

# FOIP FOLIO

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May 2005

## New Digs for Office of Information and Privacy Commissioner

We have outgrown our office on Blackfoot Drive and before the end of June will move to:

**Connexus Tower  
503 -- 1801 Hamilton Street  
Regina, Saskatchewan  
S4P 4B4**



The phone and fax numbers will not change.

## OIPC Job Opportunity – Office Manager

Please visit our website to see details on this vacancy. [www.oipc.sk.ca](http://www.oipc.sk.ca)

## Reinforcements Coming??

In October we will be hiring a Portfolio Officer for the OIPC. The work will entail investigations of both privacy breaches and requests for review of unfulfilled access efforts. If you know of someone who may be interested in this kind of work they should watch for the position to be advertised in late August and early September.

## New Reports from the OIPC

Our office has issued two new reports dealing with sections 19(1)(b), 19(1)(c) and 17(1)(b)(i) of *The Freedom of Information and Protection of Privacy Act* (“FOIP”).

### **Report No. 2005-003 (Crown Investments Corporation)**

The Commissioner found that Crown Investments Corporation (CIC) had not met the burden of proof to justify the denial of access to certain records related to the Saskatchewan government’s utility bundle proposal. CIC had withheld the records on the basis (a) they contained financial or technical information supplied in confidence by a third party and (b) disclosure could reasonably be expected to prejudice the competitive position of a third party. The Commissioner recommended release of the record to the Applicant.

## New Reports from the OIPC (cont'd)

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### Report No. 2005-004 (Saskatchewan Government Insurance)

The Commissioner has upheld the decision of Saskatchewan Government Insurance (SGI) to release certain records to the Applicant and to withhold six documents on the basis that they involved consultations and deliberations involving employees of SGI. The Commissioner found that the severing done by SGI prior to release of records was appropriate.



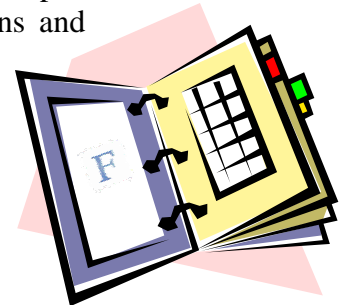
Both Reports can be accessed on our website under the “Reports” tab: [www.oipc.sk.ca](http://www.oipc.sk.ca)

### Canadian Newspaper Association gives Saskatchewan an “F” Grade

A national audit conducted by 89 reporters from 45 newspapers across Canada attempted to test operation of freedom of information laws across Canada from February to April. The report released on May 28, 2005 gave the following grades to western provinces on their response to informal and formal access requests: British Columbia – 71% (“C”), Alberta – 93% (“A”), Saskatchewan – 44% (“F”) and Manitoba – 88% (“B”). More information on this survey can be found at [www.cna-acj.ca](http://www.cna-acj.ca). Our office is in no position to comment on the statistics in the report but it is interesting that a Globe and Mail article on May 28, 2005 by Robert Cribb suggested that responses included:

- *Outright denials of information that should be routinely available;*
- *High fees for accessing records that should be available free or at nominal cost;*
- *A lack of understanding in many government agencies about public disclosure responsibilities;*
- *Officials demanding, contrary to the law, to know the requester’s identity and purpose for seeking the records before agreeing to release them.*

Our office has encountered examples of each of those kinds of responses over the last year. We look forward to working with government institutions and local authorities to ensure Saskatchewan residents will enjoy a higher standard of accountability and transparency in the operation of Saskatchewan public bodies.



## Police & FOIP

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In response to news reports last month about former police members who have been charged with respect to unauthorized use of a computer and access to police-controlled database, we have received questions about what law covers police forces in Saskatchewan. Saskatchewan and Prince Edward Island are the only two Canadian provinces that have exempted municipal police services and police commissions from the scope of the LA FOIP Act.



In the result, our office has no jurisdiction to review decisions of police services with respect to access to information or privacy issues. There are however different rules if you should live in a community policed by the RCMP. The RCMP is subject to the federal *Access to Information Act* and the federal *Privacy Act*. In this respect, there are different access and privacy rights depending on where you live in the province.

## Newfoundland and Labrador FOIP Regime moves Forward

A lot of impressive work has been done by the new office of the Nfld. Labrador Information and Privacy Commissioner. This is evident if you go to their website: [www.oipc.gov.nl.ca](http://www.oipc.gov.nl.ca). The Justice Department that is responsible for administering the FOIP Act in that jurisdiction has also produced a very impressive 246 page Policy and Procedures Manual to explain the operation and requirements of the *Access to Information and Protection of Privacy Act* in that jurisdiction. This manual along with similar instruments in Ontario, British Columbia and Alberta can be useful resources to an applicant or to a government institution preparing its submission for a review before the Saskatchewan Commissioner.

## 'Next to Naked' Flyers



Body-scanning technology is now being tested by the U.S. Homeland Security Department for use in airport security screening. This includes backscatter imaging that employs X-ray technology to scan a body through any clothing. Screeners would be able to see a very clear and detailed image of each traveller in all of their naked glory. More than a dozen U.S. airports have been selected for tests. Can we expect the U.S. Homeland Security to require this kind of screening for Canadians leaving Regina or Saskatchewan for U.S. destinations? We will try to update you on developments.

