



FOIP FOLIO

SEASONS GREETINGS!

Best wishes this holiday season to all of our subscribers and readers, from each of us at the Office of the Information and Privacy

Commissioner (OIPC). We look forward to working with you in the New Year.



THREE REVIEW REPORTS DEALING WITH CITY OF SASKATOON

On November 24, 2011 the OIPC released three different Review Reports dealing with denial of access by Saskatchewan’s largest city. These included:

- [Report LA-2011-004](#). This involved the denial of access by the City in December, 2009 to certain records of the Destination Centre Steering Committee.

- [Report LA-2011-003](#). This involved the denial of access by the City in 2005 to records relating to the South Downtown Project.

- [Report LA-2011-002](#). This involved the denial of access by the City in 2007 to a draft audit report on the City’s snow and ice program.

TABLE OF CONTENTS

Three Review Reports Dealing With City of Saskatoon . . .	1	Saskatchewan’s Highest Court Upholds Disclosure of Sasktel Customer Info to Police	5
Children, Consent and <i>The Health Information Protection Act</i> (HIPA)	2	Provincial Auditor Recommends Freedom Of Information and Protection of Privacy Act Amendment To Protect Personal Information	6
British Columbia Orders Require Disclosure	3	Changes in Alberta Oversight Agency	6
Nova Scotia Review Officer Recommends a Zero Tolerance Privacy Environment for the Workers’ Compensation Board (WCB) in the Province.	4	More on Open Government	6
OIPC Tour of Prince Albert Parkland Health Region (PAPHA)	4	Federal Government Revives <i>Personal Information Protection and Electronic Documents Act</i> (PIPEDA) Amendments Bill	7
Alberta Commissioner Deals with Misuse by a Doctor and a Pharmacist of Alberta Netcare Personal Health Information	4	Alberta OIPC Guidelines on Energy Disconnection Practices	7
Facebook Acknowledges Failure to Comply with United States FTC Requirements	5	Manitoba Ombudsman to Publish Full Investigation Reports	7
Privacy Commissioner Issues Annual Report (<i>Privacy Act</i>)	5	Mark Your Calendar!	8



THREE REVIEW REPORTS DEALING WITH CITY OF SASKATOON (cont'd.)

In all three Reports, the Commissioner found that the City had failed to meet its burden of proof to justify denying access. He recommended that all of the records the City withheld in respect to each of the three Reports be released to the applicants. In the case of Report LA-2011-004, he also recommended that, since the City had provided insufficient evidence as to whether reference to two “citizens-at-large” would constitute personal information, it should make that assessment and sever as appropriate to protect any personal information from disclosure.

In a Postscript to Report LA-2011-004, the Commissioner recommended that the City reevaluate the fashion in which it manages its statutory responsibilities under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). All three Reports are available at our website, under the Reports tab at: www.oipc.sk.ca.

CHILDREN, CONSENT AND THE HEALTH INFORMATION PROTECTION ACT (HIPA)

Some trustees have encouraged us to provide guidance on the question of access to the personal health information (PHI) of minor children in the case of divorce or separation of parents. The rules are different depending on which of two scenarios exist:

(1) Where the husband and wife continue to live together or separate but where no kind of court action has been taken under either the federal *Divorce Act* or *The Children's Law Act, 1997*; in this case, unless there has been some kind of court order or agreement to the contrary, the parents of a child are joint legal custodians of the child with equal rights, powers and duties. In other words, either parent can exercise the powers under section 56(d) of HIPA.

(2) Where a court (under either the federal *Divorce Act* or *The Children's Law Act, 1997*) has given custody to one parent and a right of access to the other, the custodial parent is the legal custodian and able to make decisions contemplated by section 56(d) of HIPA. In this case, the non-custodial parent who has access is entitled to make inquiries and be given

information concerning the health, education and welfare of the child. The non-custodial parent has, however, no right to be consulted about or to participate in making of decisions by the custodial parent.

In the result, if a physician or other trustee is approached by a child's parent seeking information about the health of any given child, the process to frame a response might look like this:

(a) **is the child a mature minor**, such that the child is making decisions about who gets access or not to his or her PHI? See section 56(c) of HIPA which is really the same test as that used for the purpose of treatment. This would not normally apply to a child younger than 12 years of age.

(b) **assuming no mature minor**, the trustee can safely deal with either parent since either is a legal custodian of their child and provided you have no knowledge of a court order to the contrary.



CHILDREN, CONSENT AND THE HEALTH INFORMATION PROTECTION ACT (HIPA) (cont'd.)

(c) **if the court has ordered**, either temporarily pending the divorce judgment or permanently in the divorce judgment (or in the case of a non-divorce legal action), **that one parent has custody and the other a right of access**, then the trustee will need to deal exclusively with that custodial parent in terms of all decisions about the child’s PHI.

It is not expected of the trustee that they will have to go to the trouble of checking court records, etc. The trustee can normally rely on what information the parents provide unless the trustee is in some fashion put on notice that the information being provided by one of the parents is wrong. If the information provided by one or more parents is suspect or unclear, the trustee is encouraged to ask either parent to furnish a copy of the relevant court order. The trustee usually cannot go wrong if they are following a court order. If the parents fail to provide a relevant court order, the trustee should proceed as if the parents are joint legal custodians and either is

entitled to act as a surrogate for the child and able make decisions under HIPA as well as to obtain access to the child’s PHI.

