!!

Five months ago we opened the doors of our new Office of the Information and Privacy Commissioner (OIPC). We are happy to report that our team is now in place and working hard to ensure that the people of Saskatchewan enjoy the full measure of their access and privacy rights. Our team is comprised of the Commissioner (Gary Dickson), Office Administrator (Pam Scott) and Assistant to the Commissioner (Diane Aldridge).

Pam will likely be your first contact when you call or write our office. Pam comes to our office from the Legislative Assembly office where she worked since 1989. A Moose Jaw native, Pam worked in Hansard, Administrative Services, Clerk's Office and Journals branches under the 'Dome'. Pam is largely responsible for production of the FOIP FOLIO and manages our OIPC website, www.oipc.sk.ca. Pam was initially seconded from the LAO to help former Commissioner Dick Rendek locate office space, hook up phones, computers, and do the thousand chores necessary to get our new office operational. Pam is delighted to finally have furniture and places to put files. It was getting hard to move around all of the boxes in the office. She reports that the first 5 months have been exciting, interesting, eventful and busy.

Diane, as Assistant to the Commissioner, will be involved with all parts of the OIPC mandate. Diane graduated from the University of Regina with a Bachelor of Education degree. She then worked in Rose Valley as a Community Wellness Coordinator for the Pasquia Health District. She spent four years as the Program Coordinator/Director for the Grinning Lizard Teen Wellness Centre operated by the Moose Jaw-Thunder Creek Health District. Most recently Diane has been working for the Workers' Compensation Board in the Prevention, Safety & Return-to-Work Department. Diane will undertake a good deal of the OIPC public education activity. Diane grew up on a farm outside of Wapella and says "*I think the thing that surprises people about me when they meet me for the first time is how much I truly know about cows. I love every corner of this province and look forward to traveling throughout it as part of my position with the OIPC.*"



E-Government through a Saskatchewan Filter

We recommend that you check out *E-Government Reconsidered: Renewal of Governance for the Knowledge Age* now available through the Saskatchewan Institute of Public Policy at the University of Regina. This is a collection of 13 thoughtful and, in some cases, provocative essays reflecting on the promise and the reality of E-Government. We commend to you in particular *Section II Information Management and the Dual Challenges of Transparency and Privacy*. Federal Information Commissioner John Reid describes information as the oxygen required by democratic institutions and initiatives. He contends that access to information legislation requires effective information management that achieves:

Availability, accessibility, stewardship, creation, retention and retrieval, privacy and security and life-cycle management.

Our Ontario colleagues, Tom Mitchinson and Mark Ratner, persuasively advocate the adoption of Access Design Principles (ADP). ADP can be thought of as the access equivalent to the Fair Information Practices in the privacy sphere. ADP would enhance and strengthen freedom of information laws such as the Saskatchewan FOIP Act.

As the Saskatchewan government moves to strengthen privacy protection, it will be important to also address these excellent suggestions to ensure that we have true transparency and accountability in the business of government.

Helpful Hints

A recent addition to our website www.oipc.sk.ca is a *Helpful Hints* section under the "Resources" tab. We have discovered that government departments and local authorities have been unclear as to what will be required of them when our office undertakes a review under *The Freedom of Information and Protection of Privacy Act* (FOIP) or *Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). We decided it would be useful to suggest the best way a public body can prepare its submission. We have been guided by materials produced by the Nova Scotia Review Officer and by other OIPC offices in Ontario and Alberta. Our suggestions relate to both the (1) *Record* and the (2) *Written Submission*. The *Record* is the package of documents that would be responsive to the applicant's access request. The *Written Submission* is the argument intended to make the case as to why certain records should not be disclosed. Both the FOIP Act and LA FOIP Act make it clear that records SHOULD be released unless a statutory exemption, either discretionary or mandatory, applies. The department or local authority has the burden of proof to establish that an exemption applies. The burden is not on the applicant to establish no exemption applies.

If you have any suggestions as to other kinds of information you would like to see on our website please call Pam at (306) 787-8350.

Yorkton Update

Our office recently was invited to attend the inaugural meeting of the Sunrise Health Region Privacy Committee. It is clear that a lot of preparatory work has already been done in this Region. Ambitious plans have been developed for extensive training of health care workers. Congratulations to Brenda Leppington and her colleagues for their hard work and leadership on the HIPA file!

Radio Frequency Identification (RFID)

Serious concerns have been raised about the proliferation of RFID technology. The Alberta Commissioner most recently has urged businesses to consider privacy obligations before implementing RFID in their operations. RFID tags have been developed for retailers to monitor and manage inventory and purchasing data. They will likely soon eclipse the familiar bar codes we are accustomed to. An RFID chip can be embedded into items. This chip can be read without the knowledge of the individual carrying the particular product. A concern is the prospect that RFID tags can be active after check-out and not disabled before they leave the store. There are all kinds of possible applications for RFID outside of the retail sector. Ann Cavoukian, the Ontario Information and Privacy Commissioner, has produced an excellent paper -- *Tag, You're It: Privacy Implications of Radio Frequency Identification (RFID) Technology*. This can be accessed through the Ontario Commissioners Website: www.ipc.on.ca (actual paper can be found at <http://www.ipc.on.ca/docs/rfid.pdf>)

FOIP & PIPEDA

Our office recently did a presentation in Prince Albert to the Saskatchewan Outfitters Association. Association members have to deal with both the federal *Personal Information Protection and Electronic Documents Act* and the provincial *Freedom of Information and Protection of Privacy Act*. PIPEDA applies since guides and outfitters are private businesses. FOIP is involved since there is an exchange of personal information with provincial government departments. This illustrates the importance of organizations carefully determining which privacy laws apply to them and under what circumstances.

