



FOIP FOLIO

NEW LOOK!

To celebrate our 50th issue, the FOIP FOLIO has taken on a new look.

The first 49 issues of the FOIP FOLIO are archived at www.oipc.sk.ca under the *Newsletter* tab.

WHERE ARE THESE FILES COMING FROM?

Kara Philip, our Administrative Coordinator, advises that since January 1, 2008, the Office of the Saskatchewan Information and Privacy Commissioner (OIPC) has opened 92 new files for investigations or reviews of access decisions. This is 114% more than the files opened for the same period in 2007. Since our staff has not grown since 2006, this kind of growth in demand will result in more delays in the service we provide

Saskatchewan residents, public bodies and health information trustees.



LOSS OF VALUABLE RESEARCH TOOL

Does it make any sense that the public cannot easily learn what kinds of information has been released already in response to access to information requests? The federal Treasury Board has cancelled a very useful service known as the CAIRS (the Coordination of Access to Information Requests System).

This was an electronic catalogue of access requests filed with federal government institutions. It enabled applicants to learn what kinds of information had already been released in response to formal access requests. Why require an applicant to go through the process of making a formal

request if the responsive record has already been released in respect of an earlier request? Our hope is that federal and provincial governments will recognize the value of such a service and take steps to ensure this is available to the public.

TABLE OF CONTENTS

Where Are These Files Coming From?	1
Loss of Valuable Research Tool	1
Watch Out for Personal Info Being Wheeled Out the Door	2
New Access and Privacy Initiative in Manitoba	2
Looking for Missing Personal Health Information	2
Denying Access to Personal Health Information	2

Alberta Commissioner Considers EHR Complaint	3
Commentary on B.C. Bill 24, E-Health Act	3
Personal Health Information Can Be Disclosed in Emergencies and Other Urgent Circumstances	4
Employee Family Assistance Programs and Privacy Implications	4
UK Security Cameras an 'Utter Fiasco'	5
Right to Know Week 2008	5
Future Events	6



WATCH OUT FOR PERSONAL INFO BEING WHEELED OUT THE DOOR



On May 5, 2008, the OIPC issued a set of guidelines for government institutions, local authorities and health information trustees to ensure that personal information/personal health information captured by fax machines, photocopiers, scanners, printers and any multi-function or multi-purpose devices does not leave

an organization when the machine is sold or serviced or returned when the lease expires. This was in direct response to the discovery of the personal health information of more than 100 Saskatchewan residents on the thermal film of a fax machine sold to someone in Prince Albert as surplus equipment at an auction. For a copy of the news release and the backgrounder “Personal Information Retained by Office Machines” go to the www.oipc.sk.ca under the *What’s New* tab.

NEW ACCESS AND PRIVACY INITIATIVE IN MANITOBA

The Manitoba Government has announced that it will create the position of adjudicator with power to issue binding orders in cases where the ombudsman is unable to resolve disputes. The

Manitoba Ombudsman who currently oversees the *Freedom of Information and Protection of Privacy Act* (FIPPA) and health information law, similar to the Saskatchewan OIPC, can

only issue recommendations but not binding orders. There is also a plan to make a number of amendments to FIPPA. For more information on these plans, go to www.gov.mb.ca.

LOOKING FOR MISSING PERSONAL HEALTH INFORMATION

Four computer tapes containing personal health information of residents of British Columbia (B.C.) and New Brunswick (N.B.) who received medical services outside their home province were couriered from N.B. to Health Insurance B.C. (HIBC), a contractor for the B.C. health ministry. They

never arrived at HIBC. The information was on magnetic tapes and was not encrypted. The B.C. Information and Privacy Commissioner, **David Loukidelis**, determined that the Ministry’s policies and practices resulted in failure to ensure the tape loss was detected in a timely way. The

Ministry also failed to notify the affected individuals and the OIPC in a timely way. The Investigation Report F08-02 is available at www.oipc.bc.ca. The Investigation Report NBPPA-2008-01 of the N.B. Ombudsman is available at <http://www.gnb.ca/0073/PDF/NBPPIA-2008-01-e.pdf>.

DENYING ACCESS TO PERSONAL HEALTH INFORMATION



Recent FOIP FOLIO issues and OIPC Report H-2007-001 have discussed when it is not appropriate to deny someone access to their own personal information. For an example of when it is appropriate to deny access you should look at Order F08-09 just issued by **David**

Loukidelis, British Columbia Information and Privacy Commissioner. Commissioner Loukidelis concluded that disclosure of the withheld information could reasonably be expected to threaten the safety or mental or physical health of others. In that case, the Ministry provided evidence that the applicant:

- Lost control of his emotions

- and became very angry/upset;
- Verbally threatened staff and used abusive language;
- Made suicidal comments;
- Attempted to bring weapons into the courthouse; and
- Encouraged the sheriffs to use their weapons on the applicant.

