

# FOIP FOLIO

June 2007

## RIGHT TO KNOW



### Nominations for *Culliton Award*

Your nominations for the *Chief Justice E.M. Culliton 'Right to Know' Award* are now invited.

Last year, in our June 2006 FOIP FOLIO, we informed you of our plans to recognize for the first time in Saskatchewan the international 'Right to Know' Day. As with last year's events, we will be working with a steering committee during the week of October 1, 2007 to raise awareness of citizens' rights to government information in the interests of open, accountable and transparent government.

Also again this year, the steering committee is seeking nominations for the *Chief Justice E.M. Culliton 'Right to Know' Award*. Last year, the City of Regina received the inaugural 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 department, Crown Corporation, board, commission or agency) or a local authority (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 **Friday, September 14, 2007**. Nominations can be self-initiated or third party. The nomination 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, October 1 to 5, 2007. Nominations should be sent to the 'Right to Know' Committee, c/o #503, 1801 Hamilton Street, Regina, SK S4P 4B4 or fax: (306) 798-1603 or email: [sbarreth@oipc.sk.ca](mailto:sbarreth@oipc.sk.ca).

If you would like more information about 2007 Right to Know Week events, contact us at (306) 787-8350.



## RIGHT TO KNOW (cont'd)

### Right to Know Essay Contest Extended

The Saskatchewan Right to Know Committee has announced that the deadline for entries in the two essay contests will be extended to August 15, 2007. The prize for the high school essay contest is \$300. For post-secondary students the prize is \$500. For more information on the contests see [www.oipc.sk.ca](http://www.oipc.sk.ca) and look under the *Right to Know* tab.

### ACCESS AND PRIVACY FOLKS



Earlier this spring, **Hank Moorlag**, Yukon Information and Privacy Commissioner completed his term after a long and distinguished service provided to the Yukon but also to the broader access and privacy community in Canada. As a former member of the RCMP, Hank was very familiar with this province and was a wonderful resource to our office. He was also a strong supporter of Right to Know and hopefully will continue to be involved with that initiative.

Another key supporter of Right to Know, **Alan Leadbeater**, Deputy Information Commissioner of Canada, has left the Information Commissioner's office. We will miss his enthusiastic support and tenacity in promoting the public's right to government records.

We have just learned that our own Director of Compliance, **Diane Aldridge**, received her IAPP certificate from the University of Alberta "with distinction". Our proud congratulations to Diane on this achievement.



**Elizabeth Denham**, has commenced a two year position with the Privacy Commissioner of Canada. Liz Denham will be the Director of Research, Analysis and Stakeholder Relations. She comes from the Alberta Information and Privacy Commissioner office where she was Director, Private Sector, with responsibility for the Personal Information Protection Act (PIPA). We are delighted to announce that Liz has agreed to come to Regina and Saskatoon in the fall to speak to the Canadian Bar Association Privacy and Access Law Sections.



Best wishes to **Heather Black** who retired last month as Assistant Commissioner to federal Privacy Commissioner Jennifer Stoddart. Heather was always very helpful to our Saskatchewan OIPC and will certainly be missed.

## NEW PROCEDURE FOR DEFECTS IN SECTION 7 RESPONSE



Our office has experienced a large volume of review files in which there are basic problems with compliance apart from any particular exemption. These procedural issues have historically been treated no differently than substantive issues related to the application of mandatory or discretionary exemptions. It is not uncommon that these files do not progress for a number of months because of delays in defining something as fundamental as which exemption the public body is relying on in denying access. There are then further delays of many months after the procedural defect has been cured but before the merits of the exemption have been resolved.

We have determined that these lengthy delays can be seen as rewarding public bodies that continue to deny access without having to meet the requirements in section 7 of FOIP and LA FOIP. Applicants, on the other hand, can be seen as being penalized by excessive delays in addressing the merits of the exemption(s) claimed. All of this brings the legislation into disrepute and undermines public confidence in FOIP and LA FOIP.

After consultation with the Access and Privacy Branch of Saskatchewan Justice, we can advise that commencing September 1, 2007, our office will be implementing a new process to deal with requests for review that involve a failure of the government institution or local authority to meet the statutory requirements as interpreted by the Commissioner including:

- No identification of the specific statutory authority for a decision<sup>1</sup>
- No explanation of the reason for a decision<sup>2</sup>
- No explanation of the reason for extension<sup>3</sup>
- Severance that fails to meet the requirements of section 8<sup>4</sup>
- Deficient fee estimate<sup>5</sup>
- Failure to respond to fee waiver request<sup>6</sup>

The new process will include the following steps:

1. In any of these situations, the public body's FOIP Officer or FOIP Coordinator will be promptly notified by an OIPC Portfolio Officer of the procedural defect in its response to the access request and that the Request for Review will be designated for expedited treatment.

<sup>1</sup> OIPC Report F-2006-003 [22], [26], [27]

<sup>2</sup> OIPC Report F-2006-003 [22], [26], [27]

<sup>3</sup> OIPC Report F-2006-003 [40]; OIPC Report F-2006-005 [33]

<sup>4</sup> OIPC Report F-2006-003 [15], [19], [21], [24], [25], [28]

<sup>5</sup> OIPC Report F-2005-005 [38], [71], [72], [73], [74], [75], [76]; F-2007-001 [57], [58]

<sup>6</sup> OIPC Report F-2007-001 [19] to [26]



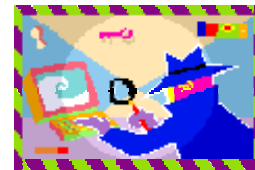
**NEW PROCEDURE FOR DEFECTS IN SECTION 7 RESPONSE (cont'd)**

2. If the defect is not remedied within 7 business days from the date that notice is provided to the FOIP Coordinator, the Portfolio Officer will immediately refer the file to the Commissioner.
3. In that case, the Commissioner will promptly notify the Deputy Minister or CEO of the government institution or head of the local authority of the procedural defect in the response to the access request.

