



FOIP FOLIO

ZERO TOLERANCE FOR HEALTH PRIVACY BREACHES IN NEWFOUNDLAND

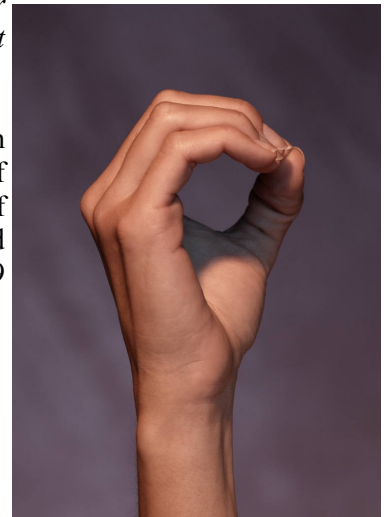
On March 7, 2011, Newfoundland’s Central Health authority announced that it had terminated an employee for breaching the privacy of patients by improperly viewing reports on laboratory tests and X-rays for personal reasons.

In announcing the dismissal, the CEO for Central Health advised that, *“The issue here is our zero tolerance policy to privacy breaching, and this employee’s standard to adhere to this policy.”*

The CEO further stated that, *“While Central Health does not normally discuss information pertaining to particular employees, we feel the seriousness of this privacy breach requires us to tell the public that this employee has been terminated. If we are going to be*

successful in protecting the private and confidential information of our clients, we must enforce our policies.”

Central Health is in the process of notifying patients of the breach and apologizing to the 19 affected patients.



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IMPRESSIVE DEVELOPMENTS CONTINUE IN NEWFOUNDLAND



Congratulations to the Newfoundland Health Ministry for an impressive set of materials that have been developed for their new stand-alone health information law - The *Personal Health Information Act* (PHIA).

This includes Frequently Asked Questions, a PHIA Online Education Program, a PHIA Facilitated Education Program, a PHIA Overview, a PHIA Risk Management Toolkit, a PHIA Policy Development Manual and a set of PHIA Sample Notice Materials. All of these useful

materials are available at <http://www.health.gov.nl.ca/health/PHIA/>

When Newfoundland's *Access to Information and Protection of Privacy Act* (ATIPPA) came into force in January 2005 it included a statutory requirement for a comprehensive review of ATIPPA within five years. That review has just concluded with the publication of the final report on January 26, 2011. The full report is available at Commissioner **Ed Ring's** office website: www.oipc.nl.ca.

Unfortunately, our much older (1992) *Freedom of Information and Protection of Privacy Act* (FOIP) includes no mandated statutory review and the Saskatchewan Government has not yet formally considered how we process lessons learned and deficiencies with FOIP documented over the last 19 years.

CITY OF SASKATOON FAILS TO JUSTIFY WITHHOLDING DOCUMENTS

In Review Report [LA-2011-001](#) Saskatchewan Information and Privacy Commissioner, **Gary Dickson**, found that, although the City of Saskatoon (the City) had argued eleven different provisions of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) applied to deny records to the Applicant, only two of those provisions were properly applied. This included 'solicitor-client privilege' to a large number of documents and 'advice from officials' to a much smaller number of documents.

In respect to the other exemptions claimed by the City, the City failed to meet the statutory burden of proof to justify withholding documents. The Commissioner offered guidance for applying each exemption and recommended that the City reconsider its decision to withhold or sever certain documents.

You can access this Review Report under the *Reports* tab at www.oipc.sk.ca.





iPAD MOBILE DEVICES: IT'S ALL ABOUT ACCESS!

We note an increased interest on the part of government institutions, local authorities and health trustees, in the iPad mobile device. We felt it was important to revisit the issue of mobile devices in the workplace. In this newsletter, we address: iPad Mobile Devices – It's All About Access!

iPad tablet computers (and other mobile devices) can be an efficient means of sharing, transporting and accessing work information from any location in the world. It can also reduce paper consumption and increase work efficiency. The work environment has changed dramatically in the past decade with the introduction of such technology.

However, what has not changed is the 'access to information' legislation in the province. *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) lay out the parameters for access to information. What is important to keep in mind is that information stored on a workplace mobile device is subject to access to information requests by the public.

