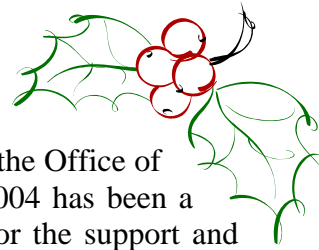


# FOIP FOLIO

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December 2004



## Seasons Greetings

Best wishes of this season to you from Pam, Diane and Gary in the Office of the Saskatchewan Information and Privacy Commissioner. 2004 has been a very eventful year for our fledgling office. We are grateful for the support and assistance we have received from departments, Crown Corporations, local authorities and health information trustees. Men and women in Saskatchewan public bodies are working diligently to improve their information management practices and to fully comply with *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). Enjoy the holiday time with your family and friends. You deserve a rest!

## Congratulations to Sunrise Health Region

Some excellent educational materials have been produced by Sunrise Health Region. Brenda Leppington, Director of Information Management, has shared with us the poster and brochures they have been distributing throughout that region. There is one brochure for the public and another brochure specifically for staff in the region. Brenda advises the region is also planning a Confidentiality Awareness week. If you would like more information on these initiatives, you should contact Brenda at (306) 798-0795. If you are designing something similar for people dealing with your organization, we encourage you to include mention of our office's oversight role and the right to complain to our office if a complainant cannot get satisfaction dealing with a trustee directly.

## Freedom of Information and Protection of Privacy Regulation Amended

Order in Council 759/2004 has issued to amend the FOIP Regulation to permit disclosure of certain names, birth dates and addresses by the Department of Health. This will allow the Department of Culture, Youth and Recreation to contact individuals born before 1905, individuals born prior to 1939 and the parents of children born on January 1, 2005 or September 4, 2005 as part of the centennial celebrations.

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## Privacy Commissioner Releases 2003-2004 Annual Report

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Jennifer Stoddart's first Annual Report as the national Privacy Commissioner is a must-read resource for organizations subject to either the *Privacy Act* or the *Personal Information Protection and Electronic Documents Act* (PIPEDA). Of particular interest to us in Saskatchewan are her comments with respect to PIPEDA and the health sector. Commissioner Stoddart notes that implied consent can be relied upon for uses and disclosures that a patient would reasonably expect for care and treatment. She notes that *"More explicit consent would be necessary for uses or disclosures that a patient would not reasonably expect. The disclosure of information for research purposes is one such example."* Commissioner Stoddart does not indicate whether her office believes our Health Information Protection Act would qualify as a law substantially similar to PIPEDA so as to displace PIPEDA for those organizations that are "trustees" under HIPA. The full report is accessible at [www.privcom.gc.ca](http://www.privcom.gc.ca).



### Frivolous and Vexatious Requests

We have been contacted by some government institutions and local authorities that have expressed concern about multiple access requests from the same applicant. The concern is that, in the view of the public body, some of the requests are frivolous or vexatious. Section 50(2) of the FOIP Act, section 39 of the LA FOIP Act and section 47(2) of HIPA permit the Commissioner to refuse to conduct a review or to discontinue a review if the application for review is frivolous or vexatious but that power is not available to public bodies in terms of dealing with the access request. We note the following provision in the Alberta FOIP Act:

*If the head of a public body asks, the Commissioner may authorize the public body to disregard one or more requests under section 7(1) or 36 (1) if (a) because of their repetitious or systematic nature, the request would unreasonably interfere with the operations of the public body or amount to an abuse of the right to make those requests, or (b) one or more of the requests are frivolous or vexatious. [Section 55]*

When the Saskatchewan provincial government undertakes its review of our FOIP Act, we will encourage the government to consider including a similar provision in our Saskatchewan legislation.

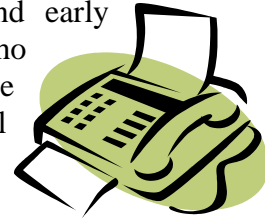
In the meantime, we encourage FOIP or HIPA coordinators to attempt to chat with applicants and attempt to informally resolve or narrow access requests when appropriate. It may be possible to satisfactorily resolve some of these 'problem files' outside of the FOIP Act.

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## Do You Know Who is Receiving Your Faxes?

