

# FOIP FOLIO

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August 2005

## Welcome to Candace Malowany !

We are pleased to introduce our new office manager, Candace Malowany. Candace comes from Saskatchewan Labour with 10 years of government experience. Most recently, Candace has been working with the Occupational Health and Safety Division as a Supervisor of Program Services. Candace is largely responsible for the day-to-day office functions, producing the FOIP FOLIO and managing our Office of the Information and Privacy Commissioner (OIPC) website, [www.oipc.sk.ca](http://www.oipc.sk.ca). Candace has a young family and continues to pursue her degree in Human Resources Development at the U. of Regina. Candace grew up on a farm outside of Liebenthal, Saskatchewan and says that *“the farm life taught her how to work hard and play hard and she will always be proud of her rural roots.”*



## OIPC Job Opportunity

Starting in September, we will hold an open competition for a **portfolio officer**. The successful applicant will be a highly motivated, dynamic individual to assist with the examination and resolution of diverse access to information and privacy issues arising from *The Freedom of Information and Protection of Privacy Act* (FOIP), *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP), and *The Health Information Protection Act* (HIPA). The portfolio officer will monitor compliance with the Acts, mediate between individuals and public sector organizations and health trustees on access and disclosure issues and generally uphold the access and privacy rights of Saskatchewan residents. The successful candidate will use proven communication skills and proactive work style to investigate, analyze and resolve cases and complaints. This will also involve promoting public awareness through accessible education programs. The qualifications include a university degree plus considerable directly related experience in legislative and policy interpretation, investigations, research and analysis, negotiation and mediation. Knowledge of Saskatchewan and Canadian access and privacy legislation will be an asset.



Watch for details on our website and in the Leader Post and Star Phoenix in early September.

## A Timely Caution from B.C. Commissioner

David Loukidelis, B.C. Information and Privacy Commissioner recently spoke at the Canadian Bar Association conference. He identified two worrisome trends. The first is that new laws have started to blur the line between national security and law enforcement powers. The second trend is that governments are increasingly acquiring personal information from private sector databases. He notes that *“the inevitable combining of private and public sector databases will increasingly fuel state law enforcement and national security activities, including through sophisticated data mining techniques that will undoubtedly be secret and entirely or largely non-reviewable.”* Such a concern is well-placed as we contemplate a push from the federal government to expand state information-gathering powers and opportunities.

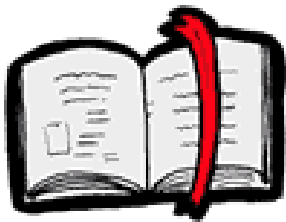
## OIPC Annual Report 2004-2005

Our latest Annual Report is now available on our website, [www.oipc.sk.ca](http://www.oipc.sk.ca). This includes *“Privacy and Access: A Saskatchewan Roadmap for Action”*, highlights of past activities of the OIPC including reviews and investigations, statistics, consideration of contracting out of information management services, the USA Patriot Act and HIPA. If you are a FOIP Co-ordinator, HIPA Co-ordinator or deal in any way with the FOIP Act, the LA FOIP Act or HIPA we encourage you to read the Annual Report.



## Saskatchewan Report 2005-006 (Saskatchewan Liquor and Gaming Authority)

The Applicant applied under the FOIP Act for a copy of a 2003 customer satisfaction survey relating to retail liquor stores operated by the Saskatchewan Liquor and Gaming Authority (SLGA). The survey was prepared by a third party. SLGA withheld portions of the record on the basis that those portions would reasonably be expected to disclose financial, and commercial information. SLGA had a proprietary interest or a right of use



of this information that had monetary value or is likely to have monetary value. The Commissioner found that the severing was appropriate and that SLGA was authorized to withhold this information from the Applicant. [Full text available at [www.oipc.sk.ca](http://www.oipc.sk.ca) under Reports]

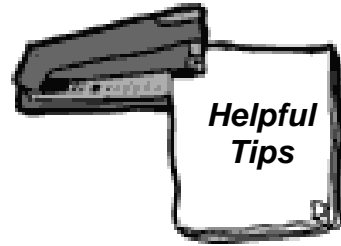
## Saskatchewan OIPC Reports Now on Quicklaw



Saskatchewan Information and Privacy Commissioner reports are now available on Quicklaw. Quicklaw is a popular legal research tool available to subscribers of that service. That website is [www.lexisnexus.ca/ql/index.php](http://www.lexisnexus.ca/ql/index.php).

## Preparing for an OIPC review

Many public bodies still are struggling with what they need to do once they are advised that our office is doing a review under FOIP, LA FOIP or HIPA. We strongly encourage all public bodies to become familiar with the *Helpful Tips* sheet that is available on our website, [www.oipc.sk.ca](http://www.oipc.sk.ca) under *Resources*. We expect that public bodies want to handle the review process as efficiently as possible. We share that desire. Preparing the index of records and marking page numbers is important for public bodies as well as our investigator. The index allows the applicant, the public body's FOIP Co-ordinator and our investigator to refer to specific pages and passages in what may be a large quantity of records.