FOIP, LA FOIP and HIPA define a "record" as information in **any** form and includes information that is written, photographed, recorded or stored in any manner¹. Therefore, records contained in any format on a mobile device fit within the definition.

The **right of access** to records is outlined in sections 5 of FOIP, LA FOIP and section 12 of HIPA. In essence, any individual, through application, can request access to records in the possession/custody or control of a government institution, local authority or trustee. This means that records stored on mobile devices must be made accessible.

Individuals also have a right under the current legislation to request **access to personal information or personal health information** that is contained in a record in the possession/custody or control of a government institution, local authority or trustee. This type of information can be contained in a mobile device and is subject to the rules governing access as well.

What about retention and disposal? Government institutions, local authorities and trustees have an obligation under HIPA and *The Archives Act* to ensure its records, including those containing personal information or personal health information, are retained for a scheduled period of time and disposed of properly. Records that are contained on mobile devices are subject to the same rules, therefore, must be accounted for, retained like other records and properly disposed of according to a set retention schedule. This is the essence of transparency and accountability regardless of the technology employed.

REMEMBER to utilize *Best Practices* when using mobile devices. Our office has published a detailed resource on our website titled [Best Practices – Mobile Device Security](#) which outlines our recommended best practices in more detail. Please visit the *Resources* tab on our website.

Our office has also published a number of articles in previous newsletters related to the use of mobile device in the workplace (see December 2005, March 2006 and March 2007 FOIP FOLIO also available on our website).



¹ See FOIP, LA FOIP and HIPA, Sections 2(1)(i), 2(1)(j) and 2(p), available on our website www.oipc.sk.ca

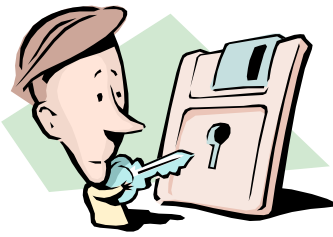
² See FOIP, LA FOIP and HIPA, Sections 31, 30 and 32, available on our website.

³ See HIPA, Sections 16, 17, 18, available on our website.

⁴ See *The Archives Act, 2004* at Section 19(1), 20, 21(1), 22, 23, 24, 26, 28, available online at www.publications.gov.sk.ca.



NEW FEDERAL OPEN DATA PORTAL



On March 17, 2011, Treasury Board President **Stockwell Day** announced a one year pilot to make 260,000 data sets available from 10 participating government departments. This data will be available at www.data.gc.ca.

Apparently the Government’s plan is to expand this to publish data sets from all federal government departments. This welcome event is consistent with the Resolution of Canada’s Access to Information and Privacy Commissioners on [Open Government](#) of

September 2010. That resolution is accessible at www.oipc.sk.ca under the *What’s New* tab.

Concerns have been expressed by open-data advocates that the licence conditions are problematic. This includes a prohibition that the data not be used “in any way which, in the opinion of Canada, may bring disrepute to or prejudice the reputation of Canada” or which identifies an individual, organization or business. Open data portals have been created by the cities of Toronto, Edmonton and Vancouver. Similar initiatives have been taken by the U.S. federal government and the U.K. government.

BRITISH COLUMBIA GOVERNMENT PROMISES OPEN GOVERNMENT FEATURE

Presumably in the spirit of open government, the Ministry of Citizen’s Services which has administrative responsibility for that province’s *Freedom of Information and Protection of Privacy Act* has announced that the Government of British Columbia will now be making publicly available all access requests to any B.C. public body.

A similar initiative of a number of federal government departments was highlighted in the January, 2011 FOIP FOLIO. This and all archived past issues of the FOIP FOLIO are available at www.oipc.sk.ca under

the *Newsletters* tab. This new initiative is currently under consideration by **Elizabeth Denham**, that province’s Information and Privacy Commissioner in connection with a formal complaint about how BC Ferries handles access requests.



SASKATCHEWAN AND AFRICAN NATIONS SHARE EXPERIENCES WITH ACCESS TO INFORMATION

South Africa may be 15,000 kilometres away from Saskatchewan but it turns out that there is plenty that can be learned from each jurisdiction when it comes to building a robust access regime. This was apparent at a two day conference at Wits University in Johannesburg, South Africa March 9 & 10, 2011.

