

Access to Information - Statutory Alternatives

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CASE STUDY

The operator of a crop dusting plane hit a wind turbine tower on Joe Smith's farm. The plane engine became detached in the collision and crashed into a nearby barn on the farm. This triggered a fire. In trying to evacuate livestock from the burning barn Mr. Smith, and his teenaged son were seriously injured. An ambulance operated by the Regional Health Authority was dispatched from the nearest community, Smalltown. Unfortunately, the dispatcher's confused instructions to the driver of the ambulance meant that, in error, it went to Mr. Smith's brother's farm in the opposite direction from Joe Smith's farm. When the ambulance driver realized the error and reversed course, much valuable time was lost. The ambulance finally arrived at the Joe Smith farm. He loaded both Mr. Smith and his son into the ambulance. Realizing that precious time had been lost because of the incorrect directions from his dispatcher, the ambulance driver threw caution to the wind on the trip to the Smalltown hospital. He took a turn too fast, crashed through a fence and into a dugout near Mr. Smith's farm. The son died by drowning. Mr. Smith was eventually hospitalized for extensive burns and related injuries.

Civil aviation investigators from the federal Department of Transport attended at the scene and did an extensive report on the causes of the plane crash.

The RCMP attended at the scene and interviewed witnesses to the ambulance accident including Mr. Smith, and took extensive notes and photographs.

The supervisor of the local ambulance service attended at the scene, interviewed the driver and later the dispatcher, recorded his observations and findings and took photographs. He videotaped his interview with the dispatcher.

A neighbour mentioned to Joe Smith that this was the seventh vehicular accident at that particular corner in the last five years. The neighbour comments that she has heard rumours that the Around Smalltown R.M. and the provincial Department of Highways and Transportation have recently been discussing upgrades to this particular road corner to make it safer.

Mr. Smith then attended his solicitor's office to discuss his options in seeking compensation.

How might access to information laws and tools be useful to Mr. Smith and his solicitor?

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I. INTRODUCTION

In obtaining documents, Saskatchewan lawyers need not be limited to the usual discovery and production process under Part 20 of the Rules of Court. They also can utilize access to information provisions in provincial statutes such as *The Freedom of Information and Protection of Privacy Act* (FOIP)¹, *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP)², *The Health Information Protection Act* (HIPA)³ or the federal *Access to Information Act* (ATIA)⁴.

Some of the advantages of an access request under one of these statutes are:

- it does not require the commencement of proceedings;
- there is an enforceable 30 day deadline for a response to the request;
- cost may be modest;
- it can allow access to records created by a third party;
- it can allow access to records related to a defendant or prospective defendants;
- the identity of the applicant is not published by the Office of the Information and Privacy Commissioner for Saskatchewan (OIPC); and
- the applicant doesn't require any special 'standing'.

II. RESOURCE MATERIAL

A. *THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT*

There are a limited number of useful Saskatchewan resources to assist in using FOIP or LA FOIP in order to obtain records. The Access and Privacy branch of Saskatchewan Justice (A & P Branch) is currently developing additional webpage content and intends to publish in the future a comprehensive guide to FOIP and LA FOIP. In the meantime, lawyers can consult full text Reports of the Saskatchewan Information and Privacy Commissioner (Commissioner) that interpret and apply provisions in these three statutes. In addition there is some general information

¹ *The Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. F-22.01 (FOIP)

² *The Local Authority Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. L-27 (LA FOIP)

³ *The Health Information Protection Act*, S.S. 1999, c. H-0.021 (HIPA)

⁴ *Access to Information Act*, R.S. 1985, c. A-1 (ATIA)

available on the A & P Branch webpage⁵ and also on the Saskatchewan Health privacy webpage⁶. In addition, Saskatchewan lawyers may find useful certain materials that have been prepared for ATIA since the Saskatchewan FOIP and LA FOIP instruments are at least partially modelled on ATIA.

Since every jurisdiction in Canada now has a law similar to FOIP, there is considerable value in considering both decisions and interpretative material produced by other Information and Privacy Commissioners, particularly those Commissioners in Ontario⁷, British Columbia⁸ and Alberta.⁹ Each of these oversight offices has produced an extensive body of decisions. All of these decisions are readily accessible at the websites maintained by these three offices. Although there are a number of differences in the various statutes, there is far more in common among these statutes than is different.

All of the Reports of the OIPC are available on the website at www.oipc.sk.ca. They can also be accessed via CanLII and Quicklaw.

The Commissioner's website includes the full text of all Reports of his office since November 2003. The Commissioner issues approximately ten Reports per year. These usually represent the disposition of either breach of privacy complaints or requests for review of an access request that has been denied in whole or in part by a public body. In some of these Reports, the OIPC addresses procedural elements of FOIP, LA FOIP and HIPA¹⁰.

