

FOIP FOLIO

June—July 2005

Thanks to Pam Scott

The Saskatchewan Office of the Information and Privacy Commissioner (OIPC) has accomplished a lot in our first 19 months of operation. Much of that has been due to the energy and skill of our office manager, Pamela Scott. Pam published the first 16 issues of the FOIP FOLIO, handled the logistical work for the HIPA conference last October, published our reports, served as webmaster and smoothly handled all kinds of chores. She has done so with good humour, tact and her characteristic efficiency. Pam leaves our office at the end of June for an exciting new challenge at the office of the Chief Electoral Officer. Pam has been a terrific colleague and friend to us. We wish her every success in her new endeavour.



Report No. 2005—005 (SaskEnergy)

The applicant requested certain records from this Crown Corporation under *The Freedom of Information and Protection of Privacy Act* (FOIP). SaskEnergy provided the Applicant with a fee estimate. The Applicant asked the Commissioner to review the fee estimate. Our office found that the estimated fees were excessive and recommended that they be reduced. This report surveys a number of considerations that apply in determining what fees are appropriate on an access request. All FOIP Coordinators in this province are encouraged to review this report and become familiar with the approach the OIPC takes to fees and fee estimates. This report is available online at www.oipc.sk.ca under “Reports”.



EKOS Survey for Privacy Commissioner of Canada

The federal Privacy Commissioner commissioned an opinion survey to identify Canadians’ concerns with privacy. The report from EKOS Research Associates is accessible at www.privcom.gc.ca under *Canadians, Privacy and Emerging Issue*. The survey involved more than 1000 Canadians who were contacted by telephone in late March.



EKOS Survey for Privacy Commissioner Of Canada (cont'd)

Key findings include:

- 70% agree that protecting the personal privacy of Canadians will be “one of the most important issues facing the country”;
- 3 out of 4 respondents agree on the need for strong laws to protect their personal information;
- 9 in 10 Canadians see a need for updating protection when there is a cross-border transfer of personal information;
- Virtually all of those surveyed want to not only be informed of transfers of personal information outside of Canada but they would also demand their permission; and
- Only 1 in 5 have a clear awareness of existing privacy laws.

Newfoundland and Labrador OIPC on Duty to Assist

The Commissioner found that the ‘duty to assist’ defined in that province’s new FOIP law was not met by the College of the North Atlantic. An access request had been dealt with by the college’s solicitor and was not even brought to the attention of the designated Access and Privacy Coordinator for some 40 days after it was received. That legislation has an interesting feature that could be useful in Saskatchewan. Section 67 (1) provides as follows:

“67(1) The head of a public body shall designate a person on the staff of the public body to

- (a) receive and process requests made under this Act;*
- (b) co-ordinate responses to requests for approval by the head of the public body;*
- (c) educate staff of the public body about the applicable provisions of this Act;*
- (d) track requests made under this Act and the outcome of the request; and*
- (e) prepare statistical reports on requests for the head of the public body.*

Although Saskatchewan has no such provision, it does serve as a useful outline of a job description for a FOIP Coordinator of a government institution or local authority in this province. That Report 2005-001 is available at www.oipc.nf.gov.ca.



PIPEDA and Local Authorities

The Privacy Commissioner of Canada has published a revised fact sheet dealing with municipalities, universities, schools and hospitals. The publication confirms that “*as a general rule, PIPEDA does not apply to the core activities of municipalities, universities, schools and hospitals. By core activities we mean those activities that are central to the mandate and responsibilities of these institutions. Providing a service for a fee does not necessarily trigger the application of the Act if the service is part of the institution’s core activities.*” You can find the entire fact sheet at www.privcom.gc.ca.

What’s New with Office of Information Commissioner of Canada

Commissioner John Reid’s seven-year term came to an end on June 30, 2005 but he has been continued as the federal Information Commissioner until March 2006. The Prime Minister’s office has hired former Supreme Court Justice Gerard LaForest to undertake a review of whether the federal access and privacy regimes should be integrated in a single office as is common in the provinces. Our office is of the view that integrating access and privacy in a single statute and single oversight agency works well. We recognize however that there are some different considerations that apply at the federal level.

At the federal level, there is a very large and important role for Commissioners interacting with Parliament, and large government organizations such as the RCMP. Recently there have been huge new demands on both Commissioners to respond to new anti-terrorism initiatives and new surveillance proposals. At the same time the federal government has contested or ignored all manner of proposals for strengthening the *Access to Information Act* and has forced the Information Commissioner to frequently resort to the court to compel production of cabinet documents and other records withheld by the Prime Minister’s Office. There is a legitimate concern that rolling the two offices together would end up overwhelming the new oversight office and making it less effective.



Our view is that access and privacy are fundamental rights of citizens in Canada and any major changes to the access and privacy regime should be decided by Parliament after an open, public consultation in which Canadians can participate.

Can a Public Library Secretly Monitor Employee Keystrokes?

