



FOIP FOLIO

November 2007

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SASKATCHEWAN

4TH ANNIVERSARY OF OIPC



November 1, 2003 was the beginning of the office of a full-time Saskatchewan Information and Privacy Commissioner. All of us at the Office of the Saskatchewan Information and Privacy Commissioner (OIPC) are grateful for the support, encouragement and feedback we have received from the both the public and the ‘access and privacy’ community in Saskatchewan over that four years. That includes those who may not even have realized they were members of that community! We understand that there has been a lot of change in those four years and that has translated into what will have been new approaches to meeting statutory requirements. We appreciate the professionalism of staff in the Saskatchewan public service and their willingness to work with us in building a stronger access and privacy culture in the province.

SASKATCHEWAN CANCER AGENCY REPORT



Trustees under *The Health Information Protection Act* (HIPA) frequently ask under what circumstances they can refuse to provide a patient with access to their own personal health information because “*knowledge of the information could reasonably be expected to endanger the mental or physical health or the safety of the applicant or another person.*” In Report H-2007-001, the Commissioner found that the Saskatchewan Cancer Agency (the Agency) did not have a proper basis to withhold personal health information from the patient. The evidence and argument from the Agency failed to discharge its burden of proof. The Report includes a discussion of how section 38(1)(a) of HIPA should be interpreted. This Report is available at www.oipc.sk.ca under the *Reports* tab.

ASSISTANT PRIVACY COMMISSIONER VISIT



Elizabeth Denham, the newly appointed Assistant Privacy Commissioner of Canada made her very first presentation in the nation when she spoke with the Privacy and Access Law Section of the Canadian Bar Association in Regina on November 13, 2007. Liz also met with the Regina Leader-Post editorial board. On November 14, 2007 Liz presented to the Privacy and Access Law Section (North) of the CBA in Saskatoon. Liz also met with the staff of the OIPC and canvassed ideas to raise public awareness of privacy in this province.

ELECTRONIC HEALTH RECORD DEVELOPMENT



The new Canada Health Infoway Privacy Forum was launched in November 2007. This included representatives of all provincial health departments in Canada (except for Saskatchewan Health) and representatives of the oversight offices (Information and Privacy Commissioners and in some provinces Ombudsmen). The objective is to seek practical privacy enhancing solutions to the challenges posed by the move to an electronic health record for each Canadian. **Gary Dickson**, Saskatchewan IPC, chairs a committee addressing 'Accountability' in the context of the developing electronic health record (EHR). If you have suggestions or questions about accountability issues, contact our office at 787-8350. If you would like more information about the EHR generally you could go to www.infoway. If you are interested in information about HIPA that will regulate the collection, use and disclosure of personal health information in an EHR world, go to our website, www.oipc.sk.ca and look for HIPA under the *Legislation* tab. If you have questions concerning what Saskatchewan Health and its Health Information Solutions Centre is doing in this regard, you can go to www.saskhealth.gov.sk.ca.

OIPC TOUR OF MAMAWETAN CHURCHILL RIVER HEALTH REGION



Teresa Watt and Gary Dickson

During the week of October 22nd, the OIPC's **Pam Scott** and Gary Dickson traveled to La Ronge for a series of meetings about HIPA with the staff, privacy committee, managers and the Board of the Health Region. In addition, they did presentations for the Board of the Northern Lights School Division, the La Ronge Town administrators and met with representatives of Northlands Regional College to discuss its privacy policy. Gary Dickson also participated in a MBC (Missinipi Broadcasting Corporation) Network Radio program to describe the information rights of all Saskatchewan residents. This interview was translated into Dene and Cree for a large northern Saskatchewan listening audience. Special thanks to **Teresa Watt**, Privacy Officer for the Mamawetan Churchill River Health Region, for a great deal of excellent work done to make this tour successful.