There were representatives from not just South Africa

media organizations, journalists, academics and civil society groups but a number of other African nations as well.

The Saskatchewan Information and Privacy Commissioner was sponsored as a speaker by the Canadian High Commission in South Africa.

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Co-sponsors were the British High Commission and the South African Editors Forum. The British High Commission sponsored Dr. Ian Walden, Professor of Information and Communications Law and the head of the UK Media Council.

The South African *Promotion of Access to Information Act 2000* (PAIA) and proposed bills in Rwanda and several other nations reflect 3rd generation access laws much stronger than those now in force in Canadian jurisdictions. The South African law is available at http://www.acts.co.za/prom_of_access_to_info/promotion_of_access_to_information_act.htm.

These 3rd generation laws include such features as a strong object clause, broad public interest override clause, whistleblower protection for public sector employees and in the Rwandan bill an oversight agency that would have the power to levy fines and issue binding orders. On the other hand, there was plenty of interest from Africans in the role and work of our Information and Privacy Commissioners, the substantial body of experience and case law from 28 years of Canadian experience, the issuance of full text reports and an Annotated Section Index and the role and function of FOIP Coordinators. There also was interest in the kind of leadership shown by a number of Canadian provincial Premiers who have issued public statements such as Premier Wall's announcement of September 2010 reminding all government employees of the need to respect and comply with FOIP and HIPA.

On March 11, the Canadian High Commission in Kenya and Rwanda also sponsored in conjunction with the Article 19

international non-government organization, an intensive one day conference in Kigali, Rwanda. Speakers were **Henry Mataas**, East African Director for Article 19 and **Gary Dickson**, Saskatchewan Commissioner. There was interest in the Saskatchewan oversight model, particularly our approach to leveraging modest resources to attempt to impact the operations of 3000 government institutions, local authorities and health information trustees.

The Rwanda government has developed a very progressive law that, if passed, would vault Rwanda to the very top category of strongly written access laws. Unlike our province, Rwanda is just building democratic traditions in a nation that is heavily scarred from the genocide of one million men, women and children little more than a decade ago. This includes rebuilding an independent bar, courts, the rule of law and the host of democratic institutions and conventions we too often take for granted in Canada. You can access *The Right to Know – Access to Information in Canada* and the accompanying resource list distributed to participants in both Johannesburg and Kigali at www.oipc.sk.ca. You can find more information about Article 19 at <http://www.article19.org/>.





CAMPAIGN TO NARROW EUROPEAN UNION RULES FOR ACCESS TO INFORMATION

In marked contrast to the momentum in Africa to create access to information regimes, the European Union (EU) has decided to revise the EU's rules of access to documents, [Regulation 1049/2001](#).

For more information go to the Access Info Europe website at www.access-info.org.

According to Access Info Europe its concerns about the reforms proposed by the EU Commission include the following:

- Narrower definition of “document”
- Exclusion of databases
- Veto rights for EU Member States
- Blanket Exception for Legal Advice
- Extended time for EU bodies to process appeals
- Personal data protection not subject to public interest test



PRIVACY IMPACT ASSESSMENTS AND OVERSIGHT EXPECTATIONS

A very useful contribution to the understanding of Privacy Impact Assessments (PIA) is represented by [Expectations: A Guide for Submitting Privacy Impact Assessments to the Office of the Privacy Commissioner of Canada](#). This is available at www.priv.gc.ca. This document offers some useful commentary to assist those persons in public sector

organizations that are undertaking a PIA. Given that there is a wide range of quality in the PIAs that come to our attention, we recommend that all Saskatchewan public bodies become familiar with this document. You can find a PIA for each of FOIP, LA FOIP and HIPA at our website: www.oipc.sk.ca under the *Resources* tab.

CAN INSTALLATION OF CLOSED CIRCUIT TELEVISION AMOUNT TO CONSTRUCTIVE DISMISSAL?

