



FOIP FOLIO

RIGHT TO KNOW (RTK) 2011



Saskatchewan Right to Know Week 2011 was launched with the issuance of formal proclamations by the Government of Saskatchewan and the cities of Saskatoon and Regina that declared the week of September 26th to 30th as

Right to Know Week in this province.

Saskatoon: Information and Privacy Commissioner **Gary Dickson** presented on *Open Government: What this might look like and how to achieve it* at the College of Law, University of Saskatoon on Tuesday, September 27, 2011. Thanks to **Shannon Whyley** from MacPherson Leslie Tyerman for organizing this event.

Regina: On September 29, 2011 approximately 90 persons attended the RTK signature event at the University of Regina. The speaker was **Graham Smith**, Deputy Commissioner and

Director of Freedom of Information in the United Kingdom. In contrast to Canada that has had freedom of information (at least nationally) for 28 years, the *Freedom of Information Act* in the U.K. has only been in force since 2005. Nonetheless, the U.K. law incorporates a number of features common to third generation access laws: strong provisions focused on a ‘public interest’ test; the U.K. Information Commissioner has the ability to issue binding orders as well as a broad array of powers to enable oversight of several hundred thousand different public bodies; and access requests in the U.K. can be made electronically including via Twitter and Facebook.

Of particular interest was Smith’s discussion of the Open Government – Open Data regime now being rolled out. This involves making large amounts of raw data available to anyone who visits a dedicated Open Data website. The data is accessible, free and convenient for the citizen or

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business. Smith discussed how open data is seen as an opportunity for businesses and community groups to exploit the value of various government databases for new and different applications than those that fit within the statutory mandate of the

public body. For more information on the U.K. office and the Open Data initiative in that nation, go to www.ico.gov.uk.

Thanks to our Sponsors



The Saskatchewan RTK Committee would like to acknowledge the participation and support of the following organizations:

- Institute of Public Administration of Canada (Saskatchewan)
- Johnson Shoyama Graduate School of Public Policy
- The Canadian Bar Association
- Regina Public Library
- Sheldon Chumir Foundaton for Ethics in Leadership
- Law Foundation of Saskatchewan
- McDougall Gauley LLP
- McKercher LLP
- MacPherson Leslie & Tyerman LLP
- University of Saskatchewan
- Office of the Saskatchewan Information and Privacy Commissioner.

Kudos to the RTK Organizing Committee

Thanks to the tireless Chair **Mark Anderson**, ably assisted by **Neil Robertson, Jeff Barber, Erin Kleisinger, Sarina Wowchuk, Kendra**

Gellner, Greg Fingas, Shannon Whyley, Steve Seiferling, and Kara Philip for producing RTK Week 2011.

CHIEF JUSTICE E.M. CULLITON AWARD RECIPIENT 2011



The Chief Justice E.M. Culliton Right to Know Award for 2011 is being presented to **Crown Investments Corporation of Saskatchewan (CIC)**. Since 2006 this award has been presented on an

annual basis to public sector bodies that have demonstrated leadership or innovation in promoting the public's right to know and compliance with *The Freedom of Information and Protection of Privacy Act* (FOIP). Past recipients include the City of Regina, the

Saskatchewan Health Quality Council, the Saskatoon Regional Health Authority and the Saskatchewan Institute of Applied Technology (SIAST). Before now, no provincial government institution has received the award.

Leadership can take many different forms. CIC is the central agency of our provincial government and the shareholder of Saskatchewan's commercial Crown corporations. Those include SaskTel, SaskPower, SaskEnergy, the Saskatchewan Gaming Corporation and SGI. It therefore has a unique leadership role in terms of complying fully with the requirements of laws like FOIP.



CHIEF JUSTICE E.M. CULLITON AWARD RECIPIENT 2011 (Cont'd)

CIC receives a larger volume of formal access requests than most of the 90 odd provincial government institutions. In the processing of those requests, CIC has distinguished itself with its professionalism, its alacrity, and its thoroughness in meeting its FOIP responsibilities. It has done a very good job in staff training with respect to FOIP. The Director of Compliance for the Office of the Information and Privacy Commissioner has commented that CIC has shown the most improvement of any government institution in respecting the letter and the spirit of FOIP. This includes its cooperation and timeliness in dealing with formal review of its access decisions. In addition, CIC consistently demonstrates a welcome degree of accountability and transparency in dealing directly with applicants. It also places a high

value on open communication with applicants, the oversight office and internal staff. This kind of transparency is a welcome feature of CIC's approach to FOIP and the public's right to know.