FURTHER DELAYS IN OIPC INVESTIGATIONS AND REVIEWS



Diane Aldridge, Director of Compliance, advises applicants and complainants that over the last year our office has lost two Portfolio Officers and a third has been on an extended leave. The consequence is that we have not made as much progress as we anticipated in our revised Business Plan in reducing the substantial backlog of investigations and reviews. We hired Angela Markel in September who is now undergoing intensive training and we expect to hire another Portfolio Officer for the beginning of 2008. There

FURTHER DELAYS IN OIPC INVESTIGATIONS AND REVIEWS (CONT'D)

will, however, be a period of many months training before we can redistribute our caseload to the new Portfolio Officers. At the same time, we are running what we understand is one of the highest volumes of summary advice requests in western Canada (2178 phone calls, emails and faxes requesting advice and information on privacy and access rights in 2006-2007). On a positive note, the fact that more persons are contacting our office seeking information than is the case in other provinces suggests that our awareness raising campaign over the last four years is working. This included more than 500 presentations on access and privacy rights in more than 28 different Saskatchewan communities.

ELECTRONIC HEALTH INFORMATION AND PRIVACY SURVEY: WHAT CANADIANS THINK – 2007



On November 19, 2007, Canada Health Infoway, Health Canada, and the Privacy Commissioner of Canada released an opinion survey they co-sponsored. The purpose was to explore Canadian attitudes towards electronic health information and their privacy. This opinion survey is available at www.infoway-inforoute.ca/en/News-Events/InTheNews_long.aspx?UID=284. This survey indicates increasing support for the EHR but also that there is an “enormous premium Canadians place on the necessity for safe guards to protect their health information” [p. 2].

“When there are concerns, the idea that personal health information could somehow be compromised predominates” [p. 5]. For example, 45% worry that their information could be accessed for malicious or mischievous reasons. 42% worry that it could be used for purposes not related to their health (secondary purposes). What would make Canadians more comfortable with the EHR? 70% would be more comfortable if they were informed of any privacy or security breaches. 55% would also like to be able to hide or mask sensitive information. 68% would be more comfortable if there were procedures to respond to breaches.

YET MORE PRIVACY BREACHES...



At the end of August, Capital Health (Edmonton) sent out letters to 21,000 patients whose information could have been accessed when four laptop computers were stolen from the health region. The computers had two levels of password protection but the Alberta Commissioner has determined that encryption is the necessary standard for any portable device that stores any kind of personal information.

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YET MORE PRIVACY BREACHES... (CONT'D)

More than 1600 Canadians in the Atlantic provinces were put at risk of identity theft as a result of the theft of a federal government laptop from the home of a federal employee in Gatineau, Quebec. The information on the laptop included social insurance numbers, bank account numbers, birthdates and credit details. The information was not encrypted.

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A major investigation is underway in Newfoundland and Labrador. It is alleged that a consultant working for the Provincial Public Health Laboratory removed a desktop computer to a private residence. The computer memory included lab test results for infectious diseases such as HIV and hepatitis as well as patient names and health numbers. The consultant was then advised that an individual outside of that province had succeeded in accessing the data. The provincial government has hired a computer security firm to investigate. Curiously, that province has never proclaimed its protection of privacy legislation and the Information and Privacy Commissioner is not empowered to carry out such an investigation.

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Across the Atlantic, a junior official in the UK Revenue and Customs office sent two disks to another office via courier. It never arrived. The disks contained all of the information relating to child benefit payments in that nation. This is data of 25 million individuals in 7.25 million families. It includes names, addresses, dates of birth for every claimant, child benefit and national insurance numbers, and bank account details of some. The head of the Revenue and Customs office has resigned over the “extremely serious failure” of security. The UK Chancellor made a statement in the House of Commons apologizing for the anxiety caused by the loss of the two disks.

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All Saskatchewan government institutions, local authorities and trustees are reminded of their responsibility to safeguard personal information and personal health information in their possession or under their control. This includes ensuring that personal information on citizens that is stored on portable computer devices is encrypted. Whenever personal information is taken out of the office, there is a need for physical, technical and administrative safeguards to ensure that that information is adequately protected. These requirements are also considered in the following past issues of the FOIP FOLIO: March 2007 at page 3, April/May 2006 at page 5, December 2005 at page 4, November 2005 at pages 3 and 4, June-July 2005 at page 4, December 2004 at pages 3 and 4, July 2004 at page 4, June 2004 at page 2 and May 2004 at page 2. All archived issues of FOIP FOLIO are available at www.oipc.sk.ca under the *Newsletters* tab.

