

# FOIP FOLIO

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October - November 2004

## Privacy Laws and Health Information: Making it Work



If you attended, we hope you found this conference worthwhile. We regret that our capacity of 400 was reached a full month before the conference. It is clear that there is a big appetite for reliable and practical information on what must be done to comply with *The Health Information Protection Act*.

If you were not able to attend, we hope to soon be able to post to our website, [www.oipc.sk.ca](http://www.oipc.sk.ca), copies of the written materials produced by the 42 speakers during the two day conference. The Saskatchewan Association of Health Organizations (SAHO) will produce a video recording of all of the plenary speakers and some of the workshops.

This conference was the result of a lot of work by many volunteers. Thanks to all of you. We specifically want to thank the following people on the conference steering committee who have worked very hard over the last 4 months to plan and coordinate the event:

- **Ms. Shelley Adams** (Sask Learning)
- **Ms. Diane Aldridge** (OIPC)
- **Ms. Susan Antosh** (SAHO)
- **Ms. Jeanne Eriksen** (College of Pharmacists)
- **Ms. Shelly Gibson**, (Sask Health)
- **Ms. Sherry Husband** (Assoc. of LPNs)
- **Mr. Ray Joubert** (College of Pharmacy)
- **Ms. Carol Klassen** (Regina Qu'Appelle Health Region)
- **Dr. Barry McLennan** (University of Saskatchewan)
- **Mr. Duane Mombourquette** (Sask Health)
- **Dr. David Randall** (College of Psychologists)
- **Ms. Pam Scott** (OIPC)
- **Ms. Lefa Sproxton** (Heartland Health Region)
- **Mr. Jayden Stephens** (Saskatoon Health Region)
- **Mr. David Wilson** (Regina Qu'Appelle Health Region)

## Information Commissioner Releases Annual Report

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John Reid, Information Commissioner of Canada, has produced his 2003-2004 Annual Report. This 194 page document is fascinating reading to anyone interested in the successes and challenges with ensuring the massive federal government is accountable and operates as transparently as possible. The Report is available at [www.infocom.gc.ca](http://www.infocom.gc.ca).



Commissioner Reid offers advice to the new Prime Minister, lauds the integration of federal access and privacy policy and welcomes the new policy to link effective information rights (to access and privacy) to effective records management. He decries suggestions by government insiders to make using the *Access to Information Act* harder, more expensive and more controlled by government. In the words of Mr. Reid, “*Resistance to openness has no shame!*”

The federal Commissioner’s report also includes report cards on 12 different government institutions to reflect the percentage of access requests that were answered within statutory deadlines. The highest number of complaints related to the Canada Revenue Agency, National Defence, Public Works and Government Services Canada, Transport Canada and Justice Canada. Only 25 of the 1338 complaints received by that office came from Saskatchewan.

### **Congratulations due -- Sun Country Health Region**



Congratulations to Mark Pettitt and his colleagues at Sun Country for the publication of a handsome and informative brochure “*Privacy and Our Commitment To You*”. This builds on work done by the CIO Privacy Forum coordinated by Saskatchewan Health. It contains a toll free number for more information and directions to access HIPA.

If you are considering a similar brochure for patients in your health region, it may be a good idea to indicate that they have a right to request a review/investigation by the Office of the Information and Privacy Commissioner (OIPC) and to provide contact information for the OIPC.

### **Federal Government Prepared to Reform Access to Information Act**

Justice Minister Irwin Cotler has indicated that the federal government is finally prepared to address long overdue reform of the *Access to Information Act* (ATIA) that came into force in 1983. In the intervening time, a House of Commons Standing Committee produced a substantial list of unanimous recommendations for amendment of ATIA and three successive Information Commissioners have urged changes to this legislation.

## Record will be Disclosed If Public Body can't prove its Exemption

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Report #2004-007 of the Saskatchewan Information and Privacy Commissioner involves SPMC and records with respect to the operation of a soundstage facility. This included the lease of premises to third parties. An access request for financial statements for the facility had been denied by SPMC. The Commissioner found that section 18(1)(d)[interfere with contractual or other negotiations], 18(1)(f)[prejudice the economic interest] and 19(1)(c)[disclosure could reasonably be expected to result in financial loss or gain, prejudice the competitive position of or interfere with the contractual or other negotiations of a third party] did not apply to the records. The Commissioner therefore recommended release of the record to the Applicant.

The Commissioner also found that SPMC had failed to respond openly, accurately and completely to the request and had failed its duty to assist the applicant. This reflected confusion in the specific grounds for refusing access and a decision by SPMC to narrow the scope of the request without consultation with the Applicant.

The Commissioner noted that additional documents had been identified in the course of the review and requested that those additional documents be assessed for release to the Applicant. Finally, the Commissioner discussed the time when fees should be assessed and claimed under the FOIP Regulation.

The Report is available at [www.oipc.sk.ca](http://www.oipc.sk.ca) under the tab "Reviews".

## Disclosure of Personal Information to Unions

Our office has received a number of inquiries with respect to the ability of unions to access employee personal information. Our office has not addressed this issue in previous Reports. The issue is important since many employees of local authorities or provincial bodies will be working under a collective agreement.