FOIP requires that a directory be published listing the kinds of records kept by provincial government institutions¹¹. Such a directory was last published in 2000 although FOIP requires that:

64(1) The minister shall cause to be produced, and updated as reasonably required, a directory containing:

⁵ www.saskjustice.gov.sk.ca/foi/default.shtml

⁶ www.health.gov.sk.ca/ph_pp_privacy.html

⁷ www.ipc.on.ca

⁸ www.oipc.bc.ca

⁹ www.oipc.ab.ca

¹⁰ Saskatchewan Information and Privacy Commissioner, *Review Reports F2006-005, F2006-003, F2005-005*, available at www.oipc.sk.ca/reviews.htm

¹¹ FOIP, s. 64

- (a) a list of all government institutions;
 - (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.
- (2) The minister shall cause a copy of the directory to be made available to any government offices, public libraries and municipal offices that the minister considers appropriate.

The 2000 Access Directory may be of limited use since a number of departments have been reorganized and renamed since the date of publication. Saskatchewan's Commissioner has recommended that the directory be published only in electronic form. This would not only be more economical but also be far easier to update and revise as necessary.

B. ACCESS TO INFORMATION ACT (CANADA)

To assist in identifying the appropriate department or agency that may have records of interest, an applicant can visit online the Depository Services Program of the federal government - *InfoSource*.¹² InfoSource has information on the organization and information holdings of all federal government institutions subject to ATIA. InfoSource also provides contact information for Access to Information and Privacy Coordinators for all of those institutions.

The Information Law and Privacy Section of Justice Canada has produced an *Annotated Access to Information Act* that is available online.¹³ This has been updated to September 30, 1999. In addition, one can view copies of all Federal Court of Canada decisions interpreting and applying ATIA at the Department of Justice Access to Information and Privacy website.¹⁴

¹² www.infosource.gc.ca/fed/fed00_e.asp

¹³ dsp-psd.communication.gc.ca/Collection/J2-178-1999E.pdf

¹⁴ www.justice.gc.ca/en/ps/atip/index.html

The Information Commissioner of Canada does not post his decisions and recommendations on his website but he does produce a series of report cards with respect to specific departments and institutions as well as his Annual Reports to Parliament. These are all available on his website.¹⁵

C. THE HEALTH INFORMATION PROTECTION ACT

Saskatchewan Health has not yet produced a ‘guidelines and practices’ manual. There is some high-level information available at the Department’s privacy webpage.¹⁶ The OIPC has produced a number of publications that explain and interpret the provisions of HIPA. These are available at the Commissioner's website.¹⁷ The Commissioner also posts all of his Reports on his website.

III. THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

A. GETTING ORIENTED

1. FOIP AND LA FOIP

There is nothing in FOIP or LA FOIP that prevents a party to an action from seeking access to the same documents both through the Rules of Court and pursuant to either statute.¹⁸ Both ‘access’ procedures can be pursued simultaneously or sequentially.

FOIP came into force in 1992 and LA FOIP came into force in 1993.

FOIP applies to “government institutions” including government departments, boards, commissions, agencies and Crown corporations.¹⁹ A list of those “government institutions” subject to FOIP can be found in the Appendix to the FOIP Regulation.²⁰ There are more than 75 government institutions including every department of Executive Government, Crown corporations, and a number of provincial boards, commissions and agencies.

¹⁵ www.infocom.gc.ca/menu-e.asp

¹⁶ *Supra*, note 6

¹⁷ www.oipc.sk.ca

¹⁸ FOIP and LA FOIP, Part II, s. 4(a) and (c). See also Alberta OIPC Order 99-034 [35], Investigation Report 2001-IR-004 [10]

¹⁹ FOIP, s. 2(1)(d)

²⁰ *The Freedom of Information and Protection of Privacy Regulations*, c. F-22.01, Reg 1, Appendix, Part I

LA FOIP applies primarily to four types of organizations: (1) regional health authorities; (2) school divisions; (3) colleges and universities; and (4) municipalities of all types. These bodies are captured by the definition of “local authority”.²¹ In addition, the LA FOIP Regulation enumerates additional organizations that also qualify as local authorities. A list of those “local authorities” subject to LA FOIP can be found in the Appendix to the LA FOIP Regulation.²²

Some public bodies attract a lot of requests and some almost none. For example, Saskatchewan Environment received forty-nine access requests in 2005-06.²³ On the other hand, the Office of the Rentalsman received only a single access request in that same year.²⁴ The Saskatchewan Government does not publish any statistics on access requests under LA FOIP.