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There were a number of media reports in late November and early December about business people in West Virginia and in Canada who were receiving private information about customers when the Canadian Imperial Bank of Commerce faxed this confidential information to the wrong number. The Privacy Commissioner of Canada has undertaken an investigation.



How easily could this happen in your organization? If you haven't considered this potential breach of security, you should do so immediately. Some personal information is so sensitive it should not be sent routinely by fax. When you do fax a document, it should be accompanied by a cover sheet that clearly requests any person who receives the document in error to call immediately. There should be a caution that a document received in error must not be copied or retained. Since the sender usually has no idea who is standing beside the receiving machine, in some cases it will be important to phone the intended recipient to confirm that the appropriate person will be looking for the transmission and that it will not be left sitting on the receiving Fax machine for others to look at. Finally, if you rely on pre-programmed fax numbers in your fax machine, it is important to review those numbers to ensure they are still accurate.

### Ontario Security Breach

The Ontario Ministry of Finance mailed out thousands of cheques in early December to recipients of the child-care supplement. Apparently 27,000 of these cheques were accompanied by a cheque stub with the name, residence address and social insurance number of someone other than the payee. An investigation was launched by the Ontario Information and Privacy Commissioner.

Ann Cavoukian, the Commissioner, issued her report on December 16, 2004. She concluded that this privacy breach could have been prevented with better procedures for testing a software upgrade on the printer that produced the cheques and by conducting a manual inspection of the cheques to ensure the accuracy of the content of information appearing on cheques and cheque stubs. The Commissioner proceeded to express concern over the utilization of the Social Insurance Number by the provincial government as an employee identification number. One of her recommendations is as follows:

*I recommend that the Ministry and MBS discontinue the practice of using the SIN number and create a purpose-specific unique identifier for each of their clients to replace the use of the SIN.*

## Ontario Security Breach (cont'd)

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In her reasons the Ontario Commissioner stated as follows:

*In this day and age, the greatest threat to privacy from the accidental disclosure of personal information comes in the form of identity theft. Identity theft is one of the fastest growing forms of fraud in North America. The improper disclosure of personal information, whether by government institutions, businesses or individuals themselves, provides the opportunity for perpetrating such a crime. Once an individual's identity has been compromised, the results can be truly catastrophic-leading to financial loss, ruined credit ratings and protracted efforts on the part of victims to re-establish their credit-worthiness, their good name and securing their identity.*

*The potential of identity theft arising in the present case through the improper disclosure of SIN numbers was immediately recognized by the Ministry and appropriate actions were taken. However, if the use of universal personal identifiers such as the SIN number can be limited by government institutions, then the potential for inadvertent disclosure may also be limited and, in turn, the threat of identity theft reduced."*

### Major Security Breach in Alberta

On December 16, 2004, the Alberta Information and Privacy Commissioner released his report into the improper disclosure of credit information about senior civil servants. The information was initially accessed in order to do security checks. The IPC investigation was triggered by an Edmonton police raid and the discovery of documents containing credit information of a number of government employees in a hotel room. According to the Alberta Commissioner's report, the government did not fulfill its obligation under the FOIP Act to protect employee personal information. The contract between government and its contractor failed to address protection of privacy issues. Government failed to review the security arrangements of the contractor. A number of Ministries were found to have used improper forms and this resulted in more personal information being collected than was necessary and appropriate. The full report, F2004-IR-003 is available at [www.oipc.ab.ca](http://www.oipc.ab.ca).

### Security Problem in British Columbia

In British Columbia, the Information and Privacy Commissioner's office is asking questions about an apparent security gap in a business service known as SuperPages. The company operates an online white pages search engine. The security gap allowed unauthorized users to change personal information in the online phone listings.

Such a gap means the data is vulnerable to someone who, out of malice or mischief, decided to alter the published data.

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## Criminalizing ‘Dumpster Diving’?

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The federal Justice Department has confirmed that it is considering amending the Criminal Code to make it more difficult for identity thieves to gather personal information on potential credit-fraud victims. One common way to gather information is to search through household trash for credit card numbers and other personal identifiers.

