



May 14, 2007

Honourable P. Myron Kowalsky  
Speaker of the Legislative Assembly  
2405 Legislative Drive  
REGINA SK S4S 0B3

**Re: Bill 60, *The Revenue and Financial Services Amendment Act, 2007***

Dear Mr. Speaker:

I write today to offer commentary on Bill 60, *The Revenue and Financial Services Amendment Act, 2007* (Bill 60). I am requesting that this be tabled in the Legislative Assembly pursuant to section 33 of *The Freedom of Information and Protection of Privacy Act* (FOIP), which provides as follows:

**33** *The commissioner may:*

- (a) offer comment on the implications for privacy protection of proposed legislative schemes or government programs;*
- (b) after hearing the head, recommend that a government institution;
  - (i) cease or modify a specified practice of collecting, using or disclosing information that contravenes this Act; and*
  - (ii) destroy collections of personal information that is collected in contravention of this Act;**
- (c) in appropriate circumstances, authorize the collection of personal information in a manner other than directly from the individual to whom it relates;*
- (d) from time to time, carry out investigations with respect to personal information in the possession or under the control of government institutions to ensure compliance with this Part.*

Further authority for tabling this letter can be found in section 52 of *The Health Information Protection Act* (HIPA) which provides as follows:

**52** *The commissioner may:*

- (a) offer comment on the implications for personal health information of proposed legislative schemes or programs of trustees;*
- ...

*(c) in appropriate circumstances, comment on the collection of personal health information in a manner other than directly from the individual to whom it relates;*

...

*(e) comment on the implications for protection of personal health information of any aspect of the collection, storage, use or transfer of personal health information.*

The purpose in providing our commentary is to ensure the Assembly has a complete understanding of the potential impact of Bill 60 on the privacy of Saskatchewan residents.

Bill 60 expands the powers of the Saskatchewan Finance (Finance). Finance is a “government institution”<sup>1</sup> for purposes of FOIP. Finance also qualifies as a health information ‘trustee’<sup>2</sup> pursuant to section 2(t) of HIPA.

#### **RELEVANT PROVISION IN BILL 60**

My concerns relate specifically to section 6(2) of Bill 60 that would replace the existing section 70(4) of *The Revenue and Financial Services Act* with the following:

*70(4) Notwithstanding subsections (1) and (2), the minister may authorize the release of any information or the contents of any record or return if:*

*(a) any of the following apply:*

*(i) the information is requested by a law enforcement agency or investigative body for the purposes of enforcing a law of Saskatchewan or another jurisdiction inside or outside of Canada;*

*(ii) the information is of a sufficiently general or statistical nature that the information does not disclose the tax information of a particular collector or taxpayer;*

*(iii) the information is intended for use by a department or agency of the Government of Saskatchewan for the purposes of assisting in the administration or enforcement of an Act, law, program or function that the department is responsible for administering or enforcing;*

*(iv) there are any other circumstances that may be prescribed in the regulations; and*

*(b) the minister is satisfied that it is in the public interest to release the information or the contents of the record or return.*

---

<sup>1</sup> Section 2(d)(i) of FOIP available at [www.oipc.sk.ca](http://www.oipc.sk.ca)

<sup>2</sup> Section 2(t) of HIPA available at [www.oipc.sk.ca](http://www.oipc.sk.ca)

There is no purpose or object clause in Bill 60. I note however that the Minister spoke to the purposes of Bill 60 in Second Reading debate in the Assembly on April 4, 2007<sup>3</sup>.

Relevant to FOIP, the Minister stated as follows:

*This bill is also going to revise the provision that governs the disclosure of tax information. The current tax provisions do not provide for us to share information with other government agencies or departments. We do believe that in select circumstances it is in the public interest to ensure that the government be able to carry out all of its programs and initiatives in the most efficient way possible for those people that are taking part of it. This is particularly true, for income-tested programs.*

*Therefore we are going to amend this section to allow information obtained by Finance to be shared with other departments and agencies on a select basis that require the information for use in administering provincial programs.*

*Finance also occasionally gets requests for statistical or general information that could be helpful to a business organization or regulatory agency. To accommodate these requests, we are going to propose amendments that will allow us to provide this kind of information.*

## **NO CONCERN WITH STATISTICAL OR DE-IDENTIFIED INFORMATION**

My jurisdiction in terms of privacy is limited to personal information as defined in section 24 of FOIP or personal health information as defined in section 2(m) of HIPA. It does not extend to de-identified or statistical information since such information is not about “an identifiable individual”.

This commentary therefore is concerned only with information about an identifiable individual that comes within either section 24 of FOIP or section 2(m) of HIPA.