Neither FOIP nor LA FOIP have a purpose or object clause. The Commissioner has described the object of the statutes in the following terms:

Over the twenty two years since the Access to Information Act came into force, provincial and territorial governments have enacted their own access to information and protection of privacy legislation. Many of those more recent provincial instruments have included a more comprehensive purpose clause. Those purpose clauses tend to reflect and reinforce the approach taken by the federal Information Commissioner and numerous decisions of superior courts in Canada. A good example is section 2 of the British Columbia Freedom of Information and Protection of Privacy Act:

- 2(1) The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by*
- (a) giving the public a right of access to records*
 - (b) giving individuals a right of access to, and a right to request corrections of, personal information about themselves*
 - (c) specifying limited exceptions to the rights of access*
 - (d) preventing the unauthorized collection, use or disclosure of personal information by public bodies, and*
 - (e) providing for an independent review of decisions made under this Act²⁵*

²¹ LA FOIP, s. 2(f)

²² *The Local Authority Freedom of Information and Protection of Privacy Regulations*, c. L-27.1, Reg 1, Appendix, Part I

²³ Saskatchewan Justice, *2005-2006 Annual Report, The Freedom of Information and Protection of Privacy Act*, at 8; available at www.saskjustice.gov.sk.ca/overview/annual/2005-2006/FOIAR2005-06.pdf.

²⁴ *Ibid.*

²⁵ Saskatchewan Information and Privacy Commissioner, *Review Report F-2004-003*, at [10], available at www.oipc.sk.ca/Reviews_files/Report%20No.%202004--003%20--%20File%2014--2004.pdf

Both FOIP and LA FOIP are “quasi-constitutional” laws since they create fundamental democratic rights of access to information and protection of privacy of all residents in the province.²⁶ Each contains a paramountcy provision that provides that these two statutes are paramount in the event of a conflict with provisions in another provincial statute unless the other statute is expressly declared to prevail over FOIP or LA FOIP.²⁷

2. HIPA

HIPA applies to “trustees”. This is defined in the statute to include regional health authorities, health professionals, health regulatory bodies, ambulance operators, pharmacies and medical laboratories.²⁸ Significantly, every organization designated under FOIP as a government institution is also a trustee for purposes of HIPA.

²⁶ See *Nautical Data International Inc. v. Canada (Minister of Fisheries and Oceans)*, 2005 FC 407 at para.8; *Canada (Attorney General) v. Canada (Information Commissioner)*, [2004] 4 F.C.R. 181 at para. 20, 255 F.T.R. 56, 15 Admin. L.R. (4th) 58, 32, C.P.R. (4th) 464, 117 C.P.R. (2d) 85, 2004 FC 431, rev'd (2005), 253 D.R.R. (4th) 590, 335 N.R. 8, 40 C.P.R. (4th) 97, 2005 FCA 199, leave to appeal to S.C.C. requested; *Canada (Attorney General) v. Canada (Information Commissioner)*, [2002] 3 F.C. 630 at para. 20, 216 F.T.R. 247, 41 Admin. L.R. (3d) 237, 2002 FCT 128, 2430901; *Canada Inc. v. Canada (Minister of Industry)*, [2002] 1 F.C. 421 at para. 102, (2001), 282 N.R. 284, 45 Admin L.R. (3d) 182, (2001) 14 C.P.R. (4th) 449, 2001 FCA 254, leave to appeal to S.C.C. refused, [2001] S.C.C.A. No 537 (Q.L.); *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, [2002] 2 S.C.R. 773, (2002) SCC 53 at para 25; *R. v. Dyment*, [1988] 2 S.C.R. 417; *R. v. Mills*, [1999] 3 S.C.R. 668; *Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 402; *R. v. Plant*, [1993] 3 S.C.R. 281; *R. v. Duarte*, [1990] 1 S.C.R. 30; *R. v. Edward*, [1996] 1 S.C.R. 128; *Canada (Information Commissioner) v. Canada (Commissioner of the Royal Canadian Mounted Police)*, [2003] 1 S.C.R. 66, 2003 SCC 8

²⁷ FOIP, s. 23; LA FOIP, s. 22

²⁸ HIPA, s. 2(t)

There is no purpose clause in HIPA. There is a lengthy preamble, though, as follows:

WHEREAS the Legislative Assembly recognizes the following principles with respect to personal health information:

THAT personal health information is private and shall be dealt with in a manner that respects the continuing interests of the individuals to whom it relates;

THAT individuals provide personal health information with the expectation of confidentiality and personal privacy;

THAT trustees of personal health information shall protect the confidentiality of the information and the privacy of the individuals to whom it relates;

THAT the primary purpose of the collection, use and disclosure of personal health information is to benefit the individuals to whom it relates;

THAT wherever possible, the collection, use and disclosure of personal health information shall occur with the consent of the individuals to whom it relates;

THAT personal health information is essential to the provision of health services;

THAT wherever possible, personal health information shall be collected directly from the individual to whom it relates;

THAT personal health information shall be collected on a need-to-know basis;

THAT individuals shall be able to obtain access to records of their personal health information;

THAT the security, accuracy and integrity of personal health information shall be protected;

THAT trustees shall be accountable to individuals with respect to the collection, use, disclosure and exercise of custody and control of personal health information;

THAT trustees shall be open about policies and practices with respect to the collection, use and disclosure of personal health information;²⁹

The Commissioner has described the purpose of HIPA as a law that defines the rules for the collection, use, disclosure, access to and correction of personal health information and to facilitate the creation of electronic health records.

