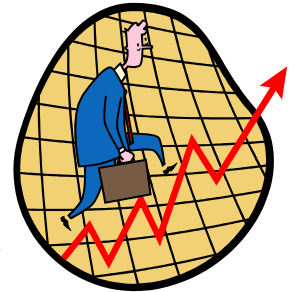


FOIP FOLIO

January 2005

Where is the Saskatchewan OIPC Headed?

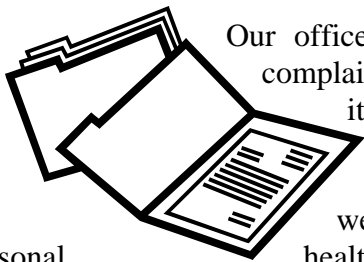
Our Information and Privacy Commissioner office (OIPC) has completed our Business Plan for 2005-2008. This is an attempt, in a transparent way, to provide the people of Saskatchewan and MLAs with a set of goals and performance measures against which our office can be measured over the next three years.



Our immediate priority is to clean up the backlog of Requests for Review and Breach of Privacy complaints under *The Freedom of Information and Protection of Privacy Act* (FOIP Act), *The Local Authority Freedom of Information and Protection of Privacy Act* and *The Health Information Protection Act* (HIPA).

We invite your feedback and comments on our Business Plan. We will revise it from time to time to address new issues and demands on our office. You can view the Business Plan at if you click on our website www.oipc.sk.ca. The Business Plan is under the “What’s New” tab.

Automobile Injury Appeal Commission (Investigation Report 2005-- 001)



Our office has issued a report following an investigation of a complaint against the Commission for publishing its decisions on its website, www.autoinjuryappela.sk.ca. The Commissioner found that there was no legislative requirement that the Commission publish decisions on its website. The disclosure of personal information and health information in this fashion violates the right to privacy of applicants provided by Section 29(1) of the FOIP Act. It also did not meet the standard in the Saskatchewan Privacy Framework. For more information on the Privacy Framework see www.privacy.gov.sk.ca. Further, the Commission had not met its obligation under section 16 of HIPA to develop written policies and guidelines for implementation of HIPA. In total, the Commissioner issued 11 recommendations for the Appeal Commission. The Investigation Report is accessible at www.oipc.sk.ca.

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It Only Takes One

On January 24, 2005, our Diane Aldridge, traveled to Kindersley to offer a presentation entitled, “Navigating the Privacy Jungle”. A resourceful Jan Kay contacted the OIPC because privacy protection was a topic she felt her community needed to know more about. Jan works at Wheatland Kennels and Pet Services. Jan succeeded in getting a good turn-out from representatives from the health region, rural municipalities, non-profits and businesses. This was really impressive, since Diane was up against tough competition that evening – it was curling night in Kindersley.



If even one person in your community wishes to take the initiative, make the necessary arrangements, and contact our office, we will send a representative from the OIPC to discuss access and privacy legislation, as our schedule allows. For more information, contact Diane Aldridge at (306) 798-1602.

DRM Technology and Privacy

Changes contemplated to the federal *Copyright Act* are giving rise to privacy concerns. The Canadian Internet Policy and Public Interest Clinic (CIPPIC) have recently identified potential problems with digital rights management (DRM) technology. Under the proposed changes, copyright owners may have legal protection of technologies that are similar to ‘spyware’. Such technologies could allow monitoring of what creative works Canadians read, watch and listen to. The Standing Committee on Canadian Heritage has recommended such legislative change. Our Ontario counterpart has produced a useful paper on this issue - *Privacy and Digital Rights Management (DRM): An Oxymoron?* The paper is available at the Ontario Commissioners’ website: www.ipc.on.ca/docs/drm.pdf. The CIPPIC website is www.cippic.ca.