## You have a Right of Access, but to What?

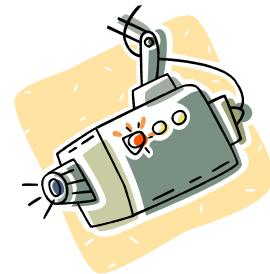
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As our office receives more and more requests for review, we are noticing a trend in the approach taken by some public bodies when responding to access to information requests. *The Freedom of Information and Protection of Privacy Act* (FOIP) and *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) are clear that access rights under these laws is to “*records that are in the possession or under the control*” of that body (government institutions and local authorities). In other words, the access provisions in both Acts are “record-driven” and not “information-driven”. There is no responsibility under either Act to create records that do not otherwise exist. Yet, sometimes instead of providing the applicant with responsive records, these bodies are offering summaries of the information requested instead, thus creating new records. This may be in fact what the applicant is looking for. However, if this is the case, an informal request by phone may suffice. A formal access request under either the FOIP or LA FOIP Acts entitles the applicant to documents in their original form.

Regardless of the form (phone, letter, prescribed form) when the request for information is received by the public body, our office encourages both parties to discuss the substance of the request to see if what is being sought is what will be produced after a thorough search. Unnecessary delays and considerable costs are being incurred by government institutions due to a lack of timely communication between the applicant and the government institution. When this doesn’t happen earlier on in the process, our office will attempt to facilitate this communication, but sometimes many months after the applicant submitted the original application. The public body does not have a right to know why the Applicant is pursuing the records, but it is still helpful in the early stages for discussion to ensue between the two to ensure that the public body is interpreting the wording of the access request as intended.

### More on Video Surveillance

This month Alberta’s Information and Privacy Commissioner issued an investigation report into the use of video cameras by a Lloydminster business (R.J. Hoffman Holdings Ltd.). The business had installed video surveillance cameras throughout its premises in Lloydminster and St. Walburg, Saskatchewan for the purpose of “employee performance management” and “asset security and employee safety”.



## More on Video Surveillance (cont'd)

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The Commissioner's investigation found that:

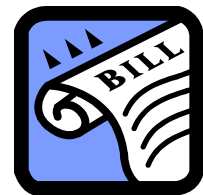
- While privacy rights in the workplace are not absolute, the *Personal Information Protection Act* (PIPA)<sup>1</sup> requires that an employer establish that the purposes for collecting information via video cameras are reasonable;
- The collection of personal employee information for purposes of ensuring employee safety is reasonable in this circumstances, and in compliance with PIPA; and
- The collection of personal employee information for the purposes of managing employee productivity would not be considered reasonable in this case and would contravene PIPA.

The report is interesting for a number of reasons including the fact that it cites a number of employment arbitration decisions. The Commissioner's staff found that the business did not have a privacy officer, a privacy policy or processes to support privacy compliance, all as required by Alberta law. You can obtain a copy of the investigation report at [www.oipc.ab.ca](http://www.oipc.ab.ca).

## Manitoba Legislature Considers Private Sector Privacy Bill

The Manitoba Assembly is considering in Second Reading debate, *Bill 200 -- The Personal Information Protection Act*.

You can access the bill at <http://web2.gov.mb.ca/bills/sess/index.php>. The bill, if adopted, would follow the lead of private sector privacy laws in British Columbia and Alberta that have displaced the federal *Personal Information Protection and Electronic Documents Act*. Like Alberta and B.C. it would provide protection for employees who are unprotected by PIPEDA. You can access the debate at <http://leg.internal:81/ISYSquery/IRL590D.tmp/2/doc>.



## More Privacy Breaches



In the U.S. LexisNexis has acknowledged that 310,000 Americans have had their personal data tapped by persons without lawful authority. There has been increased scrutiny of data brokers since the news that thieves had access personal information of more than 100,000 persons in the control of ChoicePoint Inc. of Georgia, U.S.

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<sup>1</sup> Alberta has adopted this private sector privacy law to displace the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA). In Saskatchewan, PIPEDA applies but does not cover employee information unless the business is federally regulated such as airlines, banks, etc.

## More Privacy Breaches (cont'd)

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Time Warner Inc. acknowledged that computer tapes with personal information on 600,000 current and past employees has been lost. The data on these back up tapes was not encrypted.

## USA Patriot Act Response



The federal Treasury Board has issued an Information Notice concerning the USA Patriot Act. Contracting provisions for federal government institutions relating to the Patriot Act were to have been published two months ago. This has been delayed. The link for that Notice is

[http://www.tbs-sct.gc.ca/gos-sog/atip-aiprp/in-ai2005/2005\\_2e.asp](http://www.tbs-sct.gc.ca/gos-sog/atip-aiprp/in-ai2005/2005_2e.asp).

## Events

**June 15 -- 17, 2005**, *Access and Privacy Conference 2005*, University of Alberta at Mayfield Inn, Edmonton, Alberta. ([www.accessandprivacy.com](http://www.accessandprivacy.com) for conference details)

**Jun 27 -- 28, 2005**, *Atlantic Access and Privacy Workshop*, Halifax, Nova Scotia; ([www.governmentevents.ca/aapw](http://www.governmentevents.ca/aapw) for Workshop details)

**Sep. 8, 2005**, *Access to Information: Analyzing the State of the Law*, Ottawa, Ontario; ([www.rileyis.com/seminars/index.html](http://www.rileyis.com/seminars/index.html) for seminar details)

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

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