²⁹ HIPA preamble

3. FOCUS ON FOIP

This paper will focus primarily on the application of FOIP. There are some minor differences in LA FOIP and it will be necessary to consult LA FOIP to determine material differences between the two statutes. Personal health information, that was formerly captured by the definition of personal information in FOIP and LA FOIP has now been carved out and brought within HIPA.³⁰ There are specific provisions that deal with the interaction between FOIP and HIPA.³¹ It will be important to determine whether those provisions apply in any particular fact situation.

Personal health information is defined for purposes of HIPA³² to include:

- Information about physical or mental health of an individual;
- Information about a health service provided to someone;
- Information with respect to donation of body part of bodily substance or test results;
- Information collected incidental to provision of health service; and
- Registration information (includes health services number).

B. STRUCTURE OF THE FOIP ACT

FOIP has eight parts. Part I deals with interpretation, exclusions and the preservation of “existing rights”. Part II governs access to records. Part III defines both mandatory (3) and discretionary (7) exemptions to the right of access. Part IV deals with protection of the privacy of Saskatchewan residents and the confidentiality of their personal information. Part V outlines a procedure to deal with intervention by third parties in a decision to release records. Part VI creates the OIPC. Part VII defines the procedure for a formal review by the Commissioner and a further limited right of appeal to the Court of Queen’s Bench. Part VIII deals with general matters such as the burden of proof, exercise of powers by a surrogate, immunity from prosecution, offences and penalties. This review will focus primarily on Part II (access), Part III (exemptions), and Part VII (formal review).

³⁰ FOIP, s. 24(1.1)

³¹ HIPA, s. 4

³² HIPA, s. 2(m)

C. RECORDS EXCLUDED FROM FOIP

These exclusions are found in sections 2(2) and 3 of FOIP. The excluded information includes:

- Information in the possession or control of the Court of Appeal, the Court of Queens' Bench, or the Provincial Court.
- Information in the possession or control of the Legislative Assembly Office, or offices of MLAs or members of Executive Council.
- Information in the possession or control of a corporation that has share capital owned in whole or in part by a person other than the Government of Saskatchewan.
- Published material or material that is available for purchase by the public.
- Material that is a matter of public record.
- Material in custody of Provincial Archives from non-government institutions.
- Personal health information in the custody or control of a trustee under HIPA.

D. RIGHT OF ACCESS

1. INITIAL STEPS

Prior to submitting a formal access request, it is useful to communicate directly with the particular public body that is believed to have records of interest. Most Saskatchewan public bodies will have an official designated as "FOIP Coordinator". If you cannot readily determine who is the FOIP Coordinator, consider contacting the Deputy Minister's office or in the case of a Crown corporation or board, commission or agency, the CEO's office. The A & P Branch has plans to publish a list of FOIP Coordinators with contact information for each on its website.

The FOIP Coordinator may:

- Confirm the records sought are in the possession or control of that public body;
- Advise of a more appropriate public body to contact;
- Advise if the records sought may be available informally without the need for a formal access request; and
- Offer advice on the description of the records in any formal access request.

2. THE FORMAL ACCESS REQUEST

The right of access is not restricted to Saskatchewan residents or even to Canadian citizens.

The right of access is qualified in two ways:

- 1) A number of mandatory and discretionary exemptions are described in Part III. If that information exempted from disclosure can "*reasonably be severed*" from a record, access must be given to the remainder of the record.³³
- 2) Access is subject to the payment of fees prescribed by regulation.³⁴

Each of these qualifications will be discussed in detail later in this paper.

The access may be to personal information concerning the applicant ("request for personal information") or it may be to general information such as a government program or survey ("request for general information").

Sections 5 to 12 outline the procedure to obtain access to a record subject to FOIP.

