

FOIP FOLIO

November 2003

What is this?

Welcome to the inaugural issue of the *FOIP FOLIO*. This newsletter is produced by the Office of the Saskatchewan Information and Privacy Commissioner (“OIPC”). It is intended to keep you up-to-date on reports and recommendations from the OIPC. It will feature best practices, tips and shortcuts and access/privacy developments in Saskatchewan and other parts of Canada and sometimes beyond.

The plan is to produce this on a regular basis and send it to administrative coordinators of those provincial bodies subject to the FOIP Act, municipal administrators and institutional health information trustees. [and NO, the Riders are not a body subject to the FOIP Act so those questions must go to someone else!]

FOI or FOIP?

FOIP stands for Freedom of Information and Protection of Privacy. In the early years after the *Freedom of Information and Protection of Privacy Act* went into force, the focus tended to be on access to information. Now with the emphasis shifting somewhat to privacy considerations, it is appropriate to stress the “P” for privacy.

Changes at the OIPC

The new contact information for the OIPC is as follows:

Saskatchewan Information and Privacy Commissioner
#100, 1230 Blackfoot Drive
Regina, Saskatchewan S4S 7G4
Phone: (306) 787-8350
Fax: (306) 798-1603

Thanks to Dick Rendek

The outgoing Commissioner is Richard Rendek, Q.C. The creation of the new OIPC office with a full-time Commissioner is largely a result of Dick’s vision for achieving the ends of the legislation. The office is grateful for Dick’s leadership and steady hand since he was appointed as Saskatchewan’s last part-time Commissioner on August 1, 2002. Dick chaired the Selection Panel that undertook the competition for his successor and will continue to provide support to the new Commissioner for the transition.

New Commissioner

The new Commissioner, Gary Dickson, took office November 1, 2003. Gary comes from Calgary where he worked as a lawyer, legislator and privacy consultant. “*My approach is not to march around wielding a big stick- I would much sooner work with public bodies to help them develop strong access and privacy practices and policies*” he observed. He went on to say his goal will be to encourage public bodies, local authorities and health information trustees to build in adequate privacy and access provisions when they start anything that will impact those privacy or access rights.

Pam Scott has come from the Legislative Assembly office to set up the new OIPC facility and to serve as the Office Manager.

What does the OIPC Do?

The Saskatchewan Commissioner is responsible for overseeing 3 different provincial statutes:

- *Freedom of Information and Protection of Privacy Act*
- *Local Authority Freedom of Information and Protection of Privacy Act*
- *Health Information Protection Act*

Like his counterparts in other provinces and territories, the Commissioner can be thought of as the umpire in the information age. His job is to ensure that Saskatchewan residents enjoy the access and privacy rights they are guaranteed by these three laws. The Commissioner has broadly speaking two different kinds of powers:

- 1) An aggrieved citizen who cannot get satisfaction from a provincial institution or department or a local authority or a health information trustee can appeal to the Commissioner. The Commissioner has broad powers to investigate the complaint and then make recommendations to address the complaint.
- 2) An important part of the Commissioner’s mandate is to conduct public education programs and provide information concerning the legislation and his role and activities. In addition he can undertake research into access and privacy matters.

Website under construction

The OIPC is developing a website that will have useful tips and information for administrative coordinators, privacy officers and health information trustees. It will include reports and recommendations from the OIPC. It will feature privacy and access developments within the province or beyond that you should be aware of. It will also have links to useful privacy resources.

Health information Protection Act

The Saskatchewan government has now proclaimed the *Health Information Protection Act*. One of only three such laws of its kind in Canada, it regulates the collection, use and disclosure of personal health information by “trustees”. If your organization deals with any personal health information you will want to pay particular attention to what is covered under HIPA. It is possible that some public bodies will be subject to both FOIP and HIPA at the same time.

Are Trustees In Compliance with HIPA?

One provision in HIPA that warrants careful attention is the set of limitations on the disclosure of personal health information without consent. The basic limitations can be found in sections 21 and 27 of HIPA. The experience with similar provisions in Manitoba and Alberta suggests that this will be the subject of considerable attention as trustees develop compliance plans.

Similar limitations under the *Health Information Act* (Alberta) were considered by the Alberta Information and Privacy Commissioner in November 2002. The Alberta OIPC was dealing with a complaint against a Calgary pharmacy and a pharmacist. The estranged husband of the complainant had gone to her pharmacy and obtained a printout of her prescription drug history. The printout included a listing of the prescription number; drug name; drug strength and dosage; refills, quantity, dated filled and prescription price. This printout was then used against the woman in divorce proceedings.

It turned out that the pharmacist assumed that the information was required for income tax purposes. No consent of the complainant was sought nor provided. In fact the complainant had no knowledge of the disclosure of this prejudicial information to her husband.

