

FOIP FOLIO

February 2008

ENHANCED DRIVERS' LICENCES (EDL)



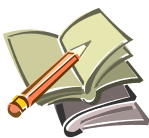
All of Canada's privacy commissioners and privacy oversight officers have called on the federal government to ensure that no EDL project proceeds on a permanent basis unless the personal information of Canadians remains in Canada. They have identified concerns with possible bulk data sharing between national governments (Canada and the U.S.) and their law enforcement agencies; radio frequency identification features that allow the licences to be read up to 10 metres away; and the potential development of a national identity card based on enhanced drivers' licences. The news release and the backgrounder are available at www.oipc.sk.ca under the *What's New* tab.

INDEPENDENT MEDICAL EXAMINATION



The federal Court of Appeal, in the case of *Wyndowe v. Rousseau*, has held that an injured person has the right to access the handwritten notes of a physician, which were taken during the independent medical examination of the insured person at the request of an insurance company. These notes constituted "personal information" of the injured person under the federal private-sector privacy law, the *Personal Information Protection and Electronic Documents Act*. The citation for this decision is 2008 FCA 39: February 1, 2008.

INVESTIGATORS' CONFERENCE – FEBRUARY 13-14, 2008



Two of our Portfolio Officers, **Angela Markel** and **Cam Moore**, attended the Investigator's Conference in Ottawa this month. The two-day conference, sponsored by the Office of the Privacy Commissioner of Canada (OPC), brought together over 100 investigators and other staff from oversight offices across Canada. The sessions provided an excellent opportunity to share techniques and practice tips.

The conference included presentations on approaches to intake and early resolution, confrontation management, assessing credibility and interviewing skills, electronic audit trails, and emerging technologies. Overall, the sessions were informative and useful in our work in Saskatchewan. Our office would like to thank the organizers at the OPC for their hard work in putting together such an excellent conference.

PRIVACY COMPLIANCE AND PUBLIC EDUCATION IN SASKATCHEWAN



Given the high degree of interest in the consultancy opportunity advertised in the January FOIP FOLIO and on the Merx site, the federal Privacy Commissioner has decided to readvertise for bids but on the basis of more specific information than was provided with the initial advertising. The new Request for Proposals is available at www.merx.com. All who submitted a bid are encouraged to resubmit their bid. The deadline for proposals is February 29, 2008 at 2:00 pm EST.

SHARING PERSONAL HEALTH INFORMATION FOR FUNDRAISING PURPOSES WAS IMPROPER



An adjudicator with the Alberta Information and Privacy Commissioner Office has ordered **Dr. Barry Lycka** to stop using and disclosing health information for purposes of soliciting for fundraising in contravention of Alberta's *Health Information Act* (HIA). There were a total of nine different inquiries undertaken by the Alberta OIPC pertaining to this database. The orders resulting from these inquiries should be read by Saskatchewan trustees and particularly, physicians and regional health authorities. In one of the inquiries the complainant had received medical treatment several years ago from her doctor, Dr. Lycka, at a physician office clinic. In 2006, the complainant received four fundraising letters from Dr. Lycka on behalf of the Canadian Skin Cancer Foundation. The information in question consisted of the patient's name, phone number, mailing address, gender and services requested. One of the four fundraising letters, a four-page package starts "Dear Friend". The letter says, "*I am writing to you because you have visited Dr. Lycka as a patient in the last two years...That means in the last two years Dr. Lycka has helped you in some way with a health or cosmetic problem.*"

There was an argument advanced by Dr. Lycka that the complainant had given her consent to the disclosure in question. The Adjudicator however found that "*consent does not authorize a custodian to use individually identifying health information for purposes that are not prescribed in section 27 of HIA. Section 27 of HIA is a complete list.*" The adjudicator further found that even if there had been consent, it was not consent in accordance with HIA. The adjudicator also noted that there was the possibility that the return address of a physician who specializes in treating certain medical conditions and the return address of a cancer foundation might reveal health information such as an individual's diagnosis. For more information, please view Order H2007-004 and the related orders that are available at www.oipc.ab.ca.