The Commissioner has determined that there is an implicit 'duty to assist' on each public body responding to an access request. This duty is to make "*every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely*".³⁵

The public body has 30 calendar days to respond to an access request.³⁶ This period can be extended for up to 30 days if certain conditions exist.³⁷ In terms of requests to provincial government institutions during 2005-06, 15% of requests were responded to between 31 and 60 days.³⁸

³³ FOIP, s. 8; LA FOIP, s. 8

³⁴ FOIP 1, s. 9; LA FOIP, s. 9

³⁵ Saskatchewan Information and Privacy Commissioner, *Review Reports F-2005-005, F-2004-007, F-2004-005, F-2004-003, LA-2004-001*, available at www.oipc.sk.ca/reviews.htm

³⁶ FOIP, s. 7(2), LA FOIP, s. 7(2)

³⁷ FOIP, s. 12; LA FOIP, s. 12

³⁸ *Supra*, note 23, at 6

The Commissioner specifically addressed the procedure that government institutions should follow in invoking an extension of time in Report F2006-005.³⁹

Typically the applicant will receive a document with certain portions blank. In those blank portions, the section number of one or more statutory exceptions will be printed. The applicant will also be given contact information for the appropriate FOIP Coordinator along with advice about the right to ask for a review by the Commissioner. A public body may refuse to confirm or deny the existence of a record sought although the Commissioner has urged government institutions to invoke this extraordinary provision sparingly.

There is provision for a government institution to transfer a request to another government institution if the other body “has a greater interest in the record”.⁴⁰ Such a transfer must occur within 15 days after receipt of the request for access. Notice must be given to the applicant. In case of a transfer, the 30-day period for response will start when the transferee body receives the transferred request.

3. FEES AND FEE WAIVERS

Under the FOIP Act there are several kinds of fees:

- (a) application fee of \$20 for requests under LA FOIP (No application fee for requests under FOIP);
- (b) fee for searching for responsive records;
- (c) fee to prepare the record; and
- (d) photocopy charge.

The fee for the search for responsive records or for preparation of the record applies only if the time in question exceeds two hours. It is calculated at the rate of \$15 per half hour for time beyond the first two hours.⁴¹ There is also a photocopy charge calculated at the rate of \$0.25 per page.

³⁹ Saskatchewan Information and Privacy Commissioner, *Review Report F-2006-005*, available at www.oipc.sk.ca/reviews.htm

⁴⁰ FOIP, s. 11; LA FOIP, s. 11

⁴¹ *Supra*, note 20, s. 6(2); note 22, s. 5(3); note that the rate applies after one hour for LA FOIP

In the event that the fees will exceed \$50 the applicant must be provided with a written estimate.⁴² The applicant can be required to pay one-half of the estimated fee before the government institution proceeds to process the request. The balance of any fee owing is payable when the documents are delivered to the applicant.

Fees or fee estimates can be appealed to the Commissioner. The OIPC discusses how to calculate fees, how to communicate fee estimates to an applicant and those services which are not compensable in Report F-2005-005.⁴³

There is an extremely limited fee waiver provision.⁴⁴ An applicant may request that a public body waive fees. This will only be granted however if the applicant can establish that “payment of the prescribed fees will cause a substantial financial hardship for the applicant”. A non-impecunious applicant cannot obtain a fee waiver even if there may be a compelling public interest in some records being made public.

4. MANDATORY EXEMPTIONS

There are four mandatory exemptions. In these cases, the government institution has no alternative but to refuse access. These exemptions consist of the following (listed to reflect frequency of use):

- 1) personal information of someone other than the applicant (section 29);
- 2) third party information (section 19);
- 3) executive council confidence (section 16); and
- 4) records from other governments (section 13).

a. Personal Information (Section 29)

This mandatory exemption is the most frequently cited mandatory exemption among Saskatchewan government institutions. This exemption was cited in 48% of all mandatory exemptions invoked in 2005-06.⁴⁵

Unlike most other provinces, this is not a harm based exemption. It is a class-based exemption.

⁴² *Supra*, note 20, s. 7; note 22, s. 6

⁴³ Saskatchewan Information and Privacy Commissioner, *Review Report F-2005-005*, available at www.oipc.sk.ca/reviews.htm

⁴⁴ *Supra*, note 20, s. 9; note 22, s. 8

⁴⁵ *Supra*, note 23 at 7

Key is the definition of “personal information”.⁴⁶ There is a major qualification in the definition of personal information that does not appear to be well understood by all public bodies. This qualification is that the name of an employee or ex-employee of a public body, the job title and job responsibilities is not “personal information”.

The views or opinions of one with respect to anyone (subject individual) constitutes the personal information of the subject individual.

This mandatory exemption has been considered by the OIPC in Reports F-2006-004, F-2006-001, F-2005-007, F-2005-001, F-2004-002.⁴⁷

b. Third Party Business Interests (Section 19)

This is the second most frequently cited mandatory exemption utilized by Saskatchewan government institutions.⁴⁸

This exemption relates to disclosure that would reveal:

- trade secrets of a third party;
- financial, commercial, scientific, technical or labour relations information supplied in confidence to a government institution by a third party;
- information, disclosure of which could reasonably be expected to:
 - result in financial loss or gain to;
 - prejudice the competitive position of; or
 - interfere with the contractual or other negotiations of;a third party.
- a statement of a financial account relating to a third party with respect to the provision of routine services from a government institution;
- a statement of financial assistance provided to a third party by a prescribed Crown corporation that is a government institution; or
- information supplied by a third party to support an application for financial assistance from a Crown corporation.