Ontario Personal Health Information Protection Act (PHIPA)

In November 2004, Ontario’s *Personal Health Information Protection Act* came into force. As the latest law of its kind, there are some interesting features in PHIPA that we haven’t seen in similar laws in Alberta, Saskatchewan and Manitoba. These unique features include the following:

- Section 12 in PHIPA obligates a custodian to notify the individual at the first reasonable opportunity if the information is stolen, lost or accessed by unauthorized persons. [Although this is not a statutory requirement in Saskatchewan, we view this as a ‘best practice’ that ought to be followed]

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Ontario Personal Health Information Protection Act (PHIPA) (cont'd)

- Section 45 in PHIPA limits the ability of the Minister of Health and Long-Term Care to access anyone's individually identifying health information unless the Minister has first submitted a proposal to the Ontario Information and Privacy Commissioner and allows the Commissioner to review and comment on the proposal.
- Consent under PHIPA may be express or implied. In either case, an individual has the right to withdraw consent. This is a right not available under HIPA if personal health information is being collected, used or disclosed in most circumstances pursuant to section 27(2). The Ontario consent model is close to the Canadian Medical Association Privacy Code. This is also consistent with the Pan-Canadian Framework for Health and Privacy.

Some interesting tools have been developed in Ontario since that law came into force November, 2004. These include a Hospital tool-kit developed by the Ontario Hospitals Association and the Hospital e-Health Council. That is a 375 page book complete with illustrations, charts, best practices and detailed security requirements. There is also a physicians' tool-kit that is 64 pages long and focuses just on the legislation and not best practices. The security requirements are simplified. The physicians' tool-kit can be found at http://www.oma.org/phealth/privacy/physiciankit_FINAL.DOC.

You can also access the first two cases that the Ontario Information and Privacy Commissioner has dealt with under PHIPA at www.ipc.on.ca.

Privacy Commissioner Funds Research Projects



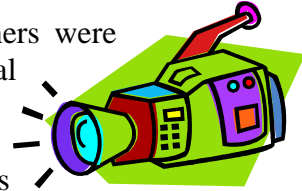
Canada's Privacy Commissioner, Jennifer Stoddart, has announced the awarding of more than \$370,000 to support 10 non-profit organizations in conducting research into the privacy impact of emerging technologies. The Commissioner's office was so impressed with the quality of submissions that it allocated an additional \$171,000 over and above the original \$200,000 in the Contributions program. For a listing of funded projects, go to www.privcom.gc.ca.

To undertake research is also part of the mandate of the Saskatchewan OIPC. Although we have no funding currently for research initiatives, we are certainly open to discuss proposals for 2005-2006.

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Video surveillance Developments

Provincial and Territorial Information and Privacy Commissioners were recently briefed by the Assistant Commissioner of the Royal Canadian Mounted Police on its video surveillance policy guidelines for community programs. This was developed with input from the Privacy Commissioner of Canada and after rigorous evaluation of a Kelowna project. If the RCMP provides your community policing, you should be able to get more information from your detachment.



Our office recently had the opportunity to visit the site of SIAST (Regina campus) to inspect the video surveillance set-up and operation. We applaud the SIAST initiative to review its use of video surveillance and compliance with the Video Surveillance Practices Advisory note on our website, www.oipc.sk.ca under the “Resources” tab.

Saskatchewan’s Health Quality Council Leads Again

Not only is Saskatchewan’s new Health Quality Council blazing the trail for this kind of innovative work in Canada but it is also pioneering in terms of privacy protection. HQC, on behalf of all Saskatchewan health regions, is undertaking an extensive patient satisfaction survey. The purpose is to engage residents in improving health care.

HQC has taken some important steps to protect the privacy of Saskatchewan patients and the confidentiality of their information. The survey involves distribution of letters to patients and then collection and analysis of the responses. We applaud two specific initiatives associated with this project.

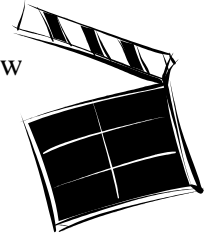
- (1) HQC undertook a formal Privacy Impact Assessment before embarking on this project and discussed that with our office.
- (2) Although HQC has contracted with a company that will do information management services with Canadian data in the U.S., individual identifiers will be first stripped from the data before it is sent out of the country. The data will be re-identified once it is back in Canada. We understand that this impacts the cost of the survey project but it is an important step in reducing the risk that it can be accessed by some unauthorized person or organization. It also addresses the risks posed by the USA *Patriot Act* discussed in past issues of the FOIP FOLIO.