This may fully deal with the Bill’s proposed (4)(a)(ii) although it is not entirely clear that this information is non-identifiable personal information or whether it is just minimal identifiable personal information.

## **WHAT PERSONAL INFORMATION DOES FINANCE COLLECT NOW?**

Section 64 of FOIP requires that Saskatchewan Justice (Justice) publish a directory containing:

*(a) a list of all government institutions;*

---

<sup>3</sup> Saskatchewan, Legislative Assembly Debates and Proceedings, “Hansard Verbatim Report”, No. 42A (April 4, 2007) at 1198

*(b) a general description of the categories of records in the possession or under the control of each government institution; and*

*(c) the title and address of the appropriate officer for each government institution to whom applications for access to records should be sent.*

Although section 64 requires that Justice update “as reasonably required”, I note that the last Directory produced by Justice was in 2000.

In the *2000 Access Directory*<sup>4</sup>, the mandate for Finance is described as follows:

*The Department of Finance administers various provincial taxes and grant and refund programs; arranges government financing and manages the banking, investment and public debt functions; provides financial and policy analysis to the Treasury Board and Cabinet; develops tax policy alternatives; provides economic forecasting and economic and social statistical data; annually produces the Budget Speech; assists the government and legislature with the responsibility for managing and accounting for public monies; and, manages the government’s various pension and benefit plans.*

The organization of Finance is described as follows:

*The department is comprised of six divisions:*

- Administration Division, which includes the Deputy Minister’s Office.*
- Budget Analysis Division, which includes Economic and Fiscal Policy Branch, including the Bureau of Statistics; Taxation and Intergovernmental Affairs Branch and Treasury Board Branch.*
- Treasury and Debt Management Division.*
- Revenue Division.*
- Provincial Comptroller’s Division.*
- Public Employees’ Benefit Agency.*

The kinds of personal information Finance has about employees will be considerable including both personal information under FOIP and personal health information under HIPA. It will have information about government-wide employee wage and salary garnishees, and payroll services for sixteen different organizations. I note that on the Finance website there is a page dedicated to the Public Employee Benefits Agency (PEBA)<sup>5</sup>. This includes the statement that:

*The Public Employees Benefits Agency (PEBA) was created as a central body working within the Department of Finance, Government of Saskatchewan. PEBA*

---

<sup>4</sup> Government of Saskatchewan, *2000 Access Directory Provincial Government Institutions*

<sup>5</sup> Available at <http://www.peba.gov.sk.ca/>

*administers a wide range of pension and benefits plans for public sector employees including executive government, Crown corporations and government*

*funded bodies. In administering the various pension plans, PEBA serves about 60,000 active members and more than 11,000 pensioners on behalf of more than 1,000 participating employees.*

In addition, on the Finance website the responsibilities of the department include:

- *Administers various provincial tax and refund programs, including Provincial Sales Tax, Tobacco Tax, Fuel Tax, Corporation Capital Tax and Farm Fuel Rebates;*
- *Manages various pension and benefit plans including the Public Service Superannuation Plan, the Public Employees Superannuation Plan, the Municipal Employees Pension Plan, the Members of the Legislative Assembly Superannuation Plan and the Judges of the Provincial Court Superannuation Plan as well as the Public Service Group Life, Dental and Disability Income Plans;*

This is a vast amount of personal information in the possession or under the control of Finance.

## **PERSONAL INFORMATION IS DIFFERENT THAN CORPORATE INFORMATION**

I anticipate that much of the information that will be caught by the amendment will be that of corporations. Corporations have no right of privacy. They may have certain common-law and statutory rights to protect certain ‘confidential’ information or trade-secret information but such rights are not protected by our office for purposes of Part IV of FOIP. In the result, corporations on the list of licensed tobacco retailers are not protected by FOIP. The same would apply to heating contractors and bulk fuel dealers, most of whom I assume do business through corporations.

In addition, it may be that in the case of sole proprietorships or partnerships that the information likely to be caught by the amendments would be treated as “work product”<sup>6</sup> and not as personal information at all.

It may be useful to consider each of the two arguments put forward by the Minister in Second Reading debate.

---

<sup>6</sup> Discussed in Report F-2006-001, March 31, 2006 at [113] as well as our *Report on The Health Information Protection Act Draft Regulations, September 10, 2004*. Both are available at [www.oipc.sk.ca](http://www.oipc.sk.ca)

## **THE PUBLIC INTEREST IN EFFICIENCY**

This argument is not novel and has certainly been raised many times by governments seeking to justify enlarged opportunities to collect, use or disclose personal information without requiring the consent of the citizen.

