



FOIP FOLIO

July 2007

40 ISSUES BEHIND US!



Welcome to the 40th issue of our little e-newsletter, the *Saskatchewan FOIP FOLIO*. You can easily review all 40 archived issues of the *FOIP FOLIO* at our website, www.oipc.sk.ca under the tab, *Newsletters*. If there are topics you think should be included in future issues of the *FOIP FOLIO*, please contact Kara at webmaster@oipc.sk.ca or (306) 787-8350 or toll free 1-877-748-2298.

RIGHT TO KNOW

October 1-5, 2007 is *Right to Know Week* in Saskatchewan. This week will include presentations by former federal Information Commissioner, **John Reid**, in Regina and Saskatoon.



Right to Know Week will see presentations to the winners of the two essay contests on the topic: “*The importance of access to information in a modern democracy.*” One contest is open to post-secondary students. The prize is \$500 and is sponsored by the law firm McKercher, McKercher & Whitmore, LLP. A second contest is open to high school students in Saskatchewan. Details of the essay contests are available under the *Right to Know* tab at the website, www.oipc.sk.ca.

There will also be a presentation of the *Chief Justice E.M. Culliton Right to Know Award* to a Saskatchewan public body that has demonstrated excellence in promoting the public’s right to know. The Right to Know Committee invites nominations for this award. The criteria are detailed in the June *FOIP FOLIO*, page one.

The Regina Public Library will be offering a week long topical film festival.

GREAT NEWS FROM THE WORKERS’ COMPENSATION ACT COMMITTEE OF REVIEW



Readers may recall that last fall the OIPC made a submission to the Committee of Review dealing with *The Workers’ Compensation Act, 1979* (WCA) and the operations of the Workers’ Compensation Board (WCB). We are delighted to report that the Committee has now recommended that the WCB should be subject to all provisions of *The Freedom of Information and Protection of Privacy Act* (FOIP) and *The Health*

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GREAT NEWS FROM THE WORKERS' COMPENSATION ACT COMMITTEE OF REVIEW (Cont'd)

Information Protection Act (HIPA). The recommendations relevant to FOIP and HIPA can be found in Chapter 9 at page 228. In considering the application of FOIP, “*The Committee has concluded there is no overriding purpose or reason that the Board should be exempt from these parts.*” The Committee also recommended the repeal of the exemption that the WCA has from Parts II, IV and V of HIPA. The Committee went on to say that: “*Once these recommendations are enacted, the Board will have to review and adopt new processes and procedures for the collection, use and disclosure of personal information that will respond to the submissions the Committee received.*”

The Committee further commented that:

The Committee can find no compelling public policy purpose or basis for the Board to continue to be exempt from, or have a special position with respect to, the legislation and administration protecting information or personal health information that applies generally in Saskatchewan.

The Committee recognizes the unique mandate and decision-making role of the Board in the administration of justice, but does not consider the Board's mandate and role to be so unique or special that the law and remedies that apply to other administrative agencies and public bodies should not apply to the Board.

The Committee's Report is accessible on Saskatchewan Labour's website, www.labour.gov.sk.ca. The OIPC submission is accessible at www.oipc.sk.ca under the *What's New* tab.

OIPC ANNUAL REPORT



On July 4, 2007, the Saskatchewan Information and Privacy Commissioner released his Annual Report for the fiscal year 2006-2007. The Commissioner, **Gary Dickson**, commented on a number of improvements in terms of compliance by Saskatchewan public bodies with access and privacy requirements. He made recommendations to the Saskatchewan Legislative Assembly as to how the province can do an even better job. This includes:

- Issuance of an open letter from the Premier to each of his Ministers stressing the importance of compliance with our access and privacy laws;
- Making each Deputy Minister explicitly responsible for ensuring that his or her Department fully complies with access and privacy laws; and



OIPC ANNUAL REPORT (Cont'd)

- The need for Ministers, CEOs of Crown corporations and local authorities to provide clear direction and explicit support to the FOIP (access and privacy) Coordinators in each of their organizations.

Commissioner Dickson discussed a worrisome trend in the introduction of new laws and regulations that diminish the information rights of Saskatchewan residents. The Annual Report includes 9 proposed steps for the Saskatchewan Government that would promote excellence in meeting access and privacy requirements. This Annual Report is accessible at www.oipc.sk.ca under the tab, *Annual Reports*.

A compact disk that includes the Annual Report and all the *FOIP FOLIOs*, Review Reports and Investigation Reports issued in the 2006-2007 fiscal year has been sent to government institutions, local authorities and health information trustees in Saskatchewan. Some features of the Annual Report that may be of particular interest to FOIP Coordinators include: a glossary of access and privacy terms; a summary of Review Reports and Investigation Reports issued and the response by the public bodies; a discussion of our Business Plan key performance measures; and details of our activities including 2,168 requests for summary advice, 148 requests for review, 70 breach of privacy complaint investigations, 156 education presentations, as well as 99 'detailed advice and commentary to public bodies' files. In the 2006 calendar year, our website, www.oipc.sk.ca attracted 195,827 'hits' (536 per day) and 54,784 'visits' (150 per day).