We anticipate that there will be fundraising regulations under HIPA later in 2008. In the meantime, we refer interested readers to page 19 of our *Report on the Draft HIPA Regulations* dated September 10, 2004 available on our website, www.oipc.sk.ca under the tab *Resources*.

DATA ON USED VEHICLES NOW AVAILABLE



Recently, *The Regina Sun* reported that “SGI has launched a new online service for used car buyers.”¹ The article states that “[c]ustomers can now type in the VIN [Vehicle Identification Number], which can be found on both the vehicle and the registration certificate, in order to find out if the vehicle has had any damage claims in Saskatchewan since Jan. 1, 1998.” SGI’s website offers further details of this new service in the following news release: “SGI has introduced a free online Saskatchewan Damage Claims History Search, which gives customers the ability to check a vehicle’s history of damage claims in the province since Jan. 1, 1998, as well as its most recent Saskatchewan registration expiry date and if it has been given a status such as rebuilt, stolen, non-repairable or a total loss.”²

In our 2005-2006 Annual Report, we provided the following update with respect to SGI’s response to the recommendations made in the Commissioner’s Report F-2005-007³ issued November 3, 2005:

*The Applicant sought the detailed claims history of a vehicle owned by the Applicant. SGI denied access on the basis that access would disclose personal information about previous owners of the same vehicle. The Commissioner held that the claims history of a motor vehicle registered in Saskatchewan, once specific identifying information has been severed, is not personal information within the meaning of FOIP. SGI, however, advised that it did not agree with the Commissioner’s findings and consequently, did not comply with the Report’s recommendations.*⁴

Based on the Commissioner’s findings in the above referenced Report, we view this new approach by SGI to be a positive one.

We congratulate SGI on its recent action to make the damage history of a vehicle available to the public.

PUBLIC HEALTH INSPECTIONS OF RESTAURANTS ARE A MATTER OF PUBLIC INTEREST IN ALBERTA

On January 21, 2008, Alberta’s Information and Privacy Commissioner, **Frank Work**, issued an order slashing the fee estimate provided by Capital Health (Edmonton Regional Health Authority) to an applicant seeking access to public complaints, public health inspections and statistical data regarding restaurant inspections from \$140,000 to \$0. Commissioner Work held that the records related to a matter of public interest. In his decision, Commissioner Work noted that, “*I must also consider the important role the media plays in obtaining information and making it available to the public in the pursuit of government accountability.*” He also found that Capital Health had failed to fulfill its duty to assist the applicant and did not respond within the statutory time limits of Alberta’s FOIP Act. This Order, F2007-017, is available at www.oipc.ab.ca.

¹ Flegel, Stephanie. *The Regina Sun*, SGI offering online help. February 10, 2008.

² Available online: http://www.sgi.sk.ca/news_releases/2008/feb_05_2008.html

³ Available online: <http://www.oipc.sk.ca/Reports/F-2005-007.pdf>

⁴ 2005-2006 Annual Report at 33 available online: <http://www.oipc.sk.ca/Reports/AnnualReport05-06.pdf>

CALGARY NIGHT CLUB IMPROPERLY COLLECTED PERSONAL INFORMATION

Commissioner Work held that a Calgary night club had violated Alberta's *Personal Information Protection Act* (PIPA) when it scanned the driver's licence information of a patron into a database without his consent when he entered. The night club was ordered to destroy personal information improperly collected and to cease its practice of scanning the driver's licenses of patrons. The full Order, P2006-011, is accessible at www.oipc.ab.ca.

EDMONTON POLICE IMPROPERLY COLLECTED PERSONAL INFORMATION



The Alberta Commissioner also found that a second-hand store violated PIPA when it collected a customer's personal information under a municipal bylaw and then uploaded that information to a database maintained by Business Watch International (a Regina based corporation) so that the personal information was available to the Edmonton Police Service. Commissioner Work found that the City of Edmonton had not taken reasonable steps to safeguard the personal information of second-hand store or pawnshop clients from unauthorized access, collection, use, disclosure, or destruction. He further found that the Edmonton Police Service and City contravened the Alberta FOIP Act when the personal information was uploaded to the Business Watch International database. Unlike Saskatchewan, Alberta does not have a provincial law that requires the collection and disclosure to police services of this type of information. The full Orders F2007-001, F2007-002, and P2007-001 are available at www.oipc.ab.ca.