FOIP, like its counterpart in all other Canadian jurisdictions, is constructed on a fundamental concept. The head of each separate government institution is directly responsible for what is done with personal information in its possession or under its control. More than 20 years of Canadian public sector experience has reflected the concept that the accountability to citizens is focused on the man or woman who may be the Minister of a department or the CEO of a Crown corporation. This is important since governments tend to be so large, so vast, that it is not realistic or effective to hold the Premier or Prime Minister directly accountable for a breach of FOIP or its counterpart as if government were a single entity.

A former Privacy Commissioner of Canada observed as follows:

*Not having a single client file is a good thing-on the principle that the more separate the databases, the lower the risk of indiscriminate collection, unrelated uses and improper disclosures of personal data. Organizing information into “silos”-discrete collections-may be less “efficient” but more protective of individual privacy, as each silo holds only information required for a particular purpose. Only Statistics Canada gathers comprehensive information about individuals but does so only for statistical purposes, not to make decisions about them. And Statistics Canada’s data is stringently protected; abusers can be fined and jailed.*

This concern surfaced in a high-profile case involving involving the Longitudinal Labour Force file advanced by Human Resources Development Canada (HRDC) in 1998. The office of the federal Privacy Commissioner asserted that there were a number of problems with the HRDC Longitudinal Labour Force initiative including:

- It created a comprehensive and “extraordinarily detailed” database of personal information.
- The new database was relatively invisible. Canadians would not know how much information is being collected about them or the extent to which it was being integrated and shared with others.
- Its permanence. The database was never purged.
- No appropriate legal protective framework. Unlike the Statistics Canada database, there were no strong safeguards to protect against abuse.

Ultimately after a firestorm of protest by parliamentarians and Canadians, the plan was shelved<sup>7</sup>.

It is easy to find corresponding features or at least the opportunity to create corresponding features in Bill 60.

Given the breadth of the personal information that is already available to Finance, we are talking in Saskatchewan about a very major database.

In my view, the database created by Bill 60 would also be relatively invisible to Saskatchewan residents. Unlike HRDC, I know of no plans by Finance to describe the database on its website or in some other effective way to communicate this new feature to Saskatchewan residents. There have been no public hearings, no discussion guide, no invitation to the public to learn more about Bill 60 and the plans of Finance.

In the absence of other evidence, I assume that the intention of Finance is that the new database will be permanent.

In terms of a strong legal protective framework, I have noted in past Annual Reports that Part IV of FOIP does not include an explicit requirement that a government institution such as Finance take reasonable measures to safeguard the personal information in its possession or under its control. The maximum penalty for breach of FOIP is a maximum fine of \$1,000. Such a provision minimizes the importance of privacy in 2007.

It is also important to note that privacy is an important value in Saskatchewan and Canada. Presumably this motivated the adoption by the Saskatchewan Government in 2003 of the *Overarching Personal Information Privacy Framework for Executive Government*.<sup>8</sup> The Framework vision was “*to build a culture of privacy*”. Government education material from late 2003 observes that “[t]his vision focuses on how we can create a corporate culture within government that reflects greater concern over how we collect, use, disclose and protect personal information. This puts a much greater emphasis on a citizen’s right to have their personal information protected.”

I might end this section of my analysis with the observation that in our new privacy-aware world where identity theft is one of our most serious crimes and powerful search engines permit widespread data profiling, it is curious that there apparently has not been more rigour in terms of measuring the impact of Bill 60 on the privacy of Saskatchewan residents.

## **REQUIREMENT FOR PERSONAL INFORMATION IN ADMINISTERING PROVINCIAL PROGRAMS**

---

<sup>7</sup> Available at [http://www.privcom.gc.ca/media/nr-c/archive/02\\_05\\_b\\_000529\\_e.asp](http://www.privcom.gc.ca/media/nr-c/archive/02_05_b_000529_e.asp)

<sup>8</sup> Available at <http://www.saskjustice.gov.sk.ca/foi/>

Clearly privacy is not an absolute right and there is a need to recognize the appropriate requirements of modern government to be able to deliver, in an efficient and cost-effective fashion, the very services that citizens expect and indeed, demand. The issue here, rather, is whether:

- The need for sharing is sufficiently important to justify no consent requirement for the sharing;
- The impact on the privacy of citizens is proportional to the value added by the proposed information sharing; and
- The need for sharing is limited and specific to minimize the diminished privacy of citizens.

There is nothing in the proposed section 70(4)(a)(iii) in the Bill that requires the disclosure to be essential or necessary. It may be used to accommodate a matter of mere convenience.

It is not clear how “agency” in the proposed section 70(4)(a)(iii) will be defined. I don’t know whether this would be co-extensive with the definition of “government institution” in FOIP. That would mean that not only all of Executive Government would be included but also a long list of more than 70 different boards, commissions and agencies would be captured.