In the Ontario Supreme Court decision of [Colwell v. Cornerstone Properties Inc. \(2008 CanLII 66139\)](#), an employee discovered that her employer had installed a video surveillance camera in her office without any notice to her.

The camera was installed ostensibly to deal with a theft problem but this



employee was not a suspect. The court accepted that the installation of the camera in these circumstances constituted a fundamental breach of the terms of her employment contract and amounted to constructive dismissal. Damages were awarded against the employer.



BRITISH COLUMBIA COURT LIMITS HOW GOVERNMENT CAN DEFINE 'CABINET SECRETS' TO DENY ACCESS



A B.C. Supreme Court decision in January narrowed the exemption in British Columbia's FOIP Act for cabinet records. This related to access requests for records from government caucus committees

between 2002 and 2004. The records had been severed pursuant to section 12 of the B.C. FOIP Act which is a compulsory exemption for records that disclose information that would reveal the substance of deliberations of the cabinet or committees. For more information see http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/96165_02#section12.

SO YOU ARE MOVING – WHO WILL BE RESPONSIBLE FOR THE RECORDS?

According to a story by **Elise Stolte** in the Edmonton Journal, the Misericordia Community Hospital in Edmonton was the scene of an office move in January 2011. An external hard drive containing two surgery videos and 3,600 photos of wounds, lab specimens and photos of dead infants, all labeled with the patients' names was put under a desk during the office move. Some 10 days later, the hard drive could not be located. Alberta Information and Privacy Commissioner **Frank Work** has undertaken an investigation.

In the meantime, there is a good lesson for all trustees that may at some point contemplate a move from one place to another or from one building to another. We are reminded of the 1998 high profile breach in Calgary when a hospital was being emptied in preparation for demolition. The health region in question carefully assigned responsibility for different assets to ensure they were safely relocated to the new facility. The one omission is that no one was assigned specific responsibility for the patient files, both current and those archived. As a result, boxes of cardex records detailing the personal health

information of some 200 mental health patients were discovered and provided to a local daily newspaper for what became a week's series of highly critical news stories.

The lesson from these experiences is that any trustee must recognize that a very important asset in any physical relocation will be the patient files. A single individual or team should be specifically tasked with ensuring that the patient files are identified, are safely transported and then made secure in the new premises. Some official must be made specifically responsible for the safe and secure transfer of records and patient personal health information. Anything less would likely mean a violation of section 16 of HIPA in Saskatchewan.



Our Mission:
The people of Saskatchewan shall enjoy the full measure of information rights that have been affirmed by the Legislative Assembly of Saskatchewan



EVERYONE'S NIGHTMARE: PRIVACY AND DATA BREACH RISKS



The Boston, Massachusetts based law firm Edwards Angell Palmer & Dodge LLP has produced a very comprehensive 72 page summary of law, practices and court decisions that focuses principally on the

U.S. but with much current information that is also relevant to a Saskatchewan context. This resource can be accessed via www.eapdlaw.com.

ONTARIO HYDRO ONE PROMOTING KEY PRIVACY FEATURES IN ITS SMART GRID

With encouragement and advice from Ontario's Information and Privacy Commissioner, **Ann Cavoukian**, Hydro One Inc. has embarked on a pilot project that is intended to avoid the kind of backlash from consumers experienced in California.

The pilot project is intended to integrate privacy into the design of the smart grid. Details are available in the paper co-authored by the Ontario IPC, Hydro One Inc., GE, IBM and Televent. *Operationalizing Privacy by Design: The Ontario Smart Grid Case Study* is available online at www.ipc.on.ca.

ONTARIO INFORMATION AND PRIVACY COMMISSIONER ORDERS HOSPITAL TO DEAL WITH ANOTHER ELECTRONIC BREACH OF PATIENTS MEDICAL RECORDS

In January 2011 Ontario Commissioner **Ann Cavoukian** ordered the Ottawa Hospital to examine its rules and practices on the heels of another electronic breach of the personal health information of a patient.

In the case a diagnostic imaging technologist accessed the medical files of another woman who was now married to the ex-husband of the technologist. She did this on six different times over a 10 month period.