⁴⁶ FOIP, s. 24; LA FOIP, s. 23

⁴⁷ Saskatchewan Information and Privacy Commissioner, *Review Reports*, available at www.oipc.sk.ca/reviews.htm

⁴⁸ *Supra*, note 44

Although this is a mandatory exemption, the record can be disclosed with the written consent of the third party.

There is an interesting exception that permits the head to give access if disclosure could reasonably be expected to be in the public interest as it relates to public health, public safety or protection of the environment.⁴⁹ This would require advance notice to the third party and a 20 day opportunity for the third party to make representations to the government institution. If the government institution decides not to reconsider its decision to disclose, there is a further opportunity for the third party to request a review by the Commissioner.

The OIPC interpreted this mandatory exemption in a number of Reports including Report F-2006-002, F-2005-003, and F-2004-007.⁵⁰ These Reports distinguish “supplied” from “obtained. They address “financial information”, “commercial information”, “technical information” as well as the phrase “supplied in confidence implicitly or explicitly”.

The burden of proof to establish the requirements of this provision is on the government institution and requires a preponderance of evidence.⁵¹ In the event that the government institution decides to grant access and the third party wishes to contest that decision, the third party bears the burden of proof.

c. Executive Council Confidence (Section 16)

This exemption was only invoked in approximately 6% of cases involving government institutions in 2005-06.⁵²

This exemption applies to:

- records to present advice, proposals, recommendations, analyses or policy options;
- agendas or minutes;
- records of consultations on making decisions or formulation of policy; and
- records of briefings.

⁴⁹ FOIP, s. 19(3); LA FOIP, s. 18(3)

⁵⁰ Saskatchewan Information and Privacy Commissioner, *Review Reports*, available at www.oipc.sk.ca/reviews.htm

⁵¹ FOIP, s. 61; LA FOIP, s. 51

⁵² *Supra*, note 44

This exemption does not apply to:

- records of more than 25 years; and
- records in respect of which the Premier has given consent to access.

This mandatory exemption was considered by the OIPC in Report F-2004-004.⁵³

d. Records From Other Governments (Section 13)

A head is required to refuse access to a record obtained in confidence from:

- federal government, its agencies, Crown corporations;
- another provincial government, its agencies, Crown corporations;
- foreign government; and
- international organization of states or institutions.

The exception would be if the other government makes the information in question public or just consents to the disclosure.

Of the mandatory exemptions this is perhaps the least used exemption.⁵⁴ The OIPC has considered this particular mandatory exemption in Report F-2006-002 and F-2004-004.⁵⁵

If a record was obtained from a local authority the exemption would be discretionary not mandatory.⁵⁶

5. DISCRETIONARY EXEMPTIONS

In addition to the four mandatory exemptions, there are seven discretionary exemptions to disclosure (listed to reflect frequency of use):⁵⁷

- a) advice from officials;⁵⁸
- b) solicitor-client privilege;⁵⁹

⁵³ Saskatchewan Information and Privacy Commissioner, *Review Reports*, available at www.oipc.sk.ca/reviews.htm

⁵⁴ *Supra*, note 44

⁵⁵ Saskatchewan Information and Privacy Commissioner, *Review Reports*, available at www.oipc.sk.ca/reviews.htm

⁵⁶ FOIP, s. 13(2)

⁵⁷ *Supra*, note 44

⁵⁸ FOIP, s. 16; LA FOIP, s. 16

⁵⁹ FOIP, s. 22; LA FOIP, s. 21

- c) economic and other interests;⁶⁰
- d) law enforcement and investigations;⁶¹
- e) danger to health or safety;⁶²
- f) information injurious to intergovernmental relations or national defence;⁶³ and
- g) testing procedures, tests and audits.⁶⁴

Before exercising a discretionary power the government institution must assess the following elements:

- the relevant facts and circumstances;
- the applicable law, including the objects of the law and the scope of the discretionary power; and
- how to properly apply the law to the relevant facts.

A government institution that uses a discretionary exception must first undertake two exercises:

- 1) it must determine whether an exemption applies; and
- 2) it must decide whether that information should nevertheless be disclosed, even though the exemption applies.

When exercising its discretion the government institution must consider the objects and purposes of FOIP. It must show that it considered all relevant factors. It must act in good faith, for a proper purpose and base the exercise of its discretion on relevant considerations only.

Brief commentary on the four most frequently cited discretionary exemptions follows.