You can access this Order at www.oipc.bc.ca.



ALBERTA COMMISSIONER CONSIDERS ELECTRONIC HEALTH RECORD COMPLAINT



Alberta Information and Privacy Commissioner, **Frank Work**, has released his Investigation Report dealing with a complaint about the mandatory participation in Alberta Netcare (Alberta's electronic health record). The Complainant stated that she was *"having trouble to comprehend that [her] personal information is being forced into a 'public database' without [her] consent, let alone [her] informed consent."* The Commissioner found that Alberta Health and Wellness failed to discharge its duty under section 58(2) of the *Health Information Act* (HIA) to consider the Complainant's expressed request that her health information not be made available through Alberta Netcare. He made six specific recommendations that have all

been accepted by the department. This Report is perhaps the first detailed analysis by an oversight agency in Canada of a complaint that focuses on the question of patient control over their own personal health information. It is a very important contribution to the ongoing development of the electronic health record by all provinces and territories and the federal government.

Investigation Report H2008-IR-001 (Alberta Health and Wellness, David Thompson Health Region and Mr. Joe Gustafson, Pharmacist) is available at www.oipc.ab.ca.

From a Saskatchewan perspective, it should be noted that we have nothing comparable in *The Health Information Protection Act* (HIPA) that requires that a trustee must consider any express wishes of the patient.

Nonetheless, in our Report H-2005-002 (Saskatchewan Cancer Agency) we urged the trustee to ensure that patients have a right to opt out of that particular health information sharing practice. That recommendation was accepted and has been implemented by the Saskatchewan Cancer Agency. We encourage all Saskatchewan trustees to consider a similar approach for all elements of the developing electronic health record. Although Saskatchewan's HIPA does not require that a patient's wishes be accommodated or even considered [as in Alberta's HIA s. 58(2)] we are encouraged that the Health Information Solutions Centre (Saskatchewan Health) has been promoting a masking feature for the first two Electronic Health Records (EHR) programs that have been implemented in this province.

COMMENTARY ON B.C. BILL 24, E-HEALTH (PERSONAL HEALTH INFORMATION ACCESS AND PROTECTION OF PRIVACY) ACT



B.C. Information and Privacy Commissioner, **David Loukidelis**, has issued an open letter to the Minister of Health highlighting concerns with:

- masking disclosure directives available;
- timelines and transparency for the data stewardship committee;
- access to personal information;
- fees for access to one's own personal health information; and
- clarifying the access rules that may be prescribed by regulation.

This letter is accessible at www.oipc.bc.ca. B.C. has elected not to create a stand alone health information law like HIPA. Bill 24 would be a supplement to the FOIP Act in that province.



PERSONAL HEALTH INFORMATION CAN BE DISCLOSED IN EMERGENCIES AND OTHER URGENT CIRCUMSTANCES



The Ontario and British Columbia Information and Privacy Commissioners recently issued a joint message – personal health information may be disclosed in emergencies and other urgent circumstances. The target of

the message is educational institutions, students, parents, mental health counselors and healthcare workers in those provinces. The news release includes the following:

The Commissioners want to send the clear message that privacy laws do not prevent counselors or healthcare providers from contacting a person's family if there are real concerns that they may seriously hurt themselves. "When there is a significant risk of serious bodily harm, such as suicide, privacy laws in Ontario clearly permit the disclosure of personal information without consent, regardless of age. In such situations, schools may contact parents or others if there are reasonable grounds to believe that it is necessary to do so," says Commissioner Cavoukian. Commissioner Loukidelis adds that, "if there are compelling circumstances affecting health or safety, or if an

individual is ill, B.C.'s privacy laws allow disclosure to next of kin and others, including school officials and health care providers. Individual cases can be fuzzy, but if someone uses common sense and in good faith discloses information, my office is not going to come down on them. Privacy is important, but preserving life is more important".

This is available at www.oipc.bc.ca. Both Commissioners are collaborating on a joint project to issue a new publication aimed at clarifying the role that privacy laws play when workers are trying to decide whether they can disclose personal health information. All of this follows the tragic suicide of a young woman attending Carleton University in Ottawa.