NEW IDENTITY THEFT BILL



On November 21, 2007 the federal government introduced Bill C-27 in the House of Commons. This would create a number of new offences in the Criminal Code focused on identity theft. The new offences include:

- Obtaining or possessing identity information with the intent to utilize that information to commit certain crimes;
- Trafficking in identity information with knowledge of or recklessness as to its intended use in the commission of certain crime;
- Unlawfully possessing and trafficking in government-issued identity documents

A copy of the bill and Hansard record of the anticipated debate will be available at www.parl.gc.ca.

PIPEDA PUBLIC CONSULTATION



Industry Canada has undertaken a public consultation with respect to the formal review of the *Personal Information Protection and Electronic Documents Act* (PIPEDA). The consultation seeks public input on the *Government Response to the Fourth Report of the Standing Committee on Access to Information, Privacy and Ethics - Statutory Review of the Personal Information Protection and Electronic Documents Act (PIPEDA)*, available at <http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?COM=13184&SourceID=21598> 2. A key question is whether public notification of breaches should be a statutory requirement and if so, in what circumstances. Input is also sought on the concepts of “work product” and “lawful authority”. Of perhaps particular importance to the Saskatchewan private sector health community is the question of whether any elements contained in the health-related PIPEDA Awareness Raising Tools (PARTs) document should be codified in PIPEDA. This document can be accessed at www.e-com.ic.gc.ca. The deadline for submissions is January 15, 2008.

Submissions should be sent to:

Mr. Richard Simpson
Director General, Industry Canada
Electronic Commerce Branch
300 Slater Street
Ottawa, Ontario K1A 0C8.

PRIVACY IMPACT ASSESSMENTS



A very interesting document was published in October by the Privacy Commissioner of Canada, namely the *Audit Report of the Privacy Commissioner of Canada - Assessing the Privacy Impacts of Programs, Plans and Policies*. This audit reviews the 5 years experience of the federal government with Privacy Impact Assessments (PIA). Any Saskatchewan trustee, local authority or government institution that uses or intends to use a PIA would benefit from considering this Audit Report. The report discusses a performance gap and identified the following factors that contributed to that gap:

- Lack of management support and infrastructure;
- Limited integration into decision making and assessment of effects;
- Resources are stretched;
- PIA requirements need to be streamlined;
- More training capacity is needed; and
- Absence of internal audit evaluation.

In the SK OIPC experience, the same factors exist in this province. On our website, www.oipc.sk.ca, you will find a separate PIA for each of the three laws that we oversee.

This Audit Report is available at http://www.privcom.gc.ca/information/pub/ar-vr/pia_200710_e.pdf.

PRIVY COUNCIL OFFICE BROKE THE LAW WHEN IT REVEALED APPLICANT'S NAME



Canadian Press reported on October 29, 2007 that the Privacy Commissioner of Canada found the Privy Council office violated the *Privacy Act*. It did so by revealing the name of a journalist who sought information under the *Access to Information Act*. The Applicant's identity had been disclosed to a third party. The Privy Council office apologized to the journalist. This decision reinforces the rule that the identity of applicants is to be kept private.

PROUD TO BE GREEN



Irene Hamilton and all of the Manitoba Ombudsman's office staff are encouraged to wear green for the balance of November in tribute to the triumphant football team in the neighbouring province! Way to go Riders!

FUTURE EVENTS

December 3, 2007 – *Electronic Health Information and Privacy Conference* – Ottawa, Ontario (visit www.ehip.ca for details)

January 29-30, 2008 – *Health Information Privacy and Security Conference* – Toronto, Ontario (visit www.insightinfo.com for details)

February 7-8, 2008 – *Digital Dilemmas, Digital Dreams: Privacy Security and Society in New World Networks* – Victoria, British Columbia (visit www.rebootconference.com/privacy2008 for details)

March 3, 2008 – *Fraud Prevention Month*

TO CONTACT US:

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

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