FRAUD PREVENTION MONTH



Financial institutions, law enforcement agencies, information and privacy Commissioners, and business groups are working together during March to promote Fraud Prevention Month.⁵ This proclamation illustrates the need for agencies to work together to combat a serious problem that undermines consumer confidence and drains billions of dollars from legitimate markets around the world.

Due to advances in technology, identity theft has become an increasingly popular crime in Canada.⁶ The crime of identity theft involves someone stealing, misrepresenting or hijacking the identity of another person or business. Your vital information, such as your name, address, date of birth, social insurance number, and your mother's maiden name enables someone to hijack your identity. Once the thief has this information, he or she can take over your financial accounts, open new bank accounts, transfer bank balances, apply for loans, credit cards and other services, and purchase vehicles all the while ruining your

⁵ http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/h_00122e.html

⁶ http://www.phonebusters.com/english/recognizeit_identitythe.html

FRAUD PREVENTION MONTH (CONT'D)

credit rating and good name. Phone Busters reports that between January 1, 2004 and December 31, 2006, there were 32,123 reported Canadian victims of identity theft and \$43,857,759.52 in total losses due to this type of fraud.⁷

Saskatchewan public bodies play three roles in the context of identity theft: as identity certificate issuers when individuals apply for identity certificates; as identity information protectors by using appropriate authentication mechanisms when citizens apply for identity certificates; and as identity verifiers when individuals apply for benefits offered by the different governmental programs. We need to consider two factors which have allowed identity theft to flourish. The first factor is the practice of relying on an identifying number, such as a Social Insurance Number other than for the intended purposes. These numbers are often used to authenticate persons on systems. This practice is especially true in the U.S., where Social Security Numbers, described as “keys to the kingdom”, are frequently used as an identifier.⁸

An associated practice is the reliance on ‘non-identity’ documents. These documents such as driver’s licenses, health cards and birth certificates, are used as identity cards by banks and financial institutions. None of these documents is a formal government identification card. The intended use of a driver’s license is a license to drive a car; a health card is used to allow access to health services; and a birth certificate is proof of birth. These can all be forged or stolen.

Some of the common modes of obtaining personal information that Saskatchewan public bodies have to be aware of are:

- Dumpster diving (acquiring discarded personal information);
- Fraudulent changes of address;
- Mail theft;
- Insider theft;
- Exploiting computer systems’ security vulnerabilities (cracking);
- Wardriving (drive-by identity theft through unsecured wireless networks); and
- Acquiring used computer equipment.⁹

If you want further information on frauds in Canada, you may wish to visit the Phone Busters site for more information: <http://www.phonebusters.com/english/index.html>. Another excellent resource for this information is the University of Ottawa Canadian Internet Policy and Public Interest Clinic web site: <http://www.cippic.ca/en/>.

⁷ http://www.phonebusters.com/english/documents/Yearly2006_000.pdf

⁸ <http://www.cippic.ca/documents/bulletins/Introduction.pdf>

⁹ <http://www.cippic.ca/documents/bulletins/Techniques.pdf>

FUTURE EVENTS

March 2008 – *Fraud Prevention Month*

March 12-13, 2008 - *Electronic Health and Medical Records Conference* – Calgary, Alberta (visit <http://www.insightinfo.com> for details)

March 26-28, 2008 – *eHealth Information Security Workshop* – Waterloo, Ontario (visit <http://hi.uwaterloo.ca/workshops> for details)

March 31, 2008 – *Privacy, Security and Technology: Affirming Our Rights* – Ottawa, Ontario (visit <http://www.rileyis.com/seminars/> for details)

April 15-16, 2008 – *eHealth Risk: Opportunity Report Card Workshop* – Waterloo, Ontario (visit <http://hi.uwaterloo.ca/workshops> for details)

April 16-17, 2008 – *Health Privacy Professional Workshop* – Waterloo, Ontario (visit <http://hi.uwaterloo.ca/workshops> for details)

May 4-7, 2008 – *e-Health 2008: Extending the Reach* – Vancouver, British Columbia (visit www.e-healthconference.com for details)

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