The OIPC takes the same approach in Saskatchewan. The message above applies with equal force in this province. *The Freedom of Information and Protection of Privacy (FOIP), The Local Authority Freedom of Information and Protection of Privacy (LA FOIP) and The Health Information Protection Act (HIPA)* all permit the same kind of flexibility and discretion on the part of mental health professionals, healthcare workers and educational institutions. Those provisions are s. 27(4)(a) [HIPA], s. 29(2)(m) [FOIP] and s. 28(2)(l) [LA FOIP].

EMPLOYEE FAMILY ASSISTANCE PROGRAMS AND PRIVACY IMPLICATIONS

An area that could stand more illumination and guidance is the world of the employee assistance program and how to interpret privacy laws in that context. That makes the recent Investigation Report from **Jill Clayton**, Director of the *Personal Information Protection Act*, office of the Alberta Information and Privacy Commissioner, a very welcome contribution to understanding the issues raised by these activities. Report P2008-IR-003 is available at www.oipc.ab.ca. The Alberta Director addresses issues including:

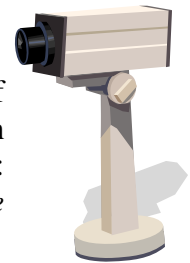
- What medical information an employer requires;
- Required degree of transparency to the employee;
- Adequacy of consent form and process; and
- Clarification of the 'need to know' principle

The Director quoted with approval Privacy Commissioner of Canada case summaries #233 and #284 also dealing with the 'return to work' situation.



UK SECURITY CAMERAS AN 'UTTER FIASCO'

A *Toronto Star* story on May 7, 2008 reveals that the senior London detective, head of the visual images unit at New Scotland Yard, has described the network of 4.2 million closed-circuit cameras in that nation as “an utter fiasco”. He is reported to have stated: “Billions of pounds have been spent on kit, but no thought has gone into how the police are going to use the images and how they will be used in court”.



RIGHT TO KNOW WEEK 2008



In 2008, the week of September 28-October 4 will be Right to Know Week. The Right to Know Steering Committee is already hard at work lining up speakers for what promises to be another interesting program with sessions in both Regina and Saskatoon.

NOMINATIONS FOR CULLITON AWARD

This year, the steering committee is again seeking nominations for the *Chief Justice E.M. Culliton Right to Know Award*. Last year, the Saskatchewan Health Quality Council received the 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 **September 15, 2008**. 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. Nominations can be mailed to:

**Right to Know Steering Committee
c/o #503, 1801 Hamilton Street
Regina, Saskatchewan S4P 4B4**

Nominations can also be sent via email to kphilip@oipc.sk.ca.

RTK ESSAY CONTESTS

Also again this year, the Right to Know Steering Committee is announcing two essay contests on the topic: “*Why the right of access to information is important in a modern democratic society.*” One contest is at the high school level and offers a \$300 award. The other contest is at the university level and offers a \$500 award. Submissions are due **Monday, September 22, 2008**. Prizes will be awarded during this year’s Right to Know Week, September 28th to October 4th.

If you would like more information about Right to Know Week 2008 events, visit our website at www.oipc.sk.ca under the *Right to Know* tab or contact us at (306) 787-8350.



FUTURE EVENTS

June 16-17, 2008 – Maritime Access and Privacy Workshop 2008 – Moncton, New Brunswick (visit <http://www.governmentevents.ca/mapw2008/agenda.php> for more details)

June 18-20, 2008 – University of Alberta: Access and Privacy Conference 2008 – Edmonton, Alberta (visit <http://www3.extension.ualberta.ca/accessandprivacy/> for more details)

July 23-25, 2008 – Symposium on Usable Privacy and Security – Carnegie Mellon University, Pittsburgh, PA (visit <http://cups.cs.cmu.edu/soups/2008/> for more details)

October 22, 2008 – Prairie Health Information Privacy Day 2008 – Winnipeg, Manitoba (visit <http://verney.ca/phipd2008/> for more details)

OFFICE OF THE SASKATCHEWAN INFORMATION AND PRIVACY COMMISSIONER

503 – 1801 Hamilton Street
Regina, Saskatchewan
S4P 4B4

Telephone: (306) 787-8350 / Toll Free: 1-877-748-2298

Fax: (306) 798-1603

E-mail: webmaster@oipc.sk.ca

Website: www.oipc.sk.ca

*If you wish to subscribe to the Saskatchewan FOIP FOLIO, please
send your e-mail address to webmaster@oipc.sk.ca.*