The RTK award is named after Chief Justice E.M. Culliton who originally recommended that Saskatchewan create a law that would "assure the public of the government's adherence to the principle of openness." His report was instrumental in the development of FOIP and *The Local Authority Freedom of Information and Protection of Privacy Act (LA FOIP)*.

PART TWO: *iPad Mobile Devices – It's All About Privacy!*



In our [February/March 2011](#) issue we reminded everyone that access to information legislation applies to mobile devices and to follow best practices when using mobile devices. If you missed it, you can access it on our website at www.oipc.sk/newsletters. This month, Part Two of our two part series is called: *iPad Mobile Devices – It's All About Privacy!*

iPad tablet computers and other mobile devices (laptops, iPhone, BlackBerry®, cell phones) can be an efficient means of sharing, transporting and accessing work information from any location in the world. It can also reduce paper consumption and increase work efficiency. Modern

technology is taking over the workplace by storm! However, in the midst of that storm we cannot forget that with these conveniences come associated risks. Particularly, the potential risk of privacy breaches.

Here is a quick refresher on some of the potential risks and how to reduce them. Mobile devices are easy to steal and easy to misplace. Did you know that if one goes missing or is stolen, a privacy breach has occurred regardless of whether the information contained in the device is accessed or not? Utilizing unsecured wireless networks poses the risk of unauthorized access to the mobile device and exposure to viruses, spyware and adware. The downloading of non-approved applications ('apps') can have dire consequences. In some cases, the mobile device can be completely taken over by a foreign unauthorized user.



PART TWO: iPad Mobile Devices – It’s All About Privacy! (Cont’d)

We recommend the following ten *Best Practices* when using mobile devices in the workplace:

1. **Data limitation** – only store what is absolutely necessary on the device;
2. **Password Protection** – always utilize a password and choose it wisely;
3. **Authentication** – use fingerprint identification, retina scans or other forms of additional authorized user verification;
4. **Encryption** [of data] – to prevent the unauthorized viewing of data in the event of a privacy breach;
5. **Physical Security** – always lock the device securely when not in use and never leave it unattended;
6. **System Integrity** – do not download unapproved applications or programs;
7. **Wireless Security** – only use secure connections if you access the internet;
8. **Data Wiping** – enable the ability to wipe the device of all data from a distance in the event the item is stolen or misplaced;



9. **Mobile Device Loss** – if the device goes missing or is stolen report it to your organization and the local police or RCMP if appropriate for the circumstance; and
10. **Proper Disposal** – properly wipe the device of all information prior to disposal – including hard drives if applicable.

Our office has published a detailed resource on our website titled [*Best Practices – Mobile Device Security*](#) which outlines these best practices in more detail (www.oipc.sk.ca/resources).

We encourage anyone utilizing a mobile device to review this to ensure they are doing everything possible to protect the personal information of individuals that may be stored on the device.

Our office has also published a number of articles in previous newsletters related to mobile device security (see [December 2005](#), [March 2006](#) and [March 2007](#) FOIP FOLIO also available on our website).

MOBILE DEVICES, HEALTH INFORMATION AND RESEARCH

Given the extensive use made by medical researchers of mobile computing and storage equipment, there is now a timely resource from **Deborah Grant** in the Ontario Information and Privacy Commissioner’s Office and the Children’s Hospital of Eastern Ontario. [*Safeguarding Personal Health Information When Using Mobile Devices for Research Purposes*](#) is available at www.ipc.on.ca. Although the key messages are applicable to Saskatchewan health

researchers, it is important to recognize that “custodian” in Ontario is similar to a “trustee” in this province. The Saskatchewan equivalent to section 10 in the Ontario *Personal Health Information Protection Act* (PHIPA) would be section 16 of *The Health Information Protection Act* (HIPA). The relevant research provision in HIPA is section 29.