In addition to this new process, our office may comment in our Annual Report specifically on problems identified with particular government institutions and local authorities in meeting procedural statutory requirements of FOIP and LA FOIP.

**SIGNED, NOT QUITE SEALED, AND DELIVERED**

The Commissioner released his Investigation Report H-2007-001 after concluding his investigation into complaints from three individuals that each received mail from branches of Saskatchewan Health (SK Health) in unsealed or improperly sealed envelopes. Each individual was concerned as those envelopes contained birth certificates, health services numbers and other information including details of his/her coverage under a certain drug plan.



The Commissioner found that although SK Health relies on Saskatchewan Property Management (SPM) to process some of its bulk mailings, it is not relieved of its obligation under section 16 of *The Health Information Protection Act* to protect personal health information. The Commissioner also found that SK Health failed to take reasonable measures to minimize the risks of improper disclosure of personal information/personal health information when such information is sent via ordinary mail. The Commissioner made six recommendations to SK Health to improve its mail handling processes in order to meet the standard required by section 16 of HIPA. The Report is accessible at [www.oipc.sk.ca](http://www.oipc.sk.ca) under the tab, *Reports*.

**FEDERAL INFORMATION COMMISSIONER ANNUAL REPORT**



The first Annual Report of the new Information Commissioner of Canada, **Robert Marleau**, discussed the very helpful role played by the Standing Committee on Access to Information, Privacy and Ethics in holding “*the government’s feet to the fire*” (both a Liberal and a Conservative government). Commissioner Marleau noted that the Committee “*offered constructive guidance to public officials concerning their obligation to restrict dissemination of requester identities and to be ‘blind’ to requester identities when making decisions about the timing and content of disclosures.*” This is consistent

## FEDERAL INFORMATION COMMISSIONER ANNUAL REPORT (cont'd)



with advice we offered in our Report F-2006-007 (Saskatchewan Justice) and in the September 2006 and September 2004 FOIP FOLIOs.

Of special interest is the section assessing the Access to Information Performance of Government Institutions (report cards). In the same Report, Commissioner Marleau made the following observations that are just as appropriate for Saskatchewan and compliance with FOIP and LA FOIP:

*As a new Information Commissioner pays tribute to his predecessors, and looks towards the horizon seven years away, what is most striking is the awesome responsibility to safeguard that essential building block of democratic freedom—the ability of citizens, as of right, to obtain access to government-held records. Throughout the world, the lesson of history is consistent: Openness is the oxygen of democracy because, to mix a metaphor, sunshine is the best disinfectant. Courageous parliamentarians and governments fought for and gave Canadians the Access to Information Act. The challenge is to make a good law better and help our excellent public officials become even more comfortable with ever increasing degrees of transparency.*

This Annual Report is available at [www.infocom.gc.ca/menu-e.asp](http://www.infocom.gc.ca/menu-e.asp).

### NEW HEALTH INFORMATION ACT GUIDELINES AND PRACTICES MANUAL

The publication of Alberta Health and Wellness provides a practical reference tool for the application of *The Health Information Act* in that jurisdiction. It is intended to provide guidelines and best practices, not binding rules. It also takes into consideration significant decisions of the Alberta Information and Privacy Commissioner. For more information about this useful resource, contact HIA Help Desk in Edmonton at [hiahelpdesk@gov.ab.ca](mailto:hiahelpdesk@gov.ab.ca), phone: 780-427-8089 or website: <http://www.health.gov.ab.ca>.



### ONTARIO INFORMATION AND PRIVACY COMMISSIONER 2006 ANNUAL REPORT



The Ontario Commissioner, **Ann Cavoukian**, has offered important information in her latest Annual Report. She revisits her previous recommendation that all contracts entered into by government institutions for the provision of programs or services be made public on a routine basis. She now is further recommending that the full procurement process needs to be a much more transparent releasing information not only about the winning bid, but of all bids. She observes that, “*Upholding compliance*



## ONTARIO INFORMATION AND PRIVACY COMMISSIONER 2006 ANNUAL REPORT (cont'd)

with Ontario privacy legislation is not simply a matter of following the provisions of enacted legislation, but ensuring that the use and disclosure of sensitive personal information is strongly monitored, and access controlled to those who truly need it in the performance of their duties.” This report is accessible at [www.ipc.on.ca](http://www.ipc.on.ca).

### FUTURE EVENTS

**July 2-4, 2007** – 20<sup>th</sup> Annual International Conference – Global Warning! Privacy Climate Changes Ahead – (visit [www.privacylaws.com](http://www.privacylaws.com) for details)

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

**September 25-28, 2007** – 29<sup>th</sup> International Conference of Data Protection and Privacy Commissioners Conference – Montreal, Quebec (visit [www.privacyconference2007.gc.ca](http://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 (visit [www.idtrail.org/content/section/11/95/](http://www.idtrail.org/content/section/11/95/) for details)

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