



Sorting through the Sea of Legislation

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Agenda

- Legislative Scan
- Navigating the sea
- Exclusions
- Paramountcy
- Possession vs. control
- Contracting issues

Legislative Scan

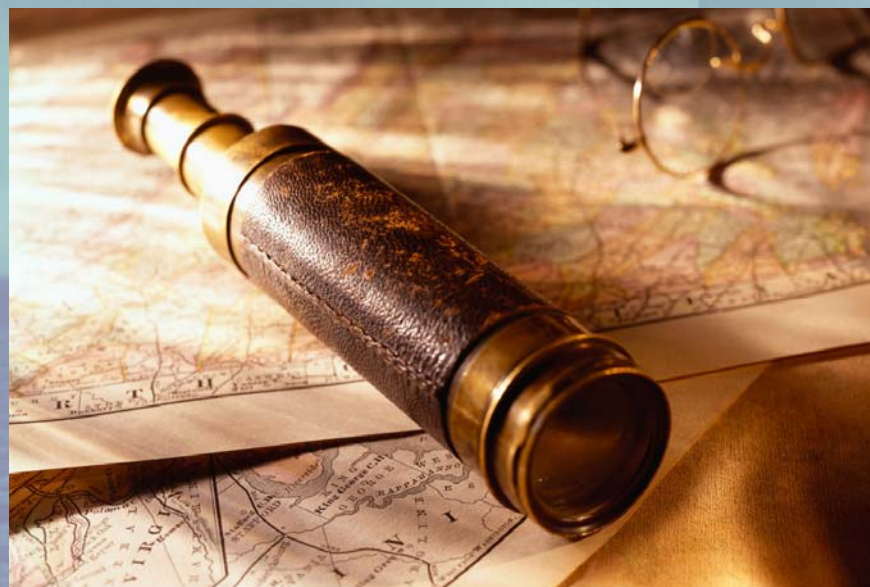
- Federal laws:
 - *Access to Information Act*
 - *Privacy Act*
 - *Personal Information Protection & Electronic Documents Act*

Legislative Scan (cont'd)

- Saskatchewan laws:
 - *The Freedom of Information & Protection of Privacy Act (FOIP)*
 - *The Local Authority Freedom of Information & Protection of Privacy Act (LA FOIP)*
 - *The Health Information Protection Act (HIPA)*

Navigating the sea

- 12 Tips to determine which law applies and when ...



Navigating (1)

1. If a department, Crown, provincial agency listed as “government institution” – *FOIP/HIPA*
2. If a municipality, school division, college, university – *LA FOIP*
3. If a regional health authority - *LA FOIP/HIPA*
4. If a federal department, agency- *Privacy Act & ATIA*
5. If a organization contracting with federal department or agency - *Privacy Act & ATIA*

Navigating (2)

6. If organization contracting with Department or Crown – *FOIP*
7. If organization contracting with municipality, college, university, school division - *LA FOIP*
8. If federally regulated business e.g. inter-provincial trucking - *PIPEDA* (customer + employee information)
9. If private business otherwise - *PIPEDA* for customer/client information only - not employee info.)

Navigating (3)

10. If an organization contracting with RHA
- *LA FOIP/HIPA*
11. If a non-profit organization carrying on a commercial activity other than fundraising
- *PIPEDA* (for customer/client information only - not employee info.)

Navigating (4)

12. If a non-profit organization not carrying on commercial activity - it is just 'best practices' now - likely legislation in future

Statutory Interpretation

- Quasi-constitutional laws (See *Access to Information – Statutory Alternatives* - www.oipc.sk.ca under ‘Presentations’ tab)
- ‘Modern Principle’ of interpretation (Feb.’07 *FOIP FOLIO*, p. 2)
- Section 10, *SK Interpretation Act*
- Saskatchewan Court of Appeal (*GMAC v. SGI* [1993] S.J. No. 601)

Exclusions

- Section 3 (FOIP & LA FOIP) excludes:
 - Published material
 - Matters of public record
 - Material in custody of Archives Bd. or given to local authority for archival purposes

Exclusions (cont'd)

- Section 4 (FOIP & LA FOIP)
 - No replacement for “existing procedures for access...”
 - Doesn't limit access “normally available to the public”
 - Doesn't limit info. available by law or through litigation
 - Doesn't prohibit storage or destruction in accordance with law

Exclusions (cont'd)

- Section 4 (FOIP & LA FOIP) cont'd
 - Doesn't prevent access to registry that normally allows access to public

Paramountcy

- Section 23 FOIP
- Section 22 LA FOIP
- Note the narrow focus on “access” not “privacy”
- How paramountcy works:
 - Must be genuine conflict between two provisions
 - i.e. to comply with one means a violation of the other
 - OIPC *Submission to WCB Review Committee* (www.oipc.sk.ca – ‘What’s New’ tab)

Paramountcy (cont'd)

- FOIP, s. 23(3):
 - *The Adoption Act*
 - *The Archives Act (s.13)*
 - *The Child & Family Services Act (s. 74)*
 - *The Criminal Injuries Compensation Act (s. 7)*
 - *The Enforcement of Maintenance Orders Act (s. 12)*

Paramountcy (cont'd)

- FOIP, s. 23(3):
 - *The Mental Health Services Act (s. 38)*
 - *The Police Act, 1990 (s. 91.1)*
 - *The Proceedings Against the Crown Act (s. 13)*
 - *The Securities Act, 1988 (s.15,84)*
 - *The Trust & Loan Corp Act, 1979 (s. 61)*
 - *The Vehicle Administration Act (s. 94)*
 - *The Vital Statistics Act (s. 10(6))*
 - *The Workers' Compensation Act (s. 171 to 171.2)*

Possession vs. Control

- *A Contractor's Guide to Access & Privacy in Saskatchewan (OIPC-www.oipc.sk.ca –What's New)*
- If in possession, control not necessary
- If not in possession, either in control or FOIP doesn't apply

Contracting Issues

- If you are a government institution or local authority ...
- If you are a non-government organization ...
- If you are a business ...

Questions ??

- Saskatchewan Information and Privacy Commissioner
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