BC UNION ENTITLED TO COPY OF CONTRACT BETWEEN COMPANY AND HEALTH AUTHORITY



In British Columbia, a union requested a copy of the contract between the company and a health authority for the provision of security services. The health authority decided to disclose the contract to the union. The company appealed to the B.C. Information and Privacy Commissioner. **Jay Fedorak**, Adjudicator in the Commissioner's

office, determined that while the contract included commercial and financial information of the company the company failed to demonstrate that it had been supplied in confidence. As a result, the Adjudicator ordered that the contract be released. The [Order F11-27](#) is available at www.oipc.bc.ca.

NEW RESOURCE ON SOLICITOR-CLIENT PRIVILEGE

There have been a number of court decisions including the Supreme Court, the Federal Court and the Newfoundland and Labrador Supreme Court addressing solicitor-client privilege in the context of access and privacy. Our office has not yet addressed this issue in the context of these decisions. There has been a very useful resource produced by **Professor Adam Dodek** of the University of Ottawa, Faculty of Law as a discussion paper for the Canadian Bar Association. This report is available at www.cba.org. Of particular interest is the section

entitled *Administrative Law and Open Government* commencing at page 36. In Saskatchewan we also have to consider the implications of the decision of our Court of Appeal in [Law Society of Saskatchewan v. Merchant](#), 2008 SKCA 128 (CanLII) that found the Law Society was entitled to compel the production of documents subject to solicitor-client privilege given the statutory mandate of the Law Society.

PRIVACY BREACHES CATALOGUED IN THE UNITED STATES



For anyone interested in healthcare data breaches in the USA, the Department of Health and Human Services just released its [Annual Report to Congress on Breaches of Unsecured Protected Health Information](#). This reveals that over 30,000 healthcare data breaches have been reported. These breaches affected more than 7.8 million patients. The most common cause was theft of computing devices including flash drives,

smartphones and laptops. The second most common cause was intentional but unauthorized snooping. The most frequently reported remedial action is revision of policies and procedures. This experience is quite consistent with the Canadian experience to date although we don't have a similar national breach reporting system. You can access the US HITECH report at <http://www.hhs.gov/ocr/privacy/hipaa/administrative/breachnotificationrule/breachrept.pdf>.



ONTARIO HOSPITAL WILL REVEAL NAME OF NURSE WHO BREACHED PRIVACY



According to a story in the *Kirkland Lake Northern News*, (September 16, 2011, B9) the North Bay Regional Health Centre

will now release the name of the nurse who breached the files of more than 5,800 patients. This will only be done for those patients who are

scheduled to receive a breach notification letter. Ontario Information and Privacy Commissioner **Ann Cavoukian** had advised that in Ontario there is no privacy law preventing the name of the staff member responsible for the breach being disclosed to the affected individuals.

NEW PRIVACY HANDBOOK FOR LAWYERS

The Privacy Commissioner of Canada, **Jennifer Stoddard**, has produced a privacy handbook for Canadian lawyers – *PIPEDA and Your Practice*. Saskatchewan law firms are strongly encouraged to become familiar with this resource. It discusses the application of PIPEDA to the practice of law. It offers advice on collection,

use and disclosure of personal information as well as safeguarding and retaining that information. There is a section on data breaches and another on employee personal information. This handbook is available at www.priv.gc.ca.

IAPP RECEIVES FIRST GRACE-PÉPIN ACCESS TO INFORMATION AWARD



The **University of Alberta's Information Access and Protection of Privacy Program (IAPP)** was chosen by a national selection committee to receive the inaugural **Grace-Pépin Access to**

Information Award. According to the Selection Committee, “the Program has produced articulate, educated champions of access to

information across Canada and the world”. The award was named after former Information Commissioner **John Grace** and **Marcel Pépin**, former president and founder of the Commission d'accès à l'information du Québec. This award will be presented during the opening reception of the 7th International Conference of Information Commissioners. More information is available at www.righttoknow.ca.

UNIVERSITY STUDENT SENTENCED TO 30 DAYS FOR SNOOPING

The September 9, 2011 edition of *The Daily Gleaner* reported that an individual who worked in the IT office of the University of New Brunswick had electronically snooped in emails of four different female students. The individual

was charged with four counts of unauthorized use of a computer and sentenced to 30 days in jail and 12 months probation.





