



# FOIP FOLIO

## DATA PRIVACY DAY 2012



January 28th is recognized internationally and in Canada

For promoting this event within your organization you can find posters and web graphics for Privacy Day 2012 at:

[www.priv.gc.ca/resource/dpd/2012/images\\_e.cfm](http://www.priv.gc.ca/resource/dpd/2012/images_e.cfm).

as Privacy Day. You can find more information about events within Canada and beyond at the websites: [www.staysafeonline.org/dpd](http://www.staysafeonline.org/dpd) and [www.priv.gc.ca/resource/dpd/2012/index\\_e.cfm](http://www.priv.gc.ca/resource/dpd/2012/index_e.cfm).

## NEW OIPC REPORT ON RECORDS RE: FORMER ECHO VALLEY CONFERENCE CENTRE DISPOSITION

Our office has issued a joint [Report F-2012-001/LA-2012-001](#) (Ministry of Government Services and Resort Village of Fort San). This is available at [www.oipc.sk.ca](http://www.oipc.sk.ca) under the *Reports* tab. An applicant had requested a copy of certain records from the local authority and from the Ministry related to the disposition of the old Fort San property. The Commissioner found that the burden of proof had not been met by Government Services in respect of the exemptions claimed, namely ss. 13(2), 19(1)(b), 18(1)(d) and 18(1)(f)

of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Commissioner concluded that to allow a government institution to invoke section 19(1)(b) of FOIP and treat a local authority as a “third party” would lead to an absurd result. In coming to this conclusion, the Commissioner considered that the common history of the two laws (FOIP & LA FOIP) was one of promoting transparency not secrecy.

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## NEW OIPC REPORT (cont'd)

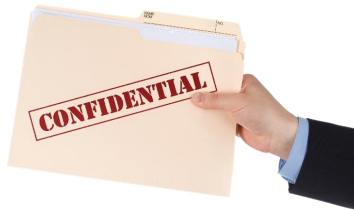
The Commissioner also found that the local authority failed to perform an adequate search for records. The Commissioner recommended that the entire record be released by the Ministry to the applicant. He made a number of recommendations for the local authority to achieve full compliance with its responsibilities

under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). He also recommended that the Minister of Justice consider whether an offence has been committed pursuant to section 56(3)(c) of LA FOIP.

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## ACCEPTING RECORDS IN CONFIDENCE

An “in confidence test” is built into several exemptions in FOIP and LA FOIP that limit disclosure of information that was obtained by, provided to or supplied to a public body. Examples of such information include proposals for government contracts, testimony of witnesses for internal investigations and even reference-check information. However, often public bodies do not meet the burden of proof for these exemptions. Often public bodies provide very little information to support the proposition they are advocating. Frequently, public bodies scramble to meet this test long after the information has been collected and only when facing a review. Officials often say after the fact “all the parties *understood* it was to be held in confidence”. The “in confidence test” can be found in [Report LA-2009-001](#) at paragraph [62]. It is also discussed in a number of other Reports as noted on the Annotated Section Index at our website [www.oipc.sk.ca](http://www.oipc.sk.ca). Here are a few quick tips:



- Where possible, get it in writing (such as in a Request for Proposal).
- If it is not possible to get it in writing, public body employees should document conversations in which the public body agreed to hold the information in confidence.
  - A “Confidential” stamp or marking on a document is generally not enough to satisfy the test.
  - Parties must agree on the confidentiality prior to collection, not after.
- Ensure third parties understand that all records collected by a public body are subject to either FOIP or LA FOIP.

Remember, during a review, even if a public body satisfies the “in confidence” test, it still must satisfy the burden of proof for the other requirements of the exemption!

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## NEW DEVELOPMENTS IN THE EUROPEAN UNION

On December 22, 2011 the European Commission announced that it would establish an eHealth Network. The aim is to ensure EU wide interoperability of electronic health record systems. The network will bring together

national authorities with healthcare responsibility on a voluntary basis to ensure transferability of data in cross-border healthcare. For more information see [http://ec.europa.eu/health/ehealth/policy/index\\_en.htm](http://ec.europa.eu/health/ehealth/policy/index_en.htm).



