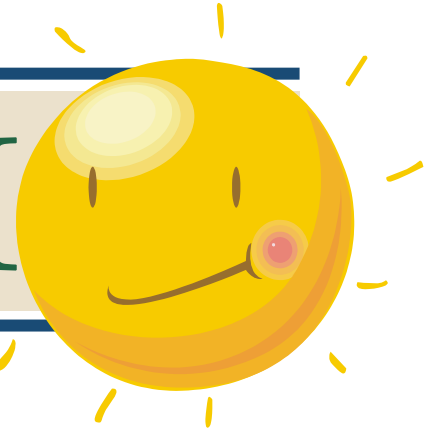




FOIP FOLI



DEADLINE FOR CULLITON AWARD NOMINATIONS

Your organization can join a number of Saskatchewan organizations that have distinguished themselves in terms of innovation and creativity in meeting FOIP requirements. Organizations that have been honoured in the past include the City of Regina, Saskatchewan Health Quality Council, Saskatoon Regional Health Authority and the Saskatchewan Institute for Applied Science and Technology (SIAST).

The Right to Know (RTK) steering committee is again seeking nominations for the *Chief Justice E.M. Culliton Right to Know Award*. The intent of the award is to celebrate and to recognize leadership in promoting open and accountable government.

To be eligible, the body must be a Saskatchewan government institution (provincial government Ministry, Crown corporation, board, commission or agency) or a local authority (e.g. regional health authority, municipality, library, school, university or college).

The nominee should be an agency that has demonstrated some or all of the following qualities:

- Leadership in promoting public access to the agency's information;
- Creativity in building public awareness of access to information;
- Excellence in orientation of, and service training in, employee access to information responsibilities; and/or
- Innovation in the development of tools to promote or facilitate access to information.

The **deadline** for nominations is **June 30, 2011** and can be self-initiated or third party. Nominations should include a letter of nomination (up to 1,000 words), and samples of materials relevant to the nomination (testimonials or other material).

The award will be presented during Right to Know Week which will be held September 26—30, 2011. Nominations can be sent to the Right to Know Steering Committee, c/o # 503, 1801 Hamilton Street, Regina, SK S4P 4B4 or fax (306) 798-1603 or email kphilip@oipc.sk.ca.

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ALBERTA OIPC CLARIFIES INDIRECT COLLECTION OF PHI

Investigator **Leahann McElveen** in the Alberta OIPC has issued an [Investigation Report H2011-IR-001](#) that clarifies when a custodian (equivalent to Saskatchewan ‘trustee’) can collect personal health information (phi) without consent. This investigation involved an individual who was admitted to a Calgary hospital under the *Mental Health Act*.

Ms. McElveen found that there was authority for the indirect collection. She had a number of recommendations however to clarify for patients when a custodian can rely on legal authority to indirectly collect and the circumstances when patient authorization is required. She recommended a new

authorization form and guidelines be developed for indirect collection and that a training and awareness strategy was required. Alberta Health Services accepted the recommendations. Investigation Report H2011-IR-001 is available at www.oipc.ab.ca.



ANONYMOUS VIDEO ANALYTICS (AVA) TECHNOLOGY

Ontario Information and Privacy Commissioner (IPC) **Ann Cavoukian** released a white paper considering AVA technology and privacy.

The Ontario IPC offers commentary on how digital screen network operators are using pattern detection technology to understand viewing audiences. This

interesting paper describes innovative digital signage technology developed in Ontario that embraces Privacy by Design principles. Commissioner Cavoukian suggests that this is a model approach for the online industry. The white paper is available at www.ipc.on.ca.

BRITISH COLUMBIA IPC CONSIDERS SIMULTANEOUS DISCLOSURE PRACTICE



British Columbia IPC **Elizabeth Denham** issued her [Investigation Report F11-02](#) into the simultaneous disclosure practice of BC Ferries.

In response to a complaint about the practice of BC Ferry Services of publicly posting responses to access to information requests, either before or at the same time as they

are provided to the applicant, the Commissioner

undertook an investigation.

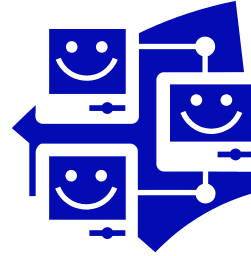
The investigation considered the practice of BC Ferries but also the general practice of proactive disclosure. She concluded that the practice frustrates the purposes of their access legislation because it may discourage some individuals, particularly the media, from making access requests, thereby interfering with their ability to hold government accountable. The Commissioner discussed best practice for proactive disclosure and recommended a minimum delay of 24 hours before the response is publicly posted. Her Investigation Report F11-02 is available at www.oipc.bc.ca.



OBTAINING DISCLOSURE OF PLAINTIFF'S FACEBOOK INFORMATION

We noted a very timely and useful paper on obtaining disclosure of a Plaintiff's Facebook information.

The article *The Proof is in the Profile* was written by **Julia Anagnostakis** of the Toronto law firm Blaney McMurtry LLP and is available at <http://www.blaney.com>



SUPREME COURT DEALS WITH RECORDS IN MINISTERS' OFFICES

On May 13, 2011 the Supreme Court issued its judgment in respect to four applications by the Information Commissioner of Canada, **Suzanne Legault**, for judicial review of refusals to disclose certain records requested about a decade ago under the federal *Access to Information Act*. The judgment covers a lot of ground but is authority for the following:

- The Prime Minister's Office and a number of ministerial offices are not part of the "government institution" for which they are responsible;
- None of the requested records could be said to be "in the control of the government institution";
- The Prime Minister's agenda in the possession of the RCMP and the Privy Council Office were under the control of a government institution;

- That agenda must be disclosed subject to the mandatory and discretionary exemptions in ATIA and section 19(1) of ATIA prohibits the head of a government institution from releasing any record that contains personal information and that would include the agenda.
- In that case, "control" meant that a senior official with the government institution (other than the Minister) has some power of direction or command over a document, even if it is only a "partial" basis, a "transient" basis, or a "de factor" basis.