One final note – if a trustee should confront a situation where a child is in imminent danger to his or her health or safety and the question of who is the legal custodian of the child is confused or unclear, the trustee may need to use their best professional judgment to act in the child’s best interests in responding to imminent danger. The trustee should consider section 27(4)(a) of HIPA for that purpose. In such a circumstance, the trustee should be mindful of the protection afforded them by the good faith defence in section 61(1) of HIPA.

More information can be found by consulting the federal *Divorce Act* and *The Children’s Law Act, 1997*.

BRITISH COLUMBIA ORDERS REQUIRE DISCLOSURE

In [Order F11-34](#), an Adjudicator in the Office of the B.C. Information and Privacy Commissioner (IPC), ordered the Ministry of Transportation and Infrastructure to disclose portions of the electronic calendar of the Minister of Transportation that had initially been withheld by the Ministry. The Ministry had argued unsuccessfully that the records concerned MLA activities and were not in the custody or under the control of the Ministry. The Order is available at: www.oipc.bc.ca.

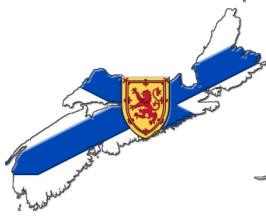
In [Order F11-33](#), another Adjudicator in the office of the B.C. IPC dealt with a copy of a severance agreement between a municipality and

its former Corporate Administrator. Since the communication at issue was between the City’s lawyer and a third party, it was not subject to solicitor-client privilege. Further, the information in the record constituted remuneration and therefore, its disclosure would not be an unreasonable invasion of third party privacy. This Order is available at: www.oipc.bc.ca.





NOVA SCOTIA REVIEW OFFICER RECOMMENDS A ZERO TOLERANCE PRIVACY ENVIRONMENT FOR THE WORKERS' COMPENSATION BOARD (WCB) IN THE PROVINCE



Nova Scotia Review Officer **Dulcie McCallum** recently released her privacy Investigation Report of the practices of the WCB of Nova Scotia. The Report includes 21 specific recommendations to improve the privacy practices of the WCB. The WCB has

announced that they will accept and implement immediately, 7 of the recommendations. The other 14 recommendations were accepted in principle but will require time to implement. [Report P-11-01](#) is available at www.foipop.ns.ca.

OIPC TOUR OF PRINCE ALBERT PARKLAND HEALTH REGION

On November 9 and 10, 2011, Commissioner **Gary Dickson** and Portfolio Officers **Alyx Larocque** and **Margot Harms** visited Prince Albert Parkland Health Region (PAPHR). They had the opportunity to meet with senior administrators in the PAPHR and participated in an interactive session with the PAPHR Board. They made a presentation to the Prince Albert Medical Association on HIPA compliance. They also had the opportunity to do a HIPA workshop for a large medical clinic in Prince Albert. Before returning to Regina, the OIPC team met

with officials of the Prince Albert Public Library to discuss LA FOIP compliance issues and challenges.

We want to acknowledge the excellent work that has been done by the PAPHR Privacy Officer **Dana Doucette** and by **Pat Stuart**, VP, Quality Management, with responsibility for HIPA compliance. We appreciated the assistance from Dana and the PAPHR in organizing this very productive tour.

ALBERTA COMMISSIONER DEALS WITH MISUSE BY A DOCTOR AND A PHARMACIST OF ALBERTA NETCARE PERSONAL HEALTH INFORMATION

Brian Hamilton, Director, *Health Information Act*, Alberta IPC, issued an Investigation Report on November 30, 2011 involving Covenant Health, the Catholic healthcare hospital board. A physician was found to have looked at the health information of three individuals in Alberta's electronic health record (Netcare) without authorization on numerous occasions without lawful authority. He did this by using the Netcare accounts of 12 other physicians without

their permission or knowledge. The doctor was not providing health services to any of the three patients at the time he snooped. The matter was referred to the College of Physicians and Surgeons for investigation. Mr. Hamilton concluded that the breach of privacy was enabled because strong controls to enforce user accountability were not in place. There was a lack of training of staff and lack of effective technical controls to avoid this kind of snooping.



ALBERTA COMMISSIONER DEALS WITH MISUSE BY A DOCTOR AND A PHARMACIST OF ALBERTA NETCARE PERSONAL HEALTH INFORMATION (cont'd.)

[Investigation Report H2011-IR-004](#) is available at: www.oipc.ab.ca.

This comes on the heels of a \$15,000 fine for an Edmonton pharmacist who obtained personal medical information from the electronic health record system and then published details through

her Facebook account. The pharmacist had improperly and illegally viewed the drug profiles of eight persons in her church in connection with her romantic activities. You can view the [Alberta Commissioner's news release](#) at: www.oipc.ab.ca.

