



FOIP FOLIO

LARGEST HIPA BREACH TO DATE



In Investigation Report [H-2011-001](#), Saskatchewan Information and Privacy Commissioner, **Gary Dickson**, found that **Dr. Teik Im Ooi**, as a trustee, failed to protect a large volume of personal health information (PHI) and in particular breached sections 16 (reasonable policies and procedures), 17 (appropriate

retention and destruction policy) and 18 (appropriate arrangements for an information management services provider or IMSP) of *The Health Information Protection Act* (HIPA). The investigation was launched on March 23, 2011 when approximately 180,169 pieces of personal health information were discovered in a recycling bin in south Regina. This included 2,682 patient files.

The Report discusses in detail seven key elements for administrative safeguards for any Saskatchewan trustee: privacy officer, privacy policy, privacy procedures, agreements, awareness and training program, communication with patients and security protections. These borrow from the [Privacy Toolkit](#) found on websites of the College of Physicians and Surgeons of Saskatchewan and the Saskatchewan Medical Association, as well as the [Guidelines for the Protection of Personal Health Information](#) found on the website of COACH,

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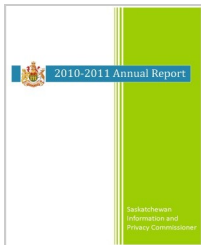
LARGEST HIPA BREACH TO DATE (Continued)

Canada's Health Informatics Association, and materials produced by the Ontario and Alberta Information and Privacy Commissioners. The Report also lists items that should be addressed in any contract with an IMSP and additional items to consider when the IMSP is for the purpose of record storage and destruction.

The Report includes a long list of findings and eleven recommendations. This includes a recommendation for breach notification to the patients affected by the breach consistent with the OIPC document [Helpful Tips: Privacy Breach Guidelines](#) as well as recommendations for

written policies and procedures and a training program for all employees of the trustee. We have recommended that the Ministry of Health complete a comprehensive manual on HIPA that will be available to trustees and the public. Another recommendation is that the College of Physicians and Surgeons of Saskatchewan implement a mandatory HIPA training program and monitors the attendance of its members. There is also a recommendation that the Minister of Justice consider prosecution under section 64 of HIPA. You can access this Investigation Report under the *Reports* tab at www.oipc.sk.ca.

OIPC ANNUAL REPORT



In the 2010-2011 Annual Report of the Office of the Saskatchewan Information and Privacy Commissioner (OIPC), **Gary Dickson** encouraged the Saskatchewan Government to embrace Open Government.

This would involve a stronger focus on getting people the records and information they need from their government in a way that is useful to them. This would build on recent initiatives of the Government of Canada (www.data.gc.ca), the cities of Toronto, Edmonton, Vancouver, Nanaimo and most recently the Government of British Columbia (www.openinfo.gov.bc.ca).

The 2010-2011 Annual Report notes that in this past fiscal year the OIPC has closed 314

investigation and review files, up from 132 in the preceding year. Overall, from January 1, 2003 to March 31, 2011 we opened 1,164 case files and closed 887.

The Commissioner also noted that starting in our next Annual Report, the OIPC will be specifically focusing on a relatively small number of large government institutions that are responsible for a significant number of delays in completing our reviews and investigations. The Annual Report provides a statistical summary of work over the last year as well as a review of Reports issued and the responses from the public bodies/trustees. The Annual Report is available at www.oipc.sk.ca.

NFLD COMMISSIONER ADVISES ON SEVERING PERSONAL INFO FOR PUBLIC MEETING

Ed Ring, Newfoundland and Labrador Information and Privacy Commissioner, has issued his [Report P-2011-001](#). This deals with a privacy complaint from a resident concerned that his correspondence and his identity was treated as a public document and was included in the

council minutes of a municipality. The Commissioner offered a number of suggestions to ensure that the requirements of the access law, the municipalities law and the privacy of the complainant could be reconciled.