The full decision is available at [Canada \(Information Commissioner\) v. Canada \(Minister of National Defence\), 2011 SCC 25](#)

Our Mission:
The people of Saskatchewan shall enjoy the full measure of information rights that have been affirmed by the Legislative Assembly of Saskatchewan



ALBERTA COLLEGE OF PHYSICIANS DEALS SEVERELY WITH PHYSICIANS

On April 20, 2011 a former Edmonton family physician was found guilty by the College of Physicians and Surgeons of Alberta (CPSA) of breaching the following CPSA *Standards of Practice*:

- Terminating the Physician Patient Relationship in Office Based Settings
- Patient Records,
- Closing, Leaving, or Moving a Medical Practice

The doctor had left Alberta and made no arrangements for the appropriate transfer of his patient files contrary to the *Standards of Practice*.

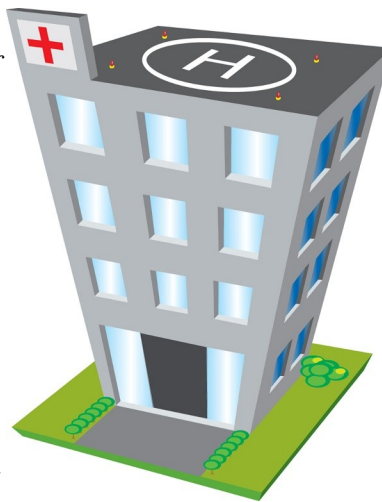
He also failed to make appropriate arrangements to ensure the confidentiality and security of his patients' medical records contrary to the applicable *Standards of Practice*. He was found to have demonstrated unprofessional conduct in his actions. He was fined \$40,000 to pay for the archiving of his patient files, and another \$15,516 for the investigation/hearing. His practice permit was suspended until the fine and costs are paid. More information is available at www.cpsa.ab.ca.



THE ROLE OF FOIP COORDINATOR IN HOSPITAL SETTING

Since Ontario hospitals only recently became subject to the *Freedom of Information and Protection of Privacy Act* (FIPPA) in that province, there has been considerable activity in preparing hospitals to assume new responsibilities.

A number of Ontario law firms have offered tips and advice to assist in those efforts. An interesting piece that provides a useful summary of the responsibilities of a Freedom of



Information and Protection of Privacy Coordinator can be found in the May 9, 2011 FAQ published by the Borden Ladner Gervais law firm. The checklist of responsibilities provides what would be a useful refresher for Privacy and Access coordinators in Saskatchewan's 13 regional health authorities and other provincial health service organizations. The May 9 document is available at www.blg.com.

DUTY TO NOTIFY OF PRIVACY BREACH

As subscribers of the FOLIO will already know, Alberta was the only jurisdiction in Canada to have mandatory breach notification across the private sector. This was done under amendments to that province's *Personal Information Protection Act* (PIPA).

If you wish to see how this works in practice, what

follows are three Orders from **Frank Work**, Alberta IPC that involve breach notifications: [P2011-ND-008](#) (MAF Metal Alloy Fabrication Limited); [P2011-ND-013](#) (H & R Block) and [P2011-ND-012](#) (Air Miles Reward Program).

All of these decisions are available at www.oipc.ab.ca.



FEDERAL COURT UPHOLDS PRIVACY COMMISSIONER DECISION

A dissatisfied complainant had initially applied for access to her personal information held by her former employer. She then appealed to the Privacy Commissioner of Canada (PCC) under the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA).

The Office of the Privacy Commissioner of Canada had determined that the complaint was well-founded but that the complainant had been provided with the information she was entitled to. The PCC therefore determined that the complaint was resolved. The complainant then applied to the Federal Court

pursuant to section 14 of PIPEDA for different kinds of relief as well as compensation.

Justice Harrington concluded that the applicant had received what she was entitled to and refused to provide her with any of the things she sought. The full decision is available at [Eve Kollar v. Rogers Communications Inc., 2011 FC 452.](#)



CITY OF VANCOUVER PROMOTES TRANSPARENCY



At the end of April Vancouver city council expenses were made available for 2010 as part

of its Open Data and Open Standards Policy. This information would also have been available by means of a formal access to information request but the City wished to publish the information proactively.

ONTARIO COMMISSIONER OFFICE ORDERS CITY TO DISCLOSE

An adjudicator in the office of the Ontario IPC recently ordered the City of Toronto to provide certain records to an applicant.

She also ordered the city to conduct a search for the records relating to a named councillor and his assistant that are in the custody and control of the city and to provide the applicant with the result of such a search.

This follows a finding that the city's search for records of the councillor and his



assistant was not a reasonable search.

The request was for records related to a named address. The adjudicator found that the councillor or his assistant's records relating to the named address would relate to the councillor's official responsibilities such that these records would be subject to the access law. The [Order MO-2610](#) is available at www.ipc.on.ca.



MARK YOUR CALENDAR!

July 27—29, 2011: [The 11th Privacy Enhancing Technologies Symposium](#), Waterloo, ON. For more information please click on link above.

October 3, 2011: Canadian Bar Association (CBA) Privacy Law Symposium, Ottawa, ON. More details to follow in future issues of the FOIP Folio.

October 13—14, 2011: PIPA Conference 2011, Privacy: It's Your Business. Coast Coal Harbour Hotel, Vancouver, BC. For more information please visit [PIPA Conference 2011](#).

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