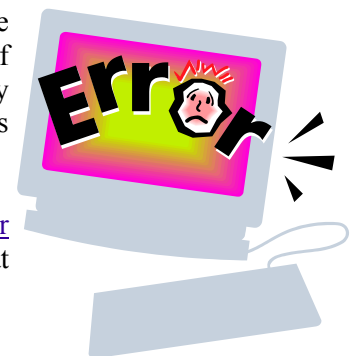
The technologist viewed 96 computer screens that included physician and nurse notes, diagnostic imaging reports, laboratory results, health number of the complainant, contact details and scheduled medical appointments.

This is the same hospital that was the subject of a

2005 breach Order of Commissioner Cavoukian that involved a fact situation similar to the latest case.

In other words, the 2005 breach involved a patient. A nurse who was the girlfriend of the patient's estranged husband accessed the patient's medical records 10 times over a six week period. In the 2005 case, the patient had even gone to the point of advising the hospital in advance of the risk of viewing by her ex-spouse's girlfriend.

The latest Ontario [Order HO-010](#) is available at www.ipc.on.ca.





DEADLINE APPROACHING FOR CULLITON AWARD NOMINATIONS

Your organization can join a number of Saskatchewan organizations that have distinguished themselves in terms of innovation and creativity in meeting FOIP requirements. Organizations that have been honoured in the past include the City of Regina, Saskatchewan Health Quality Council, Saskatoon Regional Health Authority and the Saskatchewan Institute for Applied Science and Technology (SIAST).

The Right to Know (RTK) steering committee is again seeking nominations for the *Chief Justice E.M. Culliton Right to Know 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 Ministry, Crown corporation, board, commission or agency) or a local authority (e.g. 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 **June 30, 2011**

and can be self-initiated or third party. Nominations 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 which will be held September 26—30, 2011

Nominations can be sent to the Right to Know Steering Committee, c/o # 503, 1801 Hamilton Street, Regina, SK S4P 4B4 or fax (306) 798-1603 or email shickling@oipc.sk.ca.

GRACE—PÉPIN ACCESS TO INFORMATION AWARD

Do you take any opportunity to promote access to information? Do you spend your free time developing tools that facilitate access to information? Do you regularly ask for information under the Access to Information Act? Do your activities require public institutions to comply with policies that optimize transparency? Or, do you know someone who fits the above description?

If you answered yes to one of these questions, if you are involved in any other activities that promote access to information and increase government transparency and accountability, or if you know someone who does, Canada's federal, provincial and territorial Access to Information and Privacy Commissioners want to recognize these efforts and invite you to submit a nomination to the first-ever *Grace-Pépin Access to Information Award!*

The Grace-Pépin Award was introduced on September 29 by the federal, provincial and territorial Access to Information and Privacy Commissioners. Presented in memory of **John Grace**, former Information Commissioner of Canada, and **Marcel Pépin**, president and founder of the Commission d'accès à l'information du Québec, the award recognizes those who promote access to information principles in Canada.

For more information on the *Grace-Pépin Access to Information Award*, visit the section about the award on the official Right to Know Web site at http://www.righttoknow.ca/en/Content/grace_pepin_award-prix.asp.





MARK YOUR CALENDAR!



May 26, 2011: PSA Expo 2011, hosted by the Government of Saskatchewan's Privacy and Security Awareness Month Planning Committee, Regina, SK. This event is open to all Saskatchewan government employees. For more information email accessprivacyjustice@gov.sk.ca. More details to be announced in the April issue of the *FOIP Folio*.

June 15—17, 2011: Access & Privacy Conference 2011, Edmonton Marriott at River Cree Resort, Edmonton, Alberta. For more information visit accessandprivacyconference2011.

Canadian Bar Association Privacy and Access Law Section meetings in Regina and Saskatoon. To register for any of the following section meetings call CBA at (306) 244-3898.

REGINA

April 11, 2011: *Privacy and Access Law Section South*, Hotel Saskatchewan, Regina at 12:00 noon.

Topic: iPad Use by Cabinet Ministers and Deputy Ministers , Speaker: Rick Mantey, Cabinet Secretary and Clerk of the Executive Council

SASKATOON

The April 11, 2011 *Privacy and Access Law Section North* meeting has been cancelled.

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