RIGHT TO KNOW 2011

Mark Anderson, Chairman of the Saskatchewan Right to Know Committee, has announced that **Graham Smith** has agreed to come to Regina for Right to Know Week as the featured speaker. Graham is the Deputy Commissioner and Director of Freedom of Information for the United Kingdom Information Commissioner. His presentation is tentatively scheduled for Thursday, September 29, 2011. Deputy Commissioner Smith will speak on “Open Government, UK Style”. He may also share insight into the News of the World scandal that is preoccupying much of the world’s media.

Prior to his appointment in 2001, Graham enjoyed a career in local government, working for four local authorities over 20 years. He holds a law degree from the University of Sheffield and a Diploma in Local Government and Practice. He is one of two Deputy Commissioners. Graham has lead responsibility for promoting and enforcing the *Freedom of Information Act*.

The website for the UK Information Commissioner Office is www.ico.gov.uk.

There will also be the presentation of the Chief Justice E.M. Culliton Right to Know Award to a Saskatchewan public sector organization selected by the RTK Committee. The members of the current RTK Committee include **Jeff Barber** (Director of Regina Public Library), **Neil Robertson Q.C.** (Solicitor -Regina Police Service and President of SK Institute of Public Administration, Regina), **Erin Kleisinger** (Partner of McDougall Gauley LLP and Member of the CBA National Privacy and Access Section Executive Committee), **Sarina Wowchuk**, (Johnson Shoyama Graduate School of Public Policy), **Steve Seiferling** (McKercher LLP, CBA National Privacy and Access Section), and **Shannon Whyley** (MacPherson Leslie Tyerman LLP). For more information on RTK, see www.oipc.sk.ca and www.righttoknow.ca.

SASKATCHEWAN ACCESS REQUESTS UP



In the 2010-2011 Annual Report produced by Duane Mombourquette’s Access and Privacy Branch (the Branch) there are some noteworthy statistics. In the last fiscal year, there

were 1470 access to information requests, up from just 833 in the previous year. The previous four year average was 488. The number of requests for general information rose 23% while the requests for personal information rose 185%.

The Report notes that generally fewer requests are being fully satisfied than the four year average. The most common mandatory exemption cited is “Disclosure of personal information” (s. 29 of *The Freedom of Information and Protection of Privacy Act*, FOIP). The most common discretionary

exemptions are: advice from officials (s. 17 of FOIP), law enforcement and investigations (s. 15 of FOIP) and economic and other interests (s. 18 of FOIP).

The Report from the Branch however only deals with government institutions and their FOIP activity. There are many times more local authorities (municipalities, school divisions, regional health authorities and universities and colleges) that receive and process access requests under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). Unfortunately, there is no statutory requirement for those local authority statistics to be made publicly available on an annual basis. We understand from a number of sources that local authorities have also experienced a significant increase in the number of access requests received.



DE-IDENTIFIED DATA REDUCES RISKS

NYMITY, a commercial privacy organization, makes a range of privacy services available to clients. Subscribers recently benefited from an interesting interview with a leading Canadian expert on de-identification, **Dr. Khaled EL Emam**. A professor at the University of Ottawa, Dr. El Emam has argued that there is a need in Canada to understand the facts with respect to the benefits and risks of de-identified data and the practice of ‘responsible information management.’

The article, in a July 2011 NYMITY document entitled *Privacy Interviews with Experts*, is particularly useful reading for those who work in the healthcare sector. Dr. El Emam has also co-authored a paper with Ann Cavoukian, Ontario Information and Privacy Commissioner entitled [Dispelling the Myths Surrounding De-Identification: Anonymization Remains a Strong Tool for Protecting Privacy](#). This June 2011 paper is available at www.ipc.on.ca.

TEXAS RAISES THE BAR FOR EHR COMPLIANCE



A new state law in Texas has expanded privacy protection for patients although it will not take effect until next year. This includes increased penalties for misuse of electronic patient records and new enforcement powers for a number of

state agencies. Continuing privacy training for staff has been strengthened. An employee must finish the training within 60 days of being hired and must repeat the training once every two years. All health care provider organizations must document each employee’s attendance at training sessions.