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## PRIVACY DAMAGES UNDER PIPEDA

Our office is sometimes asked questions by Saskatchewan residents about any financial recourse they may have when their privacy interest has been harmed. There is no provision for this kind of compensation in any of the three laws that we oversee (FOIP, LA FOIP and *The Health Information Protection Act*). An aggrieved individual can however consult a lawyer about suing under our provincial *Privacy Act*. A copy of this older law is available at our website, [www.oipc.sk.ca](http://www.oipc.sk.ca), although our office has no role to play in proceedings under *The Privacy Act*. If it is a private sector organization that is the wrongdoer, you may wish to consider your right

to claim damages in the Federal Court under the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA). In this regard a useful resource is the article that appeared in the *Canadian Privacy Law Review* (LexisNexis Vol. 9, Number 1, December 2011). The author, **David Elder** of the Stikeman Elliott LLP lawfirm, has reflected on more than ten years of private sector privacy legislation in his article *Panning for Gold in the Mud: The Availability of Privacy Damages Under PIPEDA*. Mr. Elder offers a number of guiding facts that the Federal Court has followed to date in making damage awards under PIPEDA.

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## HEALTH INFORMATION PRIVACY: WHO CARES? iCARE. . .



The four information and privacy oversight offices in the provinces of Alberta, British Columbia, Manitoba and Saskatchewan are

collaborating to produce the Western Canada Health Information Privacy Symposium April 30-May 1, 2012 in Calgary. Starting in 2007 the Ombudsman in Manitoba and the Information and Privacy Commissioners in Alberta and Saskatchewan organized the first Prairie Health Information Conference. The aim was to share the experience with what was then new health information laws in those prairie provinces. The stand-alone health information laws were

developed in the late 1990s and pioneered the model for a stand-alone health information law to enable and facilitate electronic health records (EHR). There is now a greater body of experience with these laws and the EHR in western Canada than anywhere else in the nation. This year we will involve our colleagues in British Columbia to enrich the experience for registrants and provide a truly western Canadian perspective. For more information visit [www.wchips2012.ca](http://www.wchips2012.ca). Registration for this event is already open. This should be worthwhile for Saskatchewan trustees, trustee organizations and their employees, health records professionals, lawyers, and consultants.

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## MANITOBA FOI REQUEST REVEALS TAXI COMPLAINTS

On January 3, 2012 the *Winnipeg Free Press* (byline: **Allison Marinelli** and **Sara Harrison**) reported that a freedom of information request to the Manitoba Taxi Board revealed 270 grievances had been filed with that agency since September 2010. The disclosure revealed not only the kinds of complaints made by taxi

customers but also some revealing statistics on the processing of such complaints. In 2010, 149 complaints were filed against taxi drivers and only 12 were reported as resolved. This has led to further discussion of the reasons why unhappy passengers did not complete the paperwork to carry on the complaint to the taxi board.



## WILL THERE BE A NEW LEGISLATIVE REGIME IN THE E.U.?



As readers likely know already, Canada's federal *Personal Information Protection and Electronic Documents Act* (PIPEDA) was largely a response to the Privacy Directive unveiled by the European Union in 1994. That Privacy Directive has increasingly been criticized as being prescriptive, complex and technical and not adequate to deal with the challenges posed by Big Data. The European Commission has announced that it will develop a new instrument for privacy regulation. It is anticipated that a formal legislative proposal will be published in January 2012. Commentators also expect a bigger commitment to Privacy Impact Assessments, a feature common in this country.

**Big Data** is the phrase used to describe a massive volume of structured and unstructured data. This volume is so large that it becomes awkward and difficult to manage with our traditional database and software techniques. It has also been described more simply as 'things you can see at a large scale that you would not be able to see on a small scale'. Big Data represents one of the most daunting challenges to privacy oversight bodies such as the OIPC because of the scale and complexity and yet the huge and increasing impact it will have on the lives of individuals..

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## ONTARIO IPC ORDERS POLICE TO RELEASE RECORDS RE: G20 DISTURBANCES

An adjudicator in the Ontario Information and Privacy Commissioner office determined that applicants were entitled to access certain records provided by Toronto Police to the Office of the

Independent Police Review Director. This was in response to complaints made against the officers under the *Police Services Act*. [Order MO-2676](#) is available at [www.ipc.on.ca](http://www.ipc.on.ca).

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## SUPREME COURT UPHOLDS ALBERTA COMMISSIONER'S INTERPRETATION OF PIPA

In December, 2011 the Supreme Court of Canada confirmed the interpretation by former Alberta Information and Privacy Commissioner **Frank Work** of the *Personal Information Protection Act* (PIPA). He had determined that extending the time for completing an inquiry under PIPA after the time limit expires does not automatically terminate an inquiry under the Commissioner's home statutes. This meant the Supreme Court overturned the decision of Alberta's Court of

Appeal that the Commissioner had lost jurisdiction because he breached the 90-day time limit for completing the inquiry. You can read this decision in *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61.