We also encounter some public bodies that are reluctant to provide us with copies of those records that they are objecting to release. There are two points to make about that reluctance:

1. We prefer to operate on the basis of consultation, co-operation and collaboration but if that is not possible we will rely on section 54 of the FOIP Act:

54(1) Notwithstanding any other Act or any privilege that is available at law, the commissioner may, in a review:

- (a) require to be produced and examine any record that is in the possession or under the control of a government institution; and
  - (b) enter and inspect any premises occupied by a government institution.
- (2) For the purposes of conducting a review, the commissioner may summon and enforce the appearance of persons before the commissioner and compel them:
- (a) to give oral or written evidence on oath or affirmation; and
  - (b) to produce any documents or things; that the commissioner considers necessary for a full review, in the same manner and to the same extent as the court.

## Preparing for an OIPC review - continued

- 2. Some public bodies have been confused about what we share with applicants. We typically share with applicants the index of records and summarize the position of the public body on a review. We do not disclose or share the record in question with the applicant. In fact we are prevented from doing so. We can only recommend that a public body disclose certain documents to the applicant but we do not physically provide those documents to the applicant.

Section 46 of FOIP provides as follows:

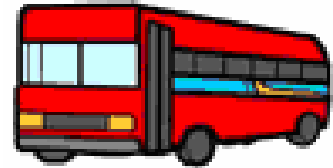
46(1) The commissioner shall not disclose any information that comes to the knowledge of the commissioner in the exercise of the powers, performance of the duties or carrying out of the functions of the commissioner pursuant to this Act.

...

(4) When making a disclosure [in the course of a review or issuing a report] the commissioner shall take every reasonable precaution to avoid disclosure, and shall not disclose:

(a) any information or other material if the nature of the information or material could justify a refusal by a head to give access to a record or part of a record;...

### Closed Circuit T.V. on Saskatchewan Buses?



Federal Transport Minister Jean Lapierre announced in early August that his government would increase security for ground transportation and public transit in Canadian cities, by means of closed circuit surveillance cameras. It will also implement a no-fly list that would identify those who “pose an immediate threat to aviation security”. Clearly public safety is an important concern. The response should however be thoughtful, measured and should incorporate checks and balances that are essential in our democratic system. On the evidence, closed circuit T.V. has not been a very effective crime/terrorism prevention tool.

### PIPEDA 5-Year Review Is Coming

The *Personal Information Protection and Electronic Documents Act* (PIPEDA) mandates a review by a Parliamentary committee of the administration of the Act “*every five years after this Part comes into force*”. The privacy part of PIPEDA came into force January 1, 2001. Since most Saskatchewan businesses and organizations have been and continue to be subject to PIPEDA, this will be an excellent opportunity to register suggestions, concerns or recommendations for change. [Practically speaking, PIPEDA does not apply if your organization is already subject to the FOIP Act or LA FOIP Act] This will also be an excellent opportunity to consider what Saskatchewan can learn from the early experience in British Columbia and Alberta with their private sector privacy laws. In those provinces, their *Personal Information Protection Acts* have displaced PIPEDA with a simpler and more comprehensive law that protects employees as well as customers.

## Future Events

**Sept. 8-9, 2005**, *Access to Information: Analyzing the State of the Law*, Riley Information Services Inc. and Canadian Newspaper Association, Ottawa, Ontario; ([www.rileyis.com/seminars/index.html](http://www.rileyis.com/seminars/index.html) for seminar details)

**Sept. 28-29, 2005**, *Technology, Privacy and Justice*, Canadian Institute for the Administration of Justice, Toronto; ([www.ciaj-icaj.ca/english/calendar/TorontoAngJune7.pdf](http://www.ciaj-icaj.ca/english/calendar/TorontoAngJune7.pdf) for details)

**Oct. 12-14, 2005**, *Privacy Security Trust 2005*, St. Andrews, New Brunswick; ([www.ung.ca/pstnet/pst2005/index.html](http://www.ung.ca/pstnet/pst2005/index.html) for details)

**Oct. 17-18, 2005**, *Electronic Health and Medical Records*, Toronto, Ontario; ([www.insightinfo.com](http://www.insightinfo.com) for details)

**Nov. 3-4, 2005**, *Privacy and Security: Disclosure*, Centre for Innovation Law and Policy (University of Toronto, Toronto, Ontario; ([www.cacr.math.uwaterloo.ca/conferences/2005/psw/announcement](http://www.cacr.math.uwaterloo.ca/conferences/2005/psw/announcement) for details)

**Nov. 5-6, 2005**, *Contours of Privacy: Social, Psychological and Normative Perspectives*, Carleton University, Ottawa, Ontario; ([www.carleton.ca/cove//contours](http://www.carleton.ca/cove//contours) for details)

**Nov. 17-18, 2005**, *Canadian Institute's 11<sup>th</sup> Annual Regulatory Compliance for Financial Institutions*, Toronto, Ontario ([http://www.canadianinstitute.com/Finance\\_Banking/RegulatoryCompliance.htm](http://www.canadianinstitute.com/Finance_Banking/RegulatoryCompliance.htm) for Conference details)

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