Those employers are bound by Part IV of *The Freedom of Information and Protection of Privacy Act* (FOIP Act) or *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP Act) and the limitations on the collection, use and disclosure of personal information. An employer in that situation can disclose personal information with consent or without consent if one of the stipulated circumstances applies.

There is a decision of the Saskatchewan Labour Relations Board that is relevant. In **Board of Education of the Saskatchewan Rivers School Division, No. 119 (Re)**<sup>1</sup> the school board was found to have violated *union security* provisions in *The Trade Union Act* when it refused to provide the union with a list of employees. The Board had not provided the list citing "*restrictions imposed by privacy legislation*".

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<sup>1</sup> [2000] S.L.R.B.D. No. 8

## Disclosure of Personal Information to Unions (Con't)

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The *LA FOIP Act* is not directly mentioned in the report and the decision was based on interpretation of *The Trade Union Act*. The Labour Relations Board held that the duty on the employer include the obligation to provide the union, upon request, with information regarding new employees, including their names, addresses and telephone numbers.

You may wish to take a peek at the FOIP Bulletin Number 15, December 2003 available at [http://www3.gov.ab.ca/foip/guidelines\\_practices/bulletins/pdf/bulletin15.pdf](http://www3.gov.ab.ca/foip/guidelines_practices/bulletins/pdf/bulletin15.pdf). This is an Alberta Government Services publication that reflects the Alberta *Freedom of Information and Protection of Privacy Act* and decisions of the Alberta Information and Privacy Commissioner. This particular bulletin discusses the impact of the *FOIP Act* in that province on the ability of unions to obtain from public sector employers personal information about employees before a first agreement. Although the FOIP provisions in Alberta are a little different than our Saskatchewan *FOIP Act* and *LA FOIP Act*, we would consider these materials very carefully in issuing any report on a similar question in this province.

### Privacy and the USA Patriot Act



On October 29, 2004 David Loukidelis, British Columbia's Information and Privacy Commissioner, released the report – *Privacy and the USA Patriot Act- Implications for British Columbia Public Sector Outsourcing*. This 151 page document is available at [www.oipc.bc.ca](http://www.oipc.bc.ca). The report and, at the very least, the sixteen recommendations should be required reading for all public and private sector officials responsible for contracting out information management services.

Much of the report focuses on section 30 of the B.C. FOIP Act. That section provides as follows:

*The head of a public body must protect personal information in the custody or under the control of the public body by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal.*

This kind of security provision is missing from the Saskatchewan legislation. In his last Annual Report the Saskatchewan Commissioner recommended that the FOIP Act should be amended to incorporate such a duty to safeguard personal information. Interestingly, the B.C. Report notes that such a duty is also missing from the federal *Privacy Act* and recommends that such a security requirement should be added.

## British Columbia and Alberta Displace PIPEDA

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On October 25, 2004, the federal Cabinet formally exempted any organization to which *The Personal Information Protection Act* in Alberta and British Columbia applies from the application of the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA).

An important consequence is that employee information will be fully protected in those two provinces. PIPEDA covers personal information of customers and only applies to personal information of employees working in federally regulated businesses such as banks and airlines. In the result, most employee information in Saskatchewan's private sector will not be protected by PIPEDA.

## Commonwealth Parliamentarians Push Access to Information

The Commonwealth Parliamentary Association has produced *Recommendations for Transparent Governance*.<sup>2</sup> This organization that includes representatives from more than 170 jurisdictions with a membership of more than 15,000 Parliamentarians has called upon all Commonwealth nations to pass access to information legislation. The Report states:

*“Freedom of information is a fundamental human right, crucial in its own right and also as a cornerstone of democracy, participation and good governance. Recognition of this key right is essential to empowering all members of society, including Parliamentarians, to strengthening parliamentary democracy, to reversing practices of government by the few and to improving the relationship between Parliament and the media.”*

## Healthcare Enterprise (IHE) Canada

October saw the founding of IHE Canada to facilitate the sharing of patient information across different facilities. This is about identifying and resolving incompatible information systems that impede the flow of clinical health care data. This project is supported by Canada Health Infoway, the Canadian Association of Radiologists, the Information Technology Association and other partners.



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<sup>2</sup> Available online at [www.cpahq.org](http://www.cpahq.org)

## New Law for Outsourcing in British Columbia

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In October the British Columbia government introduced amendments to the FOIP Act in that province to address concerns over the *USA Patriot Act*. The amendments would prohibit companies from storing or disclosing sensitive information outside Canada and require them to report any demands from a foreign authority for unauthorized disclosures of personal information. This would include whistleblower protection. British Columbia's Information and Privacy Commissioner has called for further amendments to strengthen and clarify the new provisions. His letter to the Minister of Management Services commenting on the amendment package can be accessed at [www.oipc.bc.ca](http://www.oipc.bc.ca).

### Future Events

**December 1 & 2, 2004** – *Electronic Health and Medical Records*, Vancouver, British Columbia ([www.insightinfo.com](http://www.insightinfo.com) for conference details)

**Jan. 17 & 18, 2005** -- *Health Information conference*, Toronto, Ontario ([www.insightinformation.com](http://www.insightinformation.com) for conference details)

### To Contact us:

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