



FOIP FOLIO

August 2007

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WELCOME BACK PAM



The OIPC is delighted to welcome **Pam Scott** as our Manager of Administration. Pam has returned to our office from the Office of Elections Saskatchewan earlier in August. Pam succeeds **Candace Malowany**. Many of you will have met Pam when she worked with Gary Dickson to create the full time Commissioner office in November 2003. Thanks to Candace and also to **Colleen Zimmer**, who filled in during Candace's one year leave, for their contributions to the OIPC.

RIGHT TO KNOW EVENTS



September 28, 2007 is International Right to Know Day. In Canada, the week of October 1-5, 2007 has been designated as 'Right to Know Week'. The purpose is to draw attention to the importance of 'access to information' laws and procedures in ensuring that public bodies are transparent and accountable to citizens. The Saskatchewan Government and the cities of Regina and Saskatoon will officially proclaim October 1-5, 2007 as Right to Know Week. In Saskatchewan, and almost every other province, many events have been organized during Right to Know Week. Those events organized by the Saskatchewan Right to Know Committee are described at www.oipc.sk.ca under the *Right to Know* tab.

Right to Know events include the following:

October 1-5, 2007 Regina Public Library will be showing films related to the public's right to know throughout the week at the central library.

Tuesday, October 2, 2007

4pm-6pm Right to Know Reception featuring John Reid
SIPP – Saskatchewan Institute of Public Policy
University of Regina, College Ave. Campus, Gallery Building, 2nd Floor
Presentation of Chief Justice E.M. Culliton Award
Keynote Speaker: **John Reid**, former Information Commissioner of Canada.
Wine and Cheese Reception to follow

Wednesday, October 3, 2007

12pm-2pm Right to Know Luncheon featuring John Reid
Faculty Club, University of Saskatoon
Presentation to High School Essay Contest Winner
Keynote Speaker: **John Reid**, former Information Commissioner of Canada.

FOIP FOLIO

RIGHT TO KNOW EVENTS (CONT'D)

Thursday, October 4, 2007

10am-12pm SIPP Lecture Series (in association with the U of R Library)

"Privacy and the Right to Know: Rights, Complications and Limitations"

University of Regina, College Ave. Darke Hall

Speaker: **David Fewer**, Staff Counsel, Canadian Internet Policy and Public Interest Clinic, Ottawa

CONTRIBUTORS

Thanks to the contributors to Right to Know Week in Saskatchewan: **McKercher, McKercher & Whitmore, LLP; Saskatchewan Law Foundation; Canadian Bar Association; Saskatchewan Institute for Public Policy; City of Regina; McPherson Leslie & Tyerman, LLP;** and the **Office of the Saskatchewan Information and Privacy Commissioner.**

If you would like more information about these events, contact us at (306) 787-8350.

CULLITON AWARD NOMINATIONS ARE INVITED



The Right to Know Committee is seeking nominations for the *Chief Justice E.M. Culliton 'Right to Know' Award*. Last year, the City of Regina received the inaugural 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 department, Crown Corporation, board, commission or agency) or a local authority (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 **Friday, September 14, 2007**. Nominations can be self-initiated or third party. The nomination 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. Nominations should be sent to the 'Right to Know' Committee, c/o #503, 1801 Hamilton Street, Regina, SK S4P 4B4 or fax: (306) 798-1603 or email: sbarreth@oipc.sk.ca.

PRIVACY AND ACCESS LAW SECTIONS (CANADIAN BAR ASSOCIATION) NEWS



We encourage all persons in Saskatchewan's growing 'access and privacy community' to consider the opportunity to attend meetings of the Canadian Bar Association Privacy and Access Law Sections (North – Saskatoon) or (South – Regina) this year. This is both an excellent networking opportunity as well as the chance to engage in discussions with colleagues and interesting speakers on topical access and privacy issues. Both North and South Sections offer 6 luncheon sessions from September to May, 2008. This includes a presentation by **Elizabeth (Liz) Denham**, Director of Research, Analysis and Stakeholder Relations of the Privacy Commissioner of Canada office. Liz who formerly managed the *Personal Information Protection Act* office for the Alberta Information and Privacy Commissioner will be discussing "Privacy in the Private Sector-What's Working and What's Not". Liz will be presenting in Regina on Tuesday, November 13 and in Saskatoon on Wednesday, November 14. We encourage you to mark your calendars now.