FACEBOOK ACKNOWLEDGES FAILURE TO COMPLY WITH UNITED STATES FTC REQUIREMENTS



Facebook has confessed that it failed to protect the privacy of its 880 million active users. This admission followed more than a dozen changes to its privacy policy. The U.S. Federal Trade Commission (FTC) has published a

[proposed consent order](#) which will mean that for the next 20 years Facebook's privacy compliance efforts will be monitored by the FTC. More details are available at: <http://www.ftc.gov/opa/2011/11/privacysettlement.shtm>.

PRIVACY COMMISSIONER ISSUES ANNUAL REPORT (PRIVACY ACT)

Federal Privacy Commissioner **Jennifer Stoddart** has issued her [2010-2011 Annual Report to Parliament](#), on the *Privacy Act*. Much of the Report discusses two audits undertaken by her office: (1) Canadian Air Transport Security

Authority (CATSA) and (2) RCMP management of databases. The 123 page document contains a wealth of information about privacy issues, programs and initiatives. This Report is available at: www.priv.gc.ca.

SASKATCHEWAN'S HIGHEST COURT UPHOLDS DISCLOSURE OF SASKTEL CUSTOMER INFO TO POLICE

The Saskatchewan Court of Appeal recently held that Internet Service Providers are entitled to identify to police the users assigned to specific Internet addresses. There was no Charter violation but there is an interesting and thorough

analysis of the applicable case and statute law in [R v Trap, 2011 SKCA 143 \(Can LII\)](#).



PROVINCIAL AUDITOR RECOMMENDS FOIP AMENDMENT TO PROTECT PERSONAL INFORMATION

Provincial Auditor **Bonnie Lysyk** has issued her [2011 Report Volume 2](#) this month. This includes recommendations for the Ministry of Justice and Attorney General work with the OIPC to “consider the benefits of changes to Saskatchewan’s general access and privacy legislation, which could serve to mitigate risks related to the *USA Patriot Act*. In particular, Saskatchewan’s Information and Privacy

Commissioner has expressed concerns and made recommendations, regarding the ‘duty to protect’ personal information and data in prior years.”

This Report is available at: www.auditor.sk.ca.

CHANGES IN ALBERTA OVERSIGHT AGENCY

We salute **Frank Work**, the retiring Information and Privacy Commissioner of Alberta. Frank has been a wonderful resource and provided great assistance to our fledgling office since it opened in November 2003. Many of the resources currently on our website are adaptations of tools developed by Frank’s office. **Jill Clayton** has been appointed by the Alberta Legislative

Assembly to succeed him. Jill is a former Director of the *Personal Information Protection Act* in Alberta. Congratulations Jill. We look forward to continuing the strong collaborative relationship we have had with the Alberta OIPC.

MORE ON OPEN GOVERNMENT

We have received inquiries about additional resources on the topic of Open Government. We might suggest the following titles:

- Government 2.0 and Access to Information:
 1. Recent Developments in Proactive Disclosure and Open Data in Canada Library of Parliament, Background Paper, [Publication No. 2010-14-E](#).
- Government 2.0 and Access to Information:
 2. Recent Developments in Proactive Disclosure and Open Data in the United States and Other Countries, Library of Parliament Background Paper, [Publication No. 2010-15-E](#).

- Open Government-Collaboration, Transparency and Participation in Practice. By Daniel Lathrop, Laurel Ruma – Publisher: O’Reilly Media. Released: February 2010.





FEDERAL GOVERNMENT REVIVES PIPEDA AMENDMENTS BILL

This will include breach notification amendments in [Bill C-12](#). This is a copy of Bill C-29 which died on the order paper before the federal election.

ALBERTA OIPC GUIDELINES ON ENERGY DISCONNECTION PRACTICES

This useful resource was designed to assist energy retailers in determining when they can share personal information with other businesses or with family or friends of an individual to facilitate reconnection of energy services. For a [copy of the guidelines](#), visit the website at: www.oipc.ab.ca.

MANITOBA OMBUDSMAN TO PUBLISH FULL INVESTIGATION REPORTS

Irene Hamilton, Ombudsman for Manitoba, discusses a number of changes and access and privacy developments in the latest issue of the Manitoba [OmbudsNews](#). This includes the announcement that full investigation reports under *The Freedom of Information and Protection of Privacy Act* and *The Personal Health Information Act* will be routinely published on the Ombudsman’s website at: www.ombudsman.mb.ca.

MARK YOUR CALENDAR

April 30-May 1, 2012: Western Canada Health Information Privacy Symposium - Calgary, Alberta. For more information, please visit: www.wchips2012.ca.

June 13-15, 2012: Access and Privacy Conference 2012 - Edmonton, Alberta. For more information, please visit: accessandprivacy.virb.com.

M	T	W	T	F	S	S
			1	2	3	4
			5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					





OFFICE OF THE SASKATCHEWAN INFORMATION AND PRIVACY COMMISSIONER

**503 – 1801 Hamilton Street
Regina, Saskatchewan
S4P 4B4**

Telephone: (306) 787-8350 / Toll Free: 1-877-748-2298

Fax: (306) 798-1603

E-mail: webmaster@oipc.sk.ca

Website: www.oipc.sk.ca

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Best Wishes for the Holidays