## GUIDANCE ON UTILIZING CLOUD COMPUTING

The Information Management Office of the Australian Government has just published a very useful resource intended for public sector organizations in that jurisdiction, *Negotiating the cloud – legal issues in cloud computing agreements*. Cloud computing is defined as “an ICT sourcing and delivery model for enabling convenient, on-demand network access to a shared pool of configurable computing resources (e.g. networks, servers, storage, applications and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction.” Inquiries regarding any use of this document can be sent to the mail address: [AGA@finance.gov.au](mailto:AGA@finance.gov.au).

There is much here to assist Saskatchewan based organizations including both private sector and

public sector that are contemplating contracting-out IT services to the cloud. This includes information about such key legal issues as protection of information, liability, performance management, ending the arrangement (including compensation for data loss or misuse), dispute resolution and other legal issues.

This resource is part of a suite of clearly written, practical tools available at: [www.agimo.govspace.gov.au](http://www.agimo.govspace.gov.au).



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## B.C. COMMISSIONER ORDERS RELEASE OF OPERATIONAL REVIEW REPORT



An applicant requested from the City of Vancouver (the City) a copy of an operational review report written by a third-party service provider. The City refused arguing that disclosure would reasonably

be expected to cause it financial or economic harm. The City was ordered to disclose the entire report. You can access [Order F11-35](#) at [www.oipc.bc.ca](http://www.oipc.bc.ca).

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## RECOMMENDATIONS TO IMPROVE B.C. HYDRO PRIVACY PRACTICES VIS A VIS SMART METERS

B.C. Information and Privacy Commissioner **Elizabeth Denham** has issued her Investigation Report [F11-03](#) which addresses the new smart grid and smart meters developed by B.C. Hydro. Her report includes a series of recommendations

to ensure compliance with access to information and privacy law in that jurisdiction. The Report is available at [www.oipc.bc.ca](http://www.oipc.bc.ca).



## FUTURE EVENTS

**January 28, 2012: Privacy Day** - For more information about events within Canada and beyond, please visit: [www.staysafeonline.org/dpd](http://www.staysafeonline.org/dpd) and [www.priv.gc.ca/resource/dpd/2012/index\\_e.cfm](http://www.priv.gc.ca/resource/dpd/2012/index_e.cfm).

**February 16-17, 2012: 13th Annual Privacy and Security Conference** - Victoria, B.C. For more information, please visit: [www.rebootconference.com/privacy2012](http://www.rebootconference.com/privacy2012).

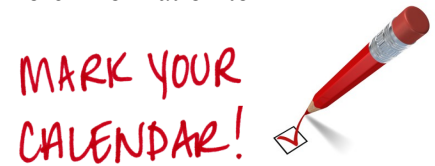
**March 7-9, 2012: IAPP Global Privacy Summit** - Washington, DC. For more information, please visit: [www.privacyassociation.org/events\\_and\\_programs/global\\_privacy\\_summit](http://www.privacyassociation.org/events_and_programs/global_privacy_summit).

**May 9-12, 2012: IAPP Canada Privacy Symposium** - Toronto, Ontario. For more information, please visit: [www.privacyassociation.org/events\\_and\\_programs/iapp\\_canada\\_privacy\\_symposium\\_2012](http://www.privacyassociation.org/events_and_programs/iapp_canada_privacy_symposium_2012).

**April 30-May 1, 2012: Western Canada Health Information Privacy Symposium** - Calgary, Alberta. For more information, please visit: [www.wchips2012.ca](http://www.wchips2012.ca).

**June 13-15, 2012: Access and Privacy Conference 2012** - Edmonton, Alberta. For more information, please visit: [accessandprivacy.virb.com](http://accessandprivacy.virb.com).

**June 15, 2012: Medical Records Seminar** - Saskatoon, Saskatchewan. More information to follow.



### 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](mailto:webmaster@oipc.sk.ca)

Website: [www.oipc.sk.ca](http://www.oipc.sk.ca)

*If you wish to subscribe to the Saskatchewan FOIP FOLIO, please send your e-mail address to [webmaster@oipc.sk.ca](mailto:webmaster@oipc.sk.ca).*