Frank Work, Alberta Commissioner recently issued a report dealing with a regional library. The library had installed keystroke logging software on the computer of an information technology employee without telling the employee. The employee complained to the Alberta OIPC that this violated the FOIP Act in that province. The library argued that the Act permitted collection of information that relates directly to and is necessary for an operating program or activity of a public body. [The Saskatchewan counterpart would be section 25 of FOIP or section 24 of LA FOIP]. The Commissioner discussed that the surreptitious use of keystroke logging software is a form of surveillance. This might be necessary if the employer had reason to believe that fraud was being committed by the employee using office-supplied information technology equipment. On the facts of this case however, the Commissioner found that there were less-intrusive means available for collecting information needed for managing the employee and accordingly the collection contravened the FOIP Act. The full report is available at www.oipc.ab.ca.



Missing Computer Tape Containing Health Information in Alberta

In Alberta, the Department of Health and Wellness discovered that a data tape containing personal health information of more than 670,000 Albertans was missing. The information was registration information and not diagnostic, treatment or care information. The tape went missing in the course of transferring data between two information management companies working for the Department. Mr. LeRoy Brower, Director, *Health Information Act* found that the department and its information managers had, in fact, taken reasonable steps to maintain safeguards to protect against a reasonably



anticipated risk. A number of changes to procedure were implemented after the data loss to prevent a recurrence. Given that the risk of someone finding the tape and being able to read the data on it was determined to be low, it was recommended that substitute notice be provided by media advertisements and publication in a prominent and highly visible location on the department's website for a period of 30 days. The full report is available at www.oipc.ab.ca.

Will the U.S. Create a Position of Information and Privacy Commissioner?

An interesting initiative is underway in Congress where a package of legislative proposals is being advanced to amend the 39 year old *Freedom of Information Act*. To keep up with more than 4 million access requests last year, it is proposed to modernize the regime and the rules governing access to federal government information. The push is coming from a coalition of organizations led by Senator Patrick Leahy and Senator John Cornyn. One of the suggestions is for an ombudsman to provide an alternative to the court process for a dissatisfied applicant.



Doctor Refuses Access Request

The Assistant Privacy Commissioner of Canada recently dealt with a complaint that a physician who had done an independent medical examination on behalf of an insurer had refused the individual access to his personal health information. The information denied the applicant consisted of notes taken by the physician during an examination. The actual report from the doctor to the insurance company was provided to the applicant. The Assistant Commissioner found that the reasons why the notes were refused were improper and recommended that the doctor provide access. The case summary is available at www.privcom.gc.ca as *PIPEDA Case Summary #306*.

Want a Free Ticket to a First Rate Privacy Conference in Ottawa?

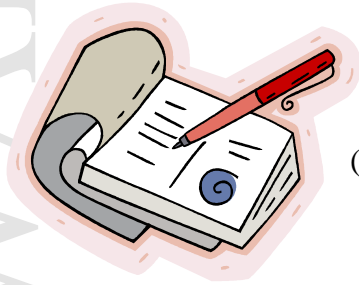


Undergraduate and graduate students are invited to submit papers for the Contours of Privacy conference to be held in Ottawa on November 5 and 6, 2005. Papers should not exceed 4000 words. Successful applicants will have their travel and accommodation expenses covered. Mail three copies to:

Contours of Privacy Conference, Student Submissions
c/o David Matheson
Department of Philosophy
Carleton University
1125 Colonel By Drive
Ottawa, Ontario K1S 5B6
dmatheson@connect.carleton.ca

Please include a cover letter containing your name, institutional affiliation, phone number, and postal and e-mail addresses, as well as an abstract of approximately 250 words. Deadline for submissions is September 15, 2005

Events



Sept. 8-9, 2005, *Access to Information: Analyzing the State of the Law*, Riley Information Services Inc. and Canadian Newspaper Association, Ottawa, Ontario; (www.rileyis.com/seminars/index.html for seminar details)

Sept. 28-29, 2005, *Technology, Privacy and Justice*, Canadian Institute for the Administration of Justice, Toronto; (www.ciaj-icaj.ca/english/calendar/TorontoAngJune7.pdf for details)

Oct. 12-14, 2005, *Privacy Security Trust 2005*, St. Andrews, New Brunswick; (www.ung.ca/pstnet/pst2005/index.html for details)

Oct. 17-18, 2005, *Electronic Health and Medical Records*, Toronto, Ontario; (www.insightinfo.com for details)

Nov. 3-4, 2005, *Privacy and Security: Disclosure*, Centre for Innovation Law and Policy (University of Toronto, Toronto, Ontario; (www.cacr.math.uwaterloo.ca/conferences/2005/psw/announcement for details)

Nov. 5-6, 2005, *Contours of Privacy: Social, Psychological and Normative Perspectives*, Carleton University, Ottawa, Ontario; (www.carleton.ca/cove//contours for details)

Nov. 17-18, 2005, *Canadian Institute's 11th Annual Regulatory Compliance for Financial Institutions*, Toronto, Ontario (http://www.canadianinstitute.com/Finance_Banking/RegulatoryCompliance.htm for Conference details)

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