OPEN GOVERNMENT INITIATIVE IN BRITISH COLUMBIA

The open data site of the B.C. Government was launched on July 19, 2011. The site, www.data.gov.bc.ca, is something that new Premier, **Christy Clark**, promised during her leadership campaign. This makes B.C. the first Canadian province to take this step. In addition, the Government will begin posting the records that it releases under that province’s FOIP Act on

the website: www.openinfo.gov.bc.ca. As noted in our June FOIP FOLIO, this will be done no sooner than 72 hours after the records are released to the original access applicant. This initiative will reduce the volume of access requests and simplify the access process for citizens of that province.

ONTARIO CLASS ACTION OVER LOST USB KEY

The Durham Regional Health Authority lost a USB key containing the personal health information of more than 83,500 individuals. On April 26, 2011 the Ontario Supreme Court of Justice certified a lawsuit against the health authority as a class action on behalf of all affected patients. The class action alleges

negligence, breach of a fiduciary duty, breach of privacy and a breach of Section 7 of the *Charter of Rights and Freedoms* (right to life, liberty and security of the person). The Court file No. is 66247/10.





UCLA HEALTH SYSTEM REQUIRED TO BETTER PROTECT PATIENT INFO



After acknowledging that employees viewed the PHI of high-profile patients improperly and without a 'need-to-know', UCLA Health System agreed to pay \$865,000 and implement a new system to better protect privacy. The new written policy and procedures clarified permissible and non-permissible use of PHI, detailed new standards for workstation use, and mandated more rigorous training of health care workers. In a press release, a spokesperson

for the U.S. Department of Health and Human Services (HHS) stated that "[e]mployees must clearly understand that casual review for personal interest of patients' [PHI] is unacceptable and against the law ...[and] [e]ntities will be held accountable for employees who access [PHI] to satisfy their own personal curiosity." The HHS news release is available at <http://www.hhs.gov/news/press/2011pres/07/20110707a.html>.

A NEW CONCERN FOR CHEATING SPOUSES

A woman in New Jersey was suspicious that her husband was having an affair. She installed a GPS device in his car so that she could monitor where he drove to. When the husband learned his vehicle movements were tracked he made a court application based on an invasion of privacy. The New Jersey Appellate Division upheld the decision of the lower court that the husband's claim be dismissed on account of any

surveillance that occurred only captured locations that were on public roadways and in plain view of the public. There could therefore be no reasonable expectation of privacy on the part of the husband. See *Villanova v. Innovative Investigations, Inc.* N.J. Super (App. Div 2011).

ONTARIO OIPC CLARIFIES "REASONABLE SEARCH"

An adjudicator for the Ontario Information and Privacy Commissioner issued an interim order this April that considered what more needed to be done to effect a reasonable search for records that would be responsive to an access request. The adjudicator relied on previous Ontario Orders that a further search will be ordered if the public body does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control. There is also Ontario precedent that a reasonable search is one in which an experienced employee



knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request. This latest Order, [PO-2964-I](#), is available at www.ipc.on.ca.

This Ontario Order would also reflect our expectations of government institutions, local authorities and trustees in Saskatchewan. Our office has considered adequacy of the search in our Reports [F-2008-001](#) and [F-2004-007](#). Both of these are available at our website, www.oipc.sk.ca, under the *Reports* tab.



SPYING ON EX-SPOUSE BY AIRPORT EMPLOYEE GOES TO FEDERAL COURT



An employee of Greater Toronto Airports Authority used surveillance equipment to spy on her former husband when he moved through the airport terminal accompanied by his new girlfriend. Federal Privacy Commissioner, **Jennifer Stoddart**, investigated and concluded that the GTAA had failed to

comply with the *Personal Information Protection and Electronic Documents Act* (PIPEDA). The Commissioner recommended a number of actions which were rejected by the GTAA. The Commissioner has now initiated an action in the Federal Court. For more information, see the Commissioner's [Annual Report to Parliament 2010](#), found at www.priv.gc.ca.

BC OIPC PUBLISHES GUIDELINES FOR ADMINISTRATIVE TRIBUNALS

The office of the B.C. Information and Privacy Commissioner has published [Balancing Privacy and Openness: Guidelines on the Electronic Publication of Decisions of Administrative Tribunals July 2011](#). This is a practical, easy to read guide for administrative tribunals to allow them to meet their requirements under FOIP when they might be considering Internet publication of their decisions. Similar tools are

available on the Privacy Commissioner of Canada's website, www.priv.gc.ca, such as [Electronic Disclosure of Personal Information in the Decisions of Administrative Tribunals](#). In addition, you may wish to review another resource at our OIPC website, [Administrative Tribunals and Posting Decisions to the Internet - Resource List](#).