⁶⁰ FOIP, s. 18; LA FOIP, s. 17

⁶¹ FOIP, s. 15; LA FOIP, s. 14

⁶² FOIP, s. 21; LA FOIP, s. 20

⁶³ FOIP, s. 14

⁶⁴ FOIP, s. 20; LA FOIP, s. 19

a. Advice From Officials (Section 17)

This discretionary exemption has been considered by the OIPC in Report F2005-004, F2004-002 and F-2004-001.⁶⁵

According to the latest Annual Report from Saskatchewan Justice, this discretionary exemption was the most frequently cited discretionary exemption by government institutions.⁶⁶

The purpose of this provision is to enable persons having responsibility to make decisions to freely discuss the issues in order to arrive at well-reasoned decisions without fear of being wrong or appearing foolish if these frank deliberations were made public.

Unlike solicitor-client privilege, the ‘advice from officials’ exemption when used will require consideration of severing where appropriate.

If the government institution relies on that portion of this exemption that relates to advice, proposals, recommendations, analyses and policy options, the advice must meet the following criteria:

- 1) sought or expected or be part of the responsibility of a person by virtue of that person's position;
- 2) directed toward taking an action or making a decision; and
- 3) made to someone who can take or implement the action.

b. Solicitor-Client Privilege (Section 22)

This exemption is also frequently raised by government institutions in resisting disclosure.

22 A head may refuse to give access to a record that:

- (a) contains information that is subject to solicitor-client privilege;*
- (b) was prepared by or for an agent of the Attorney General for Saskatchewan or legal counsel for a government institution in relation to a matter involving the provision of advice or other services by the agent or legal counsel; or*
- (c) contains correspondence between an agent of the Attorney General for Saskatchewan or legal counsel for a government institution and any other*

⁶⁵ Saskatchewan Information and Privacy Commissioner, *Review Reports*, available at www.oipc.sk.ca/reviews.htm

⁶⁶ *Supra*, note 44

*person in relation to a matter involving the provision of advice or other services by the agent or legal counsel.*⁶⁷

Solicitor-client privilege is a “class” privilege as opposed to a “case-by-case” privilege. OIPC Report F-2005-002 reviews this discretionary exemption and follows the approach taken by previous Saskatchewan Commissioners. The Commissioner, in that report, also considered who bears the burden of proof on the question of whether solicitor-client privilege has been waived.⁶⁸

c. Economic and Other Interests (Section 18)

Section 18(2)(a) and 18(1)(f) was considered by the Commissioner in Report F-2006-002, [96] to [111]. Section 18(1)(b) was considered in Report F-2005-006, [9] to [34]. Section 18(1)(d) was considered in Report F-2004-007, [20] to [25].⁶⁹

d. Law Enforcement Exception (Section 15)

The OIPC has addressed this discretionary exemption in Reports F-2006-004, F-2006-001, and F-2004-006.⁷⁰

This is one of the most frequently used discretionary exemptions.⁷¹

“Lawful investigation” means an investigation that is authorized or required and permitted by law. A government institution cannot invoke section 15(1)(c) of FOIP unless there is an active and ongoing investigation.

⁶⁷ FOIP, s. 22; LA FOIP, s. 21

⁶⁸ Saskatchewan Information and Privacy Commissioner, *Review Report F-2005-002* from [39] to [43], available at www.oipc.sk.ca/reviews.htm

⁶⁹ Saskatchewan Information and Privacy Commissioner, *Review Reports*, available at www.oipc.sk.ca/reviews.htm

⁷⁰ *Ibid.*

⁷¹ *Supra*, note 44

6. OVERSIGHT BY IPC

The Information and Privacy Commissioner is an independent officer appointed by the Legislative Assembly and has those responsibilities conferred by Parts V and VI of FOIP.

The Commissioner can be requested to review certain decisions, acts or failures to act of the government institution by an aggrieved applicant.⁷² In the case of a formal Review of an access decision by a government institution or local authority, the Commissioner initially assesses whether there is some preliminary reason why the Review should not proceed. If the Review is to proceed, the government institution or local authority is required to provide the Commissioner with the Record. This should be done in accordance with the *Helpful Tips* sheet available at the website: www.oipc.sk.ca. This includes both an index of records and a paginated non-severed record. The Commissioner is entitled to view even those documents or portions of records that may be the subject of a claim of a mandatory or discretionary exemption.

Typically, a Portfolio Officer in the OIPC office first attempts to explore a mediated resolution of the dispute between the applicant and the government institution or local authority. If this is not feasible, the OIPC proceeds to prepare a formal Report. The Report is published on the OIPC website, www.oipc.sk.ca. The Report will not identify the applicant since that would be personal information of the applicant, but in the interests of accountability, will identify the public body.

The Report is provided to the applicant and to the public body. The latter must, within 30 days, communicate with both the applicant and the Commissioner and advise whether it accepts the recommendations of the Commissioner.⁷³ If the public body chooses not to accept the Commissioner's recommendations, the aggrieved applicant may commence proceedings in the Court of Queen's Bench (Q.B.) for a binding order.⁷⁴ In the 15 year history of FOIP, there have been approximately thirteen applications to the court under FOIP. The Saskatchewan Court of Appeal has, on at least two separate occasions, considered appeals from Q.B. orders.