Other speakers & topics include:

- **October 9, 2007** (Regina)/**October 10, 2007** (Saskatoon) - *Privacy Considerations in Business Transactions* - **Kirk Nordick** (Kanuka Thuringer LLP)
- **January 9, 2008** (Saskatoon) - *Access to Information as a Litigation Strategy* – **Mickey Woodard, Q.C.** (MacPherson Leslie and Tyernman LLP)
- **January 9, 2008** (Regina) - *Access to Information as a Litigation Strategy* – **Brian Kenny Q.C.** (MacPherson Leslie and Tyernman LLP)
- **February 11, 2008** (Saskatoon) - *Employees & Privacy* - **TBA**
- **February 25, 2008** (Regina) - *Employees & Privacy* - **Clare Isman** (Chair, PSC) and **Ross Macnab** (Sk Justice)
- **April 14, 2008** (Regina) - *Data Protection Agreements* - **Brad Vance** (MacPherson Leslie & Tyernman LLP)
- **April 15, 2008** (Saskatoon) - *Data Protection Agreements* - **Craig Zawada** (Wallace Meschinshnick Clackson Zawada)
- **May 13, 2008** (Saskatoon & Regina) - *Privacy Laws and Disclosures to Police* - **TBA**

For more information or to register, check out the CBA Section Registration and Programme Handbook 2007/2008 available online at www.cba.org/Saskatchewan/pdf/Section%20Registration%20&%20Programme%20Handbook%202007-2008pdf. Alternatively, you can contact the CBA at 1-800-424-8288, Fax: (306) 652-3977 or email lorrainec@cba.org.

MAJOR INTERNATIONAL PRIVACY CONFERENCE IN MONTREAL



A unique opportunity is presented to Canadians engaged in the work of privacy. Terra Incognita is the International Conference of Data Protection and Privacy Commissioners which will be hosted by Canada in the wonderful city of Montreal September 26-29, 2007. This is open not only to Privacy Commissioners but also privacy officers, lawyers, academics, vendors and interested citizens. Speakers include:

- Michael Chertoff**, Secretary, US Department of Homeland Security
- Marc Rotenberg**, Executive Director, Electronic Privacy Information Centre
- Barry Stenhardt**, Director, American Civil Liberties Union
- Jacob Kohnstamm**, Dutch Data Protection Authority
- Bruce Schneier**, Chief Technology Officer, BT Counterpane (US)
- Alex Turk**, President, Commission nationale de l'informatique et des liberties (France)
- Deborah Platt Majoras**, Chairman, Federal Trade Commissioner (USA)
- Martin Abrams**, Executive Director for Centre for Information Policy Leadership, Hunton & Williams (USA)
- Benjamin S. Hayes**, Data Privacy Compliance Lead, Americas, Accenture (USA)
- Alexander Dix**, Berlin Commissioner for Data Protection and Freedom of Information
- Michael G. Michael**, School of Information Systems and Technology, Faculty of Informatics, University of Wollongong (Australia)
- David Lyon**, Director, Queen's University Surveillance Project
- John Borking**, Director, Borking Consultancy (Netherlands)
- John Hopkinson**, Security Strategist, EWA Information and Infrastructure Technologies, Inc. (USA)
- Artemi Rallo Lombarte**, Director, Spanish Data Protection Agency (Spain)
- Yim Chan**, Global Privacy Executive and Chief Privacy Officer, IBM Canada
- Latanya Sweeney**, Associate Professor of Computer Science, Technology and Policy, Carnegie Mellon University (USA)
- Stephen Lau**, Chairman, EDS (Hong Kong)
- Francesco Pizzetti**, President, Italian Authority for Data Protection (Italy)
- Blair Stewart**, Assistant Privacy Commissioner, New Zealand
- Paul Chadwick**, former Privacy Commissioner, State of Victoria (Australia)
- Ben Hayes**, researcher, Statewatch (UK)
- Michael Donohue**, Administrator, Privacy and Information Security (OECD)
- Peter Hustinx**, European Data Protection Supervisor (EU)
- Simon Davies**, Privacy International (UK)
- Peter Fleischer**, Global Privacy Counsel, Google (USA)

Plus many other international and Canadian experts.

