

FOIP FOLIO

January 2004

Our Website has been Launched!!

Our Office of the Information and Privacy Commissioner website - www.oipc.sk.ca is now available. We hope this will offer you a Saskatchewan perspective on access and privacy developments both inside and outside the province.



Our website will make it easier for you to find:

- access and privacy laws in force in Saskatchewan;
- *FOIP FOLIO* (current and archived);
- useful links to other resources;
- information about best practices;
- procedural tips when an OIPC review is undertaken (in the works);
- Frequently Asked Questions (in the works).

Coming soon to our website will be a *Privacy Impact Assessment* template (“PIA”). This is a format for self-audit of your privacy readiness. You will be able to download the PIA instrument, complete it and then send it to our office for feedback and advice.

If there are other things you would like to see on our website, just let us know. It is important that this site be useful to you and your organization.

Privacy and Boards of Directors -- What You Don't Know Can Hurt You

This excellent booklet should be a ‘must read’ for the CEO of every business in Saskatchewan. It provides some compelling reasons why businesses should move quickly to comply with new federal privacy legislation. It is available at the website for the Ontario Information and Privacy Commissioner: www.ipc.on.ca

Manitoba is Reviewing its FOIP Act and Personal Health Information Act

The Manitoba government is following British Columbia, Nova Scotia and Alberta in looking for public input to revise its access to information and privacy legislation. Discussion papers have been released and an MLA committee will hold public hearings throughout that province this spring. The discussion documents are available at <http://gov.mb.ca>.

Assistant to the Commissioner Job Competition

We are delighted to report that 97 applications were submitted for the position of Assistant to the Commissioner. We hope to announce the successful candidate in the February FOIP FOLIO.

Congratulations due Saskatchewan Crown Corporations

Our office has met with representatives of Saskatchewan Crowns that have done an impressive amount of work to improve compliance with the FOIP Act. The Crowns have undertaken the development of a comprehensive policy that addresses all personal information collected, used or disclosed by their organizations.

Is Your Organization covered by the Health Information Protection Act (“HIPA”)?

We have discovered that some organizations with personal health information have assumed that HIPA does not apply to them. This is based on s. 4 of HIPA that states Part II, IV and V of HIPA do not apply to personal health information obtained for purposes of 9 different statutes. We would caution you however that:

- (1) It does not follow that HIPA will not apply to one of those named agencies. There are 9 parts to HIPA. Even though Parts II, IV and V do not apply, that still leaves such items as the duty of trustees to protect information, the Commissioner’s powers of investigation and commentary and the immunity for action taken by trustees in good faith.
- (2) Statutory compliance is clearly important but the even bigger issue is whether your trustee organization is operating in a way that will reinforce public confidence that you will respect the privacy of your clients/patients and protect the confidentiality of their personal health information. Any organization in Saskatchewan that collects, uses or discloses personal health information should be focused on following best practices in terms of privacy regardless of whether or not all of the information under your control is subject to HIPA.
- (3) Many of the people who work in your organization have obligations under their professional codes of practice with respect to privacy and confidentiality. Your standards should at least meet those important requirements.

Role of Information and Privacy Co-ordinators

Probably the most important person in managing access and privacy issues in any public body, either provincial or local authority, is the designated co-ordinator. You may be surprised to learn that this key role is not even mentioned in the legislation.

The Acts place responsibility on the “head” or Minister of a provincial institution. That head however may delegate his powers to someone else in the organization. [s. 60]

The 2000 Access Directory produced by the province states that “*Each provincial government institution has a Freedom of Information and Privacy Administrative Co-ordinator. The Co-ordinator can answer questions and help you identify the records you wish to see. The Co-ordinator may be contacted in person or by telephone*”.

We could probably benefit from more consistency in labelling this position. In some organizations they are “FOI co-ordinators”, in others “Access Officers”, and in yet others, “Privacy Officers”.

So, what exactly does an Information and Privacy (FOIP) Co-ordinator do? We can do no better than borrow from some excellent work done by the Ontario Information and Privacy Commissioner’s office in outlining a job description. You can see the *Basic Tool Kit for New Co-ordinators* at www.ipc.on.ca.

Co-ordinators assist departments to meet their statutory responsibilities, promoting open government and fostering “an organizational culture” that advances four fundamental principles...

- information (general records should be available to the public);
- individuals should have access to their own personal information;
- exemptions to access should be limited and specific; and
- Institutions should protect the privacy of individuals with respect to their personal information.

A FOIP Co-ordinator works to:

- respond professionally and efficiently to access requests and privacy complaints, and;
- raise awareness of access and privacy issues on a regular and proactive basis within their organization.