For more information contact Nicole Wohlgemuth at nwohlgemuth@hqc.sk.ca.

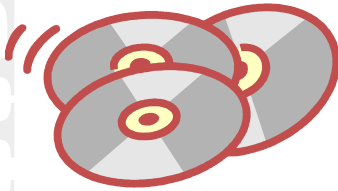
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Privacy Laws & Health Information: *Making it Work!* – DVD Now Available

Saskatchewan Association of Health Organizations (SAHO) has now produced a two-disc DVD set from the October conference, *Privacy Laws and Health Information: Making it Work*. The DVD features a number of the presentations including:



- Health Information and PIPEDA (Jennifer Stoddart)
- HIPA 101 (Duane Mombourquette)
- Health Research Perspective (David Loukidelis)
- Lessons from the Winnipeg Regional Health Authority (Katherine Choptaine)
- When the Commissioner Comes Knocking (Alta., Man. and Sask Commissioners)
- When You Need Consent (Gary Dickson)



To order the DVD contact SAHO at info@saho.org. The price is \$20 per DVD set.

Short Notices

Some interesting work has been done in Ontario in terms of “short notices”, i.e. how to write notices to the public that meet statutory requirements and yet are simple enough they can be easily understood.

The Ontario Bar Privacy Law Section and the Ontario Information and Privacy Commissioner have developed some multi-layered notices for use by health custodians (trustees in Saskatchewan). This usually involves “layering” the contents of a notice, i.e. there may be a brief one page notice and more detailed information in a brochure or poster. Together the 2 + layers (short notice and the more detailed document) may fulfill the notice requirements. This idea could easily be adapted to comply with sections 6(2), 9(3), 15, 16, 18(1)(b), 23(2), 27(3)(a) of HIPA in this province.

Quebec Amending Access Legislation

Quebec has been a pioneering province in many respects. After all, Quebec was the first jurisdiction in North America to legislate private sector privacy. Now the National Assembly is considering an interesting package of amendments to its access to information regime. One of the notable reforms is a positive duty on government departments to release information via the Internet on its operations and activities. For more information you can contact Jacques Saint-Laurent, the new President of the commission d'accès à l'information at www.cai.gouv.qc.ca.

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Newfoundland and Labrador

Canada's youngest province has reorganized its access and privacy regime. This includes the appointment of Phil Wahl as the new Information and Privacy Commissioner. The Newfoundland and Labrador office serving a province of about 500,000 now has 4 staff. Newfoundland and Labrador does not have health information legislation such as HIPA.

USA Patriot Act

The federal government has announced that it is reviewing all contracts to address concerns assessed thoroughly in the report of David Loukidelis, British Columbia Information and Privacy Commissioner. That report is available at www.oipc.bc.ca. It was announced on January 31, 2005 that the federal government will require all agencies and departments to conduct a comprehensive assessment of risks to Canadian information they release to U.S. companies carrying out work under contract. Special clauses have apparently been developed in consultation with the Privacy Commissioner of Canada.

Events

February 10 & 11, 2005 -- *Privacy and Security: Synergies in an E-Society*, Victoria, British Columbia (www.rebootconference.com/privacy2005/ for conference details)

February 16, 2005 -- *Making Tracks:RFID-The new game of tag you can't afford not to play* in Montreal, Quebec, sponsored by the Canadian Wireless Telecommunications Association.

March 4 - 5, 2005 -- *The Concealed, Anonymity-- Identity and the Prospect of Privacy*, University of Ottawa's Faculty of Law, Ottawa, Ontario (<http://www.ANONequity.org/ConcealedI> for conference details)

April 5, 2005 at 7:30 P.M., *Privacy, Anonymity and Identity in a Networked World*, University of Regina, featuring Ian Kerr who is leading a major international research project to investigate all aspects of anonymity, identity and authentication in a world of global electronic networking. Sponsored by the Sheldon Chumir Foundation for Ethics in Leadership.

June 15 -- 17, 2005, *Access and Privacy Conference 2005*, University of Alberta at Mayfield Inn, Edmonton, Alberta. (www.accessandprivacy.com for conference details)

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