For more information go to www.privacyconference2007.gc.ca.

NOTICE TO THIRD PARTIES ON A FORMAL REVIEW BY OIPC



On a number of files we have noticed that third parties have not been notified in accordance with FOIP or LA FOIP. By reason of section 52 of FOIP and section 41 of LA FOIP there is a duty on any public body when it receives notice of a Request for Review. If there is a third party that would have been entitled to notice in the event that the public body decided to disclose the records sought by an applicant, that third party must be given notice when a formal Review is initiated. This is so, even if the public body has no intention of providing access. We encourage you, in responding to notice from our office of a formal review, to provide the OIPC with confirmation that notice has been given to the affected third party(ies).

DISCLOSURE OF PERSONAL HEALTH INFORMATION TO POLICE

(A) THE GUNSHOT AND STAB WOUNDS MANDATORY REPORTING ACT



Saskatchewan Justice has now announced that this Act will be proclaimed into force effective September 1, 2007. It is important for health information trustees to note that the accompanying Regulations will remedy a significant gap in what was formerly Bill 20. We understand that the Regulations will include a definition of “stab wound” as *“any wound caused by a knife or sharp object or pointed instrument that is indicative of an act of violence inflicted by another individual.”* This, of course, will require regional health authorities to make that initial determination and certainly moves away from an indiscriminate duty to report to police that might capture information about household accidents, etc. It will be important for regional health authorities to ensure this definition is understood by emergency room staff and others who are likely to have to deal with the Act.

It will also be necessary for regional health authorities to consider their obligations under sections 9 and 10 of HIPA. In particular, section 9(2) provides that *“When a trustee is collecting personal health information from the subject individual, the trustee must make reasonable steps to inform the individual of the anticipated uses and disclosure of the information by the trustee.”* Since the new Act imposes a mandatory reporting requirement, someone who presents at a health facility with a stab or gunshot wound should be advised of the mandatory duty to report since this would be an anticipated disclosure of their personal health information. In addition, section 10 requires that the trustee take reasonable steps to be able to inform an individual about any disclosure made without their consent.

(B) NEW DISCLOSURE TO POLICE REGULATION



It will also be important for health information trustees to be mindful of their obligation under section 21(b) of HIPA whenever they disclose personal health information to police. That states that *“Where a trustee discloses*

DISCLOSURE OF PERSONAL HEALTH INFORMATION TO POLICE (CONT'D)

personal health information to a person who is not a trustee, the trustee must...(b) where the disclosure is made without the consent of the subject individual, take steps to ensure that the person to whom the information is disclosed is aware that the information must not be used or disclosed for any purpose other than the purposes for which it was disclosed unless otherwise authorized pursuant to this Act.”

In determining what steps would be “reasonable” for purposes of section 21(b), it is relevant to consider that RCMP are subject to the federal *Access to Information Act* and *Privacy Act* and have procedures to comply with both. On the other hand, different steps will likely be necessary if the disclosure is to a municipal police force that is not subject to FOIP, LA FOIP, or any other comprehensive access and privacy law. We have discussed our concerns in our letter to the Legislative Assembly dated April 11, 2007, pages 10 to 17. This is available at www.oipc.sk.ca under the *What’s New* tab.

We encourage regional health authorities to initiate discussion with their respective municipal police forces about how best to satisfy section 21(b).

ALBERTA OIPC & LIMITED SHARING OF PERSONAL HEALTH INFORMATION

The Alberta Information and Privacy Commissioner office in July 2007 published an Investigation Report that considered the collection, use and disclosure of personal information about a senior’s fitness to drive. This involved both the AB FOIP Act and the *Personal Information Protection Act* [Saskatchewan has no counterpart]. One of the interesting features of this Report is the commentary on what is reasonable for employers to collect by way of personal health information to support a medical leave. The Portfolio Officer commented:



The Privacy Commissioner of Canada has established in many findings that in cases of casual illness or short or long term disability, an employer need only satisfy itself that a qualified medical practitioner has made the determination that an employee is unfit to work for a particular period of time.... A statement from a doctor confirming that absence from work is justified should suffice in almost all cases.