PATIENT PORTALS BECOMING A BIGGER PRIORITY?



Our office has been advocating that an early deliverable of the electronic health record (EHR) under construction in Saskatchewan should be patient portals (please see OIPC’s [2010-2011 Annual Report](#)). A patient portal should allow for the patient to be able to access lab tests, immunization history, other kinds of personal health information about them and perhaps even

to allow the booking of appointments online. We are encouraged to learn that Canada Health Infoway is now offering \$1 million to help researchers accelerate the use of e-solutions including both “e-scheduling” and “patient access to health information.” More information is available at the CHI website, <https://www.infoway-inforoute.ca/>.

USA PATIENTS TO GET DIRECT ACCESS TO LAB TEST RESULTS

US Department of Health is considering a change to the *Health Insurance Portability and Accountability Act of 1966* (HIPAA) rules to allow patients and their surrogates to have direct access to medical lab test results. The motivation is to encourage patients to become more involved in their health care treatment. This would be an amendment to the *Clinical Laboratory*

Improvement Amendments of 1988. You can access the proposed rule at <http://www.gpo.gov/fdsys/pkg/FR-2011-09-14/pdf/2011-23525.pdf>. Such an amendment would be consistent with changes that our office has urged to the EHR to ensure a patient portal to empower patients.

ARBITRATOR REQUIRES MODIFICATION OF SASKTEL MEDICAL ABSENCE REPORT FORM



In an arbitration award issued August 17, 2011, **Arbitrator Bob Pelton, Q.C.** found that the Medical Absence Form utilized by Sasktel represented an overcollection of personal health information of employees and needed to be modified. The Arbitrator noted that “...the jurisprudence in this area has evolved over time. The medical information that is now

considered reasonably necessary to support an application for Sick Leave benefits is more limited than it once was.” The decision is Communications, Energy and Paperworkers Union of Canada Locals 1-S, 2-S and 3 and Sasktel. Although not referenced in the arbitration decision, section 26(3) of HIPA would also be relevant to the overcollection of personal health information by a trustee such as SaskTel.

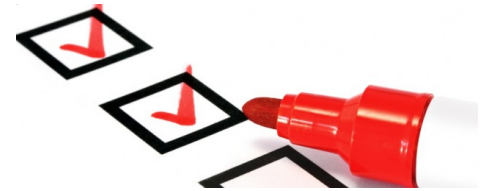


NEWSPAPERS CANADA REPORT CARD

On September 27, 2011, Newspapers Canada issued its 2011 National Freedom of Information Audit. The authors offer a laurel to Saskatchewan municipalities “for treating contracts involving the expenditure of public money as public records the public has a right to see, and releasing them quickly and without question.” The bodies surveyed in our province were the municipalities of Yorkton, Saskatoon, Regina and Moose Jaw in respect of the way they responded to three different access requests. In addition, the provincial ministries surveyed were Social Services, Highways and Infrastructure, Health, Education and Corrections, Public Safety and Policing. The municipalities received a grade of “A” in terms of both the speed of disclosure and the completeness of the disclosure. The provincial ministries received a “C” in terms

of speed of disclosure and a “B” grade in completeness of disclosure. The authors offer the following qualifications:

- a) The reader should exercise caution in drawing conclusions about any individual institution’s overall record solely from the results of this audit.
- b) No claim is made that the audit requests filed to any one institution are necessarily representative of the overall performance of the institution in answering all requests it receives.



MARK YOUR CALENDAR!

October 3, 2011: Canadian Bar Association (CBA) Privacy and Access Law Symposium - Ottawa, ON. For more information please visit [CBA Privacy and Access Law Symposium](#) or www.cba.org.

October 4-5, 2011: 7th International Conference of Information Commissioners - Ottawa, ON. For more information please visit [7th International Conference of Information Commissioners](#) or www.oic-ci.gc.ca.

October 13-14, 2011: PIPA Conference 2011, It’s Your Business - Vancouver, BC. For more information please visit [PIPA Conference 2011](#) or www.privacyconference2011.ca.

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