Role of Information and Privacy Co-ordinators (continued)

A FOIP Co-ordinator needs to:

- be well aware of all operations of the organization, the kinds of records and record-management systems in the department;
- be able to quickly identify what units within the department are likely to have the records responsive to an access request and which employees should be consulted;
- be senior enough to be able to provide access and privacy advice to the Deputy Minister or head of your organization on a regular basis;
- monitor decisions and recommendations of the OIPC and ensure those decisions are integrated into the orientation and in-service training of staff in the Department;
- be involved in the design of new programs that may impact access or privacy rights;
- provide timely advice to the Department to ensure that the FOIP Act will be complied with; and
- improve general awareness about the legislation and also substantive items such as specific recommendations from the OIPC. The Ontario OIPC has suggested that this can be done through training sessions and training materials within your department. In large organizations you may be able to use newsletters, notices, FAQs, or a column in an intradepartmental bulletin. The Co-ordinator may undertake internal audits to identify areas where more work is required to ensure full compliance.

In other provinces, Co-ordinators from different institutions meet from time to time to discuss common problems and swap experiences. This is an excellent way of building capacity across all departments.

Some organizations have designated one person as Privacy Officer and someone different as the Access Co-ordinator. This can be a problem for several reasons:

- The FOIP Act has two themes (1) access to information and (2) protection of privacy. It can be inefficient and awkward to have two individuals within a department; one responsible for privacy and another responsible for access.
- Since our office deals with both access and privacy matters, there is value in having your institution represented by a single individual who can develop positive working relationships with OIPC staff.
- Access to personal information is an integral element in the 'privacy responsibilities' of a government institution. In fact, one of the most common exemptions to access is a claim that to release certain records would prejudice the privacy of an individual.
- It is more economical to integrate both access and privacy responsibilities into a single position.

What is the purpose of The FOIP and LA FOIP Acts?

Neither of these Acts defines a clear purpose. Our office however has considered the nature of the laws, the history of this legislation, provisions in other provinces and some direction from the courts. We have concluded that the purpose of these laws is:

To make public bodies more accountable to the public and to protect personal privacy by:

- giving the public a right of access to records;
- giving individuals a right of access to and the right to request correction of personal information about themselves;
- specifying limited exceptions to the right of access;
- preventing the unauthorized collection, use or disclosure of personal information by public bodies; and
- providing for an independent review of decisions made under the legislation

In interpreting and applying the Acts we will be guided by this purpose.

Duty to Assist

The FOIP Act does not stipulate a duty to assist applicants. The OIPC however takes the position that there is an implied duty on the part of government institutions (and local authorities under the LA FOIP Act) to take reasonable steps to ensure that they respond to access requests openly, accurately and completely. Many applicants do not have detailed knowledge about the types of records your organization maintains. In our view this kind of implied duty to assist is essential to meet the purpose of the FOIP and LA FOIP Acts. This is the standard that is clearly stated in the *Health Information Protection Act*.

IMS Health Challenges Alberta OIPC

IMS Health Canada Limited has just initiated a legal challenge in Alberta Court of Queen's Bench. This attempt to quash a decision of the Alberta Commissioner is based in part on an argument that the "*Health Information Act has been supplanted by the federal Personal Information Protection and Electronic Documents Act*" or Alberta's new private sector privacy law. If the courts accept that argument, it would have clear implications for Saskatchewan's HIPA.

Ontario Bill 31

The Ontario government has introduced this bill to address “*the protection of health information*”. The bill received first reading December 17, 2003 and is now in the committee stage. An early review of Bill 31 indicates a number of elements similar to HIPA. The bill can be viewed at the Ontario Legislative Assembly website: www.ontla.on.ca. Only Saskatchewan, Manitoba and Alberta now have stand-alone health information laws.

Future Events

February 18 -- 4th Annual Privacy and Security Summit & Expo offered in Washington, D.C. <http://www.privacyassociation.org/html/summit.html>

February 25 -- Implementing Privacy Workshop offered by Canadian Career Partners – Calgary http://www.career-partners.com/content/default.asp?content=news_release_implimenting_privacy.asp

February 26 -- READY OR NOT...Privacy Legislation Compliance in Saskatchewan offered by the Saskatchewan Institute of Public Policy 1:45 p.m. to 4:30 p.m.; <http://www.uregina.ca/sipp/upcomingevents0304/policyseminar0304.htm>

February 26 -- Workplace Privacy Conference offered by Lancaster House and University of Toronto Centre for Industrial Relations <http://www.lancasterhouse.com/conferences/Toronto/hr04t/wp04t/wp04t.asp>

March 25 & 26 -- NETLAW offered by the Canadian Institute in Toronto.
Telephone: 1-877-927-7936

May 8 & 11 -- e-health 2004: offered by CIHI and COACH in Victoria, B.C. <http://www.e-healthconference.com/>

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