Diagnostic information should only be provided directly to the employer’s group insurer who is responsible for evaluating an employee’s eligibility for any benefits where applicable. An exception to this practice would be organizations with in-house health units staffed by qualified medical practitioners, who may reasonably receive this information provided that it is kept in strict confidence. These units manage workplace injuries, accidents and safety which are governed by workers compensation and occupational health and safety requirements. In such cases, collection of diagnostic information by an employer may be reasonable.

ALBERTA OIPC & LIMITED SHARING OF PERSONAL HEALTH INFORMATION (CONT'D)

I raise this issue because had [the employer] made use of a standardized insurance form required for completion by its employees' medical practitioners, the Complainant would not have submitted a letter from his Psychologist that disclosed the details of his condition. Moreover, the Psychologist would be prevented from disclosing more personal information than necessary to support the Complainant's absence.

The full decision is available at www.oipc.ab.ca, as Investigation Report P2007-IR-005

DATA-SHARING BY PAWNSHOPS AND SECOND HAND DEALERS

The July 2007 FOIP FOLIO discussed an Ontario Court of Appeal decision that struck down an Oshawa bylaw requiring the collection of personal information for law enforcement purposes. Further to that court decision, the B.C. Court of Appeal has now struck down a bylaw enacted by the City of New Westminister. The bylaw compelled pawnshops and second-hand dealers to routinely disclose personal information about each of its customers to police. The Court of Appeal determined that the requirement to collect, record and transmit that additional information [name, address, occupation, government-issued ID and physical description] was beyond the power of the city. The decision available through CanLII is *Royal City Jewellers & Loans Ltd. v. New Westminister (City)* 2007 BCCA 398, (CanLII) 2007-07-26. Saskatchewan has enacted a provincial law, *The Pawned Property (Recording) Act*, that appears to have the same purpose as those bylaws in other jurisdictions.



NEW POLICY FOR RESPONDING TO SECTION 7 COMPLAINTS



We remind you that starting in September 2007 we will be adopting a new procedure when we deal with Requests for Review that relate to an improper notification by the public body under section 7 of FOIP and LA FOIP. This was outlined in detail in the June 2007 FOIP FOLIO, page 3.

FUTURE EVENTS

September 20-21, 2007 – *Private Sector Privacy in a Changing World (PIPA Conference 2007)* – Vancouver, British Columbia (visit www.verney.ca/pipa2007/ for details)

September 24, 2007 – *Health Information Privacy Day, 2007* - Toronto, Ontario (visit <http://www.verney.ca/hpd2007/> for details)

FUTURE EVENTS (CONT'D)

September 24, 2007 – *Data Protection Commissioners' Francophonie Conference* – Montreal, Quebec (visit <http://www.cai.gouv.qc.ca/CCPDF/> for details)

September 25-28, 2007 – *29th International Conference of Data Protection and Privacy Commissioners Conference* – Montreal, Quebec (visit www.privacyconference2007.gc.ca for details)

October 1-5, 2007 – *'Right to Know' Week* (visit www.oipc.sk.ca/RighttoKnow.htm for details)

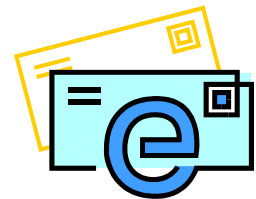
October 9, 2007 – CBA Privacy and Access Law South: *Privacy Considerations in Business Transactions* – Hotel Saskatchewan, Regina - Speaker: Kirk Nordick, Kanuka Thuringer LLP (visit www.cba.org/saskatchewan/events/section.aspx for details)

October 10, 2007 – CBA Privacy and Access Law North: *Privacy Considerations in Business Transactions* – Saskatoon Club, Saskatoon - Speaker: Kirk Nordick, Kanuka Thuringer LLP (visit www.cba.org/saskatchewan/events/section.aspx for details)

October 25-26, 2007 – *The Revealed 'I', A Conference on Privacy and Identity* – Faculty of Law, University of Ottawa (visit www.idtrail.org/content/section/11/95/ for details)

TO CONTACT US:

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