BILL 61, *THE VITAL STATISTICS ACT, 2007*



On May 9, 2007 the OIPC wrote to the Legislative Assembly detailing issues and concerns with respect to Bill 61, *The Vital Statistics Act, 2007* now before our Legislative Assembly.

We congratulate SaskHealth and officials in the Vital Statistics Division for incorporating a number of important privacy/confidentiality features in the Bill. These positive features include:

- Elimination of Division Registrars;
- Clarification of Terminology;
- Extension of time for appeals;
- Restrictions on disclosure;
- Changes to the registration requirements of abandoned newborn children; and
- Amendments to names.

Areas of remaining concern with the Bill include:

- Recognize the risks and challenges posed by an expanded electronic database;
- Need for explicit security provisions;
- Defining required elements for data-sharing agreements;



BILL 61, *THE VITAL STATISTICS ACT, 2007* (Cont'd)

- Reconsidering the scope of the paramountcy provision;
- Linkage of data with the health services number;
- Weaknesses in the authorization process for research involving personal information;
- Excessive scope of unconsented disclosure to unrelated persons;
- Disclosure to foreign governments;
- Disclosure to nearest living relative;
- Disclosure to police;
- No requirement to log and track unconsented disclosures; and
- No requirement to publish regulations in draft form to permit public comment prior to going into force.

Our letter to the Speaker of the Assembly is available at www.oipc.sk.ca under the *What's New* tab.

CANADA'S NEW NO-FLY LIST



Last month, all federal, provincial and territorial privacy commissioners issued a joint news release to identify problems with the new no-fly list, the Passenger Protect Program (the Program) and to make specific recommendations to government. Those recommendations included the following:

- Refer the Program to a Parliamentary committee for comprehensive public scrutiny re: justification for the Program, use of no-fly lists of other countries, the impact of no-fly lists on fundamental rights and freedoms, and the adequacy of the current legal framework;
- Enact comprehensive legislative criteria to govern the use of no-fly lists, the listing of persons on Canadian watch lists, and independent adjudication to ensure individuals have legal rights to appeal listing decisions;
- Confer the duty of reviewing and reporting on no-fly lists on an appropriate oversight body that is independent of government; and
- Suspend the operations of the Program until a comprehensive Parliamentary review has been completed.

The news release and background note are available at www.oipc.sk.ca under the *What's New* tab.



BYE BYE BYLAW



Across Canada, many cities have passed bylaws requiring used goods retailers to collect personal information from customers seeking to sell their goods. The result of these types of bylaws is that citizens engaged in legitimate, legal activities end up with their personal information in police databases.

On July 4, 2007, the Ontario Court of Appeal struck down a City of Oshawa bylaw. The bylaw required second hand dealers to collect identifying information about individuals including their photograph, details of three pieces of government-issued identification, the time of the visit to the store, and the nature of the goods offered for sale. The bylaw also required that the second hand store owner transmit all of this information to the police. The police stored the information in a police database and it was available for use and transmission by the police without any restriction or judicial oversight.

The Court was particularly concerned about:

- *“The wholesale transmission to the police of a significant amount of personal information about individuals;”*
- The transmission was to occur without any grounds to suspect *“that the goods that were sold to the second-hand dealer were stolen;”* and
- There was *“no limit as to [the personal information’s] use by the police or by those [with] whom the police may share the information.”*

The Court noted that the bylaw applied to second hand stores and, unlike pawn shops which are regulated by the *Pawnbrokers Act*, the *Municipality Act, 2001* did not grant the city the power to determine the type of personal information that can be collected by virtue of their power to enact bylaws.

The Court referred extensively to the decisions of the Ontario, Alberta and British Columbia Information and Privacy Commissioners. The Court adopted the approach of the Ontario Commissioner in making their decision.

The Ontario Commissioner’s enabling legislation allows the Commissioner to *“offer comment on the privacy protection implications of proposed programs of institutions.”* The Court recommended that, in future, the City take advantage of the Ontario Commissioner’s “expertise and experience” and vet any proposed new bylaw for a detailed examination of each provision and the necessity for it by the Commissioner at first instance, rather than by a court.



FUTURE EVENTS

September 20-21, 2007 – *Private Sector Privacy in a Changing World (PIPA Conference 2007)* – Vancouver, British Columbia (visit www.verney.ca/pipa2007/ for details)

September 24, 2007 – *Health Information Privacy Day, 2007* - Toronto, Ontario (visit <http://www.verney.ca/hpd2007/> for details)

September 24, 2007 – *Data Protection Commissioners’ Francophonie Conference* – Montreal, Quebec (visit <http://www.cai.gouv.qc.ca/CCPDF/> for details)

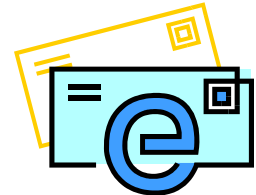
September 25-28, 2007 – *29th International Conference of Data Protection and Privacy Commissioners Conference* – Montreal, Quebec (visit www.privacyconference2007.gc.ca for details)

October 1-5, 2007 – *‘Right to Know’ Week* (details to be announced at a later date)

October 25-26, 2007 – *The Revealed ‘I’, A Conference on Privacy and Identity* – Faculty of Law, University of Ottawa (visit www.idtrail.org/content/section/11/95/ for details)

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