It may be useful to take what would be an extreme example to try to highlight some of the problems with the proposed section. I do not offer this example to indicate what is likely to happen but rather to recognize how it could be abused.

The way that the proposed section 70(4)(a)(i)(iii) and (iv) can work would allow Finance to disclose, for example, to the Milk Control Board or the Saskatchewan Arts Board any personal information it may have about a Provincial Court judge or a Member of the Legislative Assembly including but not limited to personal financial information. It could include personal health information in the event that Finance had some information about a short term disability claim under the benefit plans managed by Finance. The only conditions appear to be two:

- (1) it must be intended for use by the agency for “*the purposes of assisting in the administration or enforcement of an Act, law, program or function*” that the agency may be responsible for administering or enforcing, and
- (2) the Finance Minister is satisfied that it is in the public interest to release the information.

Condition (1) is not restricted to a statutory mandate or a core purpose. It need only “assist” in administration or enforcement. By going beyond an Act or law to capture any “program or function”, it would be possible to permit disclosure of personal information or personal health information for what may be a very broad range of activities on the margins of what might be described as the core purpose or mandated purpose of the agency.

Condition (2) is very weak. It does not identify any criteria which the Minister must address in making his determination. In any event, there is no obvious requirement that the Minister must provide the public with any information about those decisions and the

basis for them. I don't know practically or realistically how often the Minister will decline a colleague's earnest request for invoking this proposed power.

### **PROPOSED SECTION 70(4)(a)(i)**

How is an "investigative body" to be defined? This is not defined in FOIP but is limited by the FOIP Regulation<sup>9</sup>. I don't know what the justification is for the provision to assist another government enforce a law of a foreign jurisdiction? This is a remarkable provision and one I suspect well beyond the expectations of most Saskatchewan residents when they share information with Finance for the purpose of ensuring appropriate tax assessment. There is no limit or qualification as to what kind of law. I have seen no compelling argument as to why section 29(2)(g) in FOIP is viewed as inadequate and presents some kind of serious problem. Absent a compelling and persuasive case, the proposed section (4)(a)(i) seems excessive and contrary to the limited role for non-consented secondary uses and purposes.

### **RECOMMENDATIONS:**

1. Defer passage of Bill 60 or at least defer proclamation of the proposed amendment to section 70(4)(a)(i) and (iii) until there has been a comprehensive Privacy Impact Assessment (PIA) completed and then feedback with respect to the completed PIA obtained from the Office of the Information and Privacy Commissioner and interested organizations.
2. Defer passage of Bill 60 or at least defer proclamation of the proposed amendment to section 70(4)(a)(i) and (iii) until such time as the regulations have been circulated in draft form for public comment and then adopted.
3. Limit the proposed section 70(4)(a)(i) to indictable offences under the Criminal Code or the Controlled Drug and Substances Act.
4. Qualify those departments or agencies of the government of Saskatchewan so that this is not available to more than 100 different public sector organizations including such bodies as the Milk Control Board and the Wascana Centre Authority.

---

<sup>9</sup> Section 14 of *The Freedom of Information and Protection of Privacy Regulations*, available at [www.qp.gov.sk.ca](http://www.qp.gov.sk.ca)

5. Delete the phrase “of assisting” in the proposed section 70(4)(a)(iii) which will have the effect of unreasonably expanding the opportunity for this non-consented sharing of personal information and personal health information to organizations that do not require this information to do their mandated work but simply wish sharing on the basis of convenience.
6. Require the Minister to make a determination that the sharing to be permitted under the proposed section 70(4)(a) be limited to those organizations and those activities where the sharing is clearly necessary not just a matter of administrative convenience.
7. Prohibit this sharing opportunity from becoming a basis under section 25 of FOIP to enlarge the collection entitlement of Finance to even more personal information than is currently available to Finance. Failure to do so allows Finance to do the very kind of widespread personal data collection that was widely criticized when HRDC Longitudinal Labour Force File was aborted by the federal government in 2000.
8. Prohibit this sharing opportunity for all purposes of personal health information as defined in section 2(m) of HIPA.

## CONCLUSION

I encourage the Assembly to consider the impact of passing Bill 60 in its current iteration. I believe that the legitimate needs of Finance can be addressed without undermining the privacy that FOIP and HIPA guarantee Saskatchewan residents.

I am available to discuss these matters with any committee of the Assembly.

I trust that this commentary will be of some assistance to the Assembly in its deliberations.

Yours truly,



R. Gary Dickson  
Saskatchewan Information and Privacy Commissioner