Public Presentations

Our office has now provided approximately 42 public education presentations in the communities of Regina, Saskatoon, Prince Albert, Swift Current, Yorkton and Moose Jaw. If your organization would like to arrange a FOIP, LA FOIP, HIPA, or Privacy orientation session all you have to do is contact our office at 787-8350. Give us some suggested dates, approximate size of the audience and the kinds of questions your audience is wrestling with.

OIPC “Ombudsman Powers” and what they mean

In March, the Federal Court Trial Division issued judgment in 25 cases involving the exercise by the Information Commissioner of Canada of its investigative powers to review Prime Ministerial agendas and other government records. Since that Commissioner’s powers are very similar to the powers of the Saskatchewan OIPC, the court’s analysis of the issues before it is very useful to our Saskatchewan access and privacy community. The full decision can be accessed at <http://www.fct-cf.gc.ca/bulletins/whatsnew/T-582-01.pdf> -- but we warn you it is 188 pages long!

What’s new in Health Information

In the April 1, 2004 issue of the *New England Journal of Medicine*, there is a paper from Canadian health researchers who attempted to obtain consent to use health information on stroke patients. They were able to obtain consent in less than 40% of cases in their first consent effort. A second effort produced consent in just 50% of cases. The researchers argue that attempting to get consent from research subjects for some purposes could be impractical.

The same publication addresses similar criticisms of the United States *Health Insurance Portability and Accountability Act* (HIPPA).

(<http://content.nejm.org/cgi/content/short/350/14/1414>) Both pieces serve to underscore the fact health information laws can be tricky and challenging. Trustees must be prepared to invest time and energy into proper training of staff so staff members can confidently know what can or cannot be done with patient information.

Privacy does matter to folks

Is privacy important to people other than FOIP/HIPA Coordinators? You might be interested to know that since the U.S. created a DO NOT CALL registry the Federal Trade Commission has logged more than 56 million requests for phone numbers to be added to the registry.

Privacy & Internet Music

Internet Service Providers may not be required to disclose the identities of persons suspected of uploading music from the Internet. The Federal Court of Canada has recently refused the request of the Canadian Recording Industry Association for an order requiring ISPs to identify persons who offer music to others for downloading purposes. The decision will likely be appealed.

New Website feature

We are now starting to post to our website the full text of reports of the OIPC in formal reviews under Part VII of the FOIP Act, Part VI of the LA FOIP Act and Part VI of HIPA. Hopefully it will be easier to quickly identify whether this will impact your particular office. You will note that the public body is identified in the reports consistent with the theme of accountability and transparency. The applicant will not normally be identified.

Manitoba advocacy group

In Manitoba an interesting coalition of lobby groups has been created to promote an all-party review of the *Freedom of Information and Protection of Privacy Act* in that province. The coalition known as the Manitoba Access to Information Network was created by the Manitoba Library Association, the Provincial Council of Women, the Manitoba Eco-News and Canadian Taxpayers Association. Similar groups in British Columbia and Alberta have had a significant impact on legislation and policy in those provinces.

Future Events

April 20 to 23 -- CFP 2004: 14th Annual Conference on Computers, Freedom and Privacy at Berkeley, California <http://cfp2004.org/>

April 27 -- READY OR NOT...Privacy Legislation Compliance in Saskatchewan offered by Saskatchewan Institute of Public Policy in Regina.
<http://www.uregina.ca/sipp/upcomingevents0304/policyseminar0304.htm>

April 28 & 29 -- ARMA Saskatchewan Chapter in Regina. For further information, contact Jodie Woykin; Ph: (306) 751-1332 (Regina) or e-mail: jwoykin@sgi.sk.ca

May 4 & 5 -- Privacy Laws and Effective Workplace Investigation offered by Insight Information Co. at Calgary
http://www.insightinfo.com/conferences/brochures/brochure.cfm?product_code=LAC04659

May 8 -- Ehealth 2004: offered by CIHI and COACH in Victoria, B.C.
<http://www.e-healthconference.com>

May 17 & 18 -- *Privacy Compliance in Healthcare* hosted by Insight in Toronto
http://www.insightinfo.com/conferences/brochures/brochure.cfm?product_code=HCC04661

June 9 to 11 -- University of Alberta Access and Privacy Conference in Edmonton
<http://www.govsource.net/programs/iapp/conference/main.nclk>

June 21 -- Western Canadian Privacy Compliance in Calgary
<http://www.canadianinstitute.com/frames.cfm>

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