THE CASE AGAINST CLOUD COMPUTING



A very persuasive article has been written by **Bernice Karn** of the Cassels Brock & Blackwell LLP law firm based in Toronto entitled [Data Security – The Case Against](#)

[Cloud Computing](#). Ms. Karn suggests that notwithstanding the perceived advantages of cloud computing, key business should never be entrusted to the cloud. To obtain a copy of the March 31, 2011 article contact the law firm at www.casselsbrock.com.

POLICE OFFICER DISCIPLINED FOR SPYING ON FORMER GIRLFRIEND

According to a story in the Calgary Herald by **Stephane Massinon** (Postmedia News July 6, 2011), a police officer in Lethbridge has been demoted after a disciplinary hearing. The officer admitted to entering the Canadian Policy Information Centre database (CPIC) on 14 occasions for personal purposes. He was

demoted for a two year period and ordered to undergo counseling and ethics training. In Saskatchewan, municipal police forces are not subject to FOIP or LA FOIP although the RCMP are subject to the federal *Access to Information Act* and the *Privacy Act*.



PUBLIC-PRIVATE PARTNERSHIPS AND PERSONAL HEALTH INFO



The Canada Pension Plan Investment Board has recently acquired an international health information company, IMS Health. IMS has been in the news in recent years with respect to its practice of buying from pharmacies information about the prescription practices of local physicians. That information is assembled in the U.S. and then sold to pharmaceutical manufacturers for their sales activity in the form of prescription practice profiles on physicians. A recent article by **Dr. Gordon Atherley**, [*A great entrepreneurial idea or not?*](#), is available at

www.fraserinstitute.org. The OIPC has in the past determined that this information about the prescribing practices of physicians does not qualify as PHI of patients by reason of section 3 (2)(a) of HIPA. The federal Privacy Commissioner has determined that this information is work product of physicians and therefore not their personal information warranting protection under the *Personal Information Protection and Electronic Documents Act*. For more information refer to our [*Report on The Health Information Protection Act Draft Regulations*](#) dated September 10, 2004.

WELCOME TO THE OIPC

Margot Harms joined the OIPC on June 27, 2011 as a Portfolio Officer. Margot holds a Diploma of Dental Therapy as well as a Bachelors of Social Work. She comes with several years experience working with the

Ministry of Social Services in Income Security and Family Services as well as with Corrections and Public Safety in the Young Offenders program. Previously, Margot worked with a Regina law firm.

Lauren Bergren joined the OIPC on August 9, 2011 as the Administrative Manager. Lauren holds a Business Communications certificate and has over 20 years of executive administrative experience. She comes with several years experience working in the Saskatchewan

Archives as Executive Assistant to the Provincial Archivist and Board of Directors. Lauren has experience working with quasi-judicial commissions within government and the private sector.





MARK YOUR CALENDAR!

September 29, 2011: Right to Know Day Presentation - *Open Government-UK Style*, presented by Graham Smith, Deputy Information Commissioner for the United Kingdom, Room 216, Language Institute Building, University of Regina from 4:00 p.m. to 6:00 p.m. For more information on this event visit http://www.schoolofpublicpolicy.sk.ca/news_events/index.php. For updates on Right to Know Week visit www.oipc.sk.ca.

October 3, 2011: Canadian Bar Association (CBA) Privacy and Access Law Symposium - Ottawa, ON. For more information please visit [CBA Privacy and Access Law Symposium](#) or www.cba.org.

October 4-5, 2011: 7th International Conference of Information Commissioners - Ottawa, ON. For more information please visit [7th International Conference of Information Commissioners](#) or www.oic-ci.gc.ca.

October 13-14, 2011: PIPA Conference 2011, It's Your Business - Vancouver, BC. For more information please visit [PIPA Conference 2011](#) or www.privacyconference2011.ca.



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