The OIPC investigation discovered that the pharmacy had no written policies or procedures relating to the disclosure of health information. The practice in question was contrary to the *Health Information Act*. It had never been reassessed after the HIA became law. Furthermore, the pharmacy had not taken reasonable steps to protect the confidentiality of the complainant’s health information. You can review the OIPC decision at www.oipc.ab.ca and look under the tab 2002- Investigations.

If your organization is a trustee under the HIPA, have you adopted written policies and procedures for the collection, use and disclosure of personal health information? Have you reassessed your current disclosure practices and tested them against the provisions of HIPA? Have you taken all reasonable steps to protect the privacy of your patients and the confidentiality of their information?

Privacy Impact Assessments

Privacy impact assessments (PIA) are becoming a very important tool in improving privacy practices. This is a device that is used extensively in provinces such as Ontario and Alberta. It involves a template developed by the Commissioners in those provinces and available on their respective websites. You can think of this as a kind of self-audit done on new or proposed programs. It may be done on modification of an existing program. The key is whether the change or new development impacts the privacy of individuals. If so, the PIA is undertaken. Our OIPC website will offer the material you will need to carry on your own self-audit. The OIPC will be pleased to review those PIAs, subject to other demands on the office, and offer commentary on appropriate changes to ensure adequate statutory compliance and privacy protection.

Big Changes Coming January 1, 2004

Effective January 1, 2004, virtually every business in Saskatchewan and many other organizations will be covered by a federal privacy law, the *Personal Information Protection and Electronic Documents Act*. This will require that everyone from your neighbourhood pizza parlour to your realtor and insurance agent must meet new requirements for the collection, use and disclosure of personal information of their customers. Saskatchewan residents will be hearing a lot about this through the media in the last few months of 2003. There will likely be some confusion as to what PIPEDA will mean and how it will be enforced. Oversight will be provided, not by our OIPC but by the Privacy Commissioner of Canada. The provinces of Quebec, Alberta and British Columbia have developed their own privacy legislation that has been carefully tailored to meet the needs of small and medium sized businesses. This privacy legislation in those 3 provinces will displace PIPEDA and allow complaints to go to and be resolved by their provincial Commissioner. More about PIPEDA in the next **FOIP FOLIO**.

Although PIPEDA will not apply to public bodies already covered by either the FOIP Act or Local Authority FOIP Act, many of the businesses you contract with will have to conform to PIPEDA. This does not change the need to also comply with FOIP Act, if they collect, use or disclose personal information that is under the control of your public body.

New Privacy Commissioner of Canada

Since Mr. Radwanski left the Privacy Commissioner office, it has been filled on a temporary basis by Mr. Robert Marleau, a distinguished former Clerk of the House of Commons. On November 7, 2003 the Standing Committee on Government Operations and Estimates, recommended the appointment of Jennifer Stoddart as the new permanent Privacy Commissioner. Ms. Stoddart has served as the President of the Commission d'accès à l'information du Quebec. She has fulfilled a role equivalent to an information and privacy commissioner.

New Privacy Commissioner of Canada (continued)

The Standing Committee reports:

“Accordingly, we find that Ms. Stoddart is an excellent candidate for the position of Privacy Commissioner of Canada. We believe that she will be effective in tackling the central challenges that face the new Privacy Commissioner. Among those are continuing the process of rebuilding that has been successfully begun by the Interim Privacy Commissioner, and building the bridges to governments and citizens that will be critically important as the Personal Information Protection and Electronic Documents Act broadens the responsibilities of the OPC beyond the federally-regulated private sector, starting in the new year.”

Future Events

November 24, 2003 *The New Wave of Privacy Protection in Canada* (Vancouver)
<http://www.ellisriley.on.ca/fipa/>

November 27, 2003 *Meeting Your Obligations: Privacy Compliance in Western Canada* (Calgary) <http://www.canadianinstitute.com/frames.cfm>

February 6, 2004 Canadian Bar Association Mid-Winter Meeting (Regina) includes a full day program on privacy compliance. For information contact (306) 244-3898.

Our office is including information on relevant events for your convenience and interest but disclaims responsibility for the content of such conferences.

Can We Help?

Has it been some time since you and your staff received FOIP training?
Have you been able to develop in-service refresher courses and materials?
Do you have questions as to what these laws require you to do or not do?

The primary responsibility for administration of the FOIP Act has been assigned to the Justice Department. Saskatchewan Health has the lead role in administration of HIPA. The OIPC is also available and willing to assist. We will work with both ministries to make sure that you can get the help you need to ensure full compliance with these important laws.

If you have comments or suggestions for us, please send us a note to the attention of Pam Scott, Office Manager, Office of the Saskatchewan Information and Privacy Commissioner at (306) 787-8350 / e-mail: pam.oipc@accesscomm.ca

To receive future issues please provide your e-mail address.