The mischief is certainly real but is a Criminal Code amendment really the best solution? We note that in Saskatchewan, we have public sector legislation (FOIP, LA FOIP and HIPA) that already governs the collection, use and disclosure of personal information. We also have the federal *Personal Information Protection and Electronic Documents Act* that applies to Saskatchewan business organizations. It would likely be more effective for us to strengthen the security obligations in the FOIP and LA FOIP Acts and to improve our enforcement capacity than to enact new criminal legislation.

## Justice Gomery Hears of Access Problems

The judicial inquiry looking into the federal sponsorship program has heard some interesting testimony from Anita Lloyd, a federal access to information co-ordinator. Ms. Lloyd spoke of direction she received from her department’s communications branch that would have prevented the release of embarrassing records to a Globe and Mail reporter. She refused to follow those directions on the basis that it would amount to disregarding the requirements of the federal *Access to Information Act*.

Ms. Lloyd’s courage and professionalism represents a model for access and privacy coordinators throughout Canada. The evidence before Justice Gomery reminds all of us that the public’s right to know cannot be frustrated or denied because the information may prove embarrassing or causes political discomfort to a Minister. Unless one of the mandatory or discretionary exemptions to disclosure applies, records responsive to an access request must be released within the statutory period.

We note that these compliance problems with access legislation have been effectively broadcast by Ann Rees, an investigative reporter. Ms. Rees spent a year researching access to information practices after receiving the 2002 Atkinson Fellowship in Public Policy.

## What Happens when Both HIPA and PIPEDA Apply?

Such a situation arose recently and for the first time, the Alberta Office of the Information and Privacy Commissioner and the Privacy Commissioner of Canada collaborated in conducting parallel investigations. They determined that misdirected faxes sent to an Alberta couple contravened both federal and provincial privacy laws. The faxes contained personal medical information. The resulting reports are available at [www.oipc.ab.ca](http://www.oipc.ab.ca) and [www.privcom.gc.ca/media/nr-c/2004ab\\_041221\\_e.asp](http://www.privcom.gc.ca/media/nr-c/2004ab_041221_e.asp).

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## How is Health Information Being Treated Under PIPEDA?

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An employee of a telecommunications company filed two complaints. One was that her employer used and disclosed her personal information without her consent. This involved employee absences and disclosure to an independent medical examiner, without consent. The second complaint was that the employer denied access to her personal information. The Assistant Privacy Commissioner of Canada found that the first complaint was not well-founded. She noted that the information shared was directly relevant to the company's determination of the employee's ability to return to work and her eligibility for continuing employment benefits. Similarly, the employee should have expected that information relating to her absence would be shared with the independent medical examiner. The Assistant Commissioner found that the complaint about a denial of access was well-founded. The case summary #284 is available at the website: [www.privcom.gc.ca](http://www.privcom.gc.ca).

### Privacy and Mental Health

The Standing Senate Committee Report on Mental Health produced a 3 volume report on Mental Health, Mental Illness and Addiction. Noela Inions of the Alberta OIPC, who brought the report to our attention, has noted that this lengthy report is well indexed and includes some interesting commentary about privacy and mental health. The report can be accessed at [www.senate-senat.ca/social.asp](http://www.senate-senat.ca/social.asp).

### Future Events

**January 17 & 18, 2005** -- *Insight Health Information Privacy*, Toronto, Ontario  
([www.insightinformation.com](http://www.insightinformation.com) for conference details)

**January 27 – 28, 2005** – *Privacy Rights & Effective Workplace Investigations*, Toronto, Ontario  
([http://www.insightinfo.com/conferences/brochures/brochure.cfm?product\\_code=LAC05776](http://www.insightinfo.com/conferences/brochures/brochure.cfm?product_code=LAC05776) for conference details)

**February 10 & 11, 2005** -- *Privacy and Security: Synergies in an E-Society*, Victoria, British Columbia ([www.rebootconference.com/privacy2005/](http://www.rebootconference.com/privacy2005/) for conference details)

**March 4 - 5, 2005** – *The Concealed, Anonymity-- Identity and the Prospect of Privacy*, University of Ottawa's Faculty of Law, Ottawa, Ontario  
(<http://www.ANONequity.org/ConcealedI> for conference details)

**June 15 -- 17, 2005**, *Access and Privacy Conference 2005*, University of Alberta at Mayfield Inn, Edmonton, Alberta. ([www.accessandprivacy.com](http://www.accessandprivacy.com) for conference details)

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