⁷² FOIP, s. 49; LA FOIP, s. 38

⁷³ FOIP, s. 56; LA FOIP, s. 45

⁷⁴ FOIP, s. 57; LA FOIP, s. 46

The Commissioner may require to be produced any record “notwithstanding any other Act or any privilege that is available by law.”⁷⁵ The Commissioner may also compel evidence under oath.⁷⁶

Some practical tips in acting for a client who is seeking a review by the Commissioner might include the following:

- Always use the mediation opportunity. It most often will clarify and particularize the concerns of the public body that are usually quite vague in the formal documentation exchanged. It is common to obtain additional information that had not been provided prior to the Commissioner's office intervention in the case.
- In preparing your material, obviously past decisions of the OIPC are most helpful. Also persuasive would be decisions of the Federal Court or Supreme Court interpreting ATIA. Further guidance can be taken from orders issued by the British Columbia, Alberta and Ontario Information and Privacy Commissioners.
- Make use of the practice tips and recommendations published by the OIPC in its monthly e-newsletter, the Saskatchewan FOIP FOLIO. There are more than 30 issues of the FOIP FOLIO archived on the website, www.oipc.sk.ca. There is no cost for the FOIP FOLIO. The only requirement is that an email address be provided to the OIPC.

IV. ACCESS TO INFORMATION ACT

This federal statute was the first of its kind in Canada. It became law in 1982 and served as an early model for provincial access to information laws. The purpose is described as follows:

*2(1) The purpose of this Act is to extend the present laws of Canada to provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, that necessary exceptions to the right of access should be limited and specific and that decisions on the disclosure of government information should be reviewed independently of government.*⁷⁷

Unlike the provincial laws in Ontario, British Columbia and Alberta, but similar to Saskatchewan, the federal Information Commissioner acts as an ombudsman. He can investigate, address complaints from aggrieved applicants and make recommendations. There is a right to appeal to the Federal Court Trial Division for a binding order.

The Court has declared that public access ought not to be frustrated by the Courts except upon the

⁷⁵ FOIP, s. 54; LA FOIP, s. 43

⁷⁶ FOIP, *ibid*; LA FOIP, *ibid*

⁷⁷ ATIA, s. 2(1)

clearest grounds so that doubt ought to be resolved in favour of disclosure.⁷⁸ Furthermore, the burden of persuasion must rest upon the party resisting disclosure.

The Federal Court has also indicated that the purpose of ATIA is to codify the right of access of citizens. It is not to codify the Government's right of refusal.⁷⁹

Those federal departments and organizations that are subject to the Act are listed on Schedule 1 to ATIA.

An applicant must be either a Canadian citizen or a permanent resident within the meaning of the *Immigration Act*.⁸⁰ The purpose of the access request is irrelevant.⁸¹ The motive and occupation of the applicant are also irrelevant.⁸²

There is an annual directory published that lists the organization and responsibilities of each government institution, the classes of records under its control, all manuals used by government employees and the contact information for an Access to Information Coordinator for each government institution to whom access requests may be sent.⁸³

The government institution must respond within 30 days of receipt of an access request.⁸⁴ Within 15 days of receipt of a request, the institution may transfer the request to another institution that may have a greater interest in the record.⁸⁵

There are also provisions for extending the time limit for a "reasonable period of time" in particular circumstances and with notice to the Information Commissioner.⁸⁶

⁷⁸ *Maislin Industries Limited v. Canada (Minister for Industry, Trade & Commerce)*, [1984] 1 F.C. 939 (T.D.)

⁷⁹ *Information Commissioner (Canada) v. Canada (Minister of Employment and Immigration)*, [1986] 3 F.C. 63 (T.D.)

⁸⁰ ATIA, s. 4(1)

⁸¹ *Stevens v. Canada (Prime Minister)*, [1988] 4 F.C. 89 (C.A.)

⁸² *Intercontinental Packers Limited v. Canada (Minister of Agriculture)* (1987), 14 F.T.R. 142 (F.C.T.D.); aff'd (1988), 87 N.R. 99 (F.C.A.)

⁸³ ATIA, s. 5(1). See also note 8 supra

⁸⁴ ATIA, s. 7

⁸⁵ ATIA, s. 8(1)

⁸⁶ ATIA, s. 9(2)

An applicant must pay an application fee of \$5. In addition there are fees fixed by regulation for every hour in excess of five hours that is reasonably required to search for the record or prepare any part of it for disclosure.⁸⁷ There is provision for a fee waiver.⁸⁸

A. EXEMPTIONS TO DISCLOSURE

The exemptions in ATIA must be interpreted in light of the purpose clause. Where there are two interpretations open to the Court, it must, given Parliament's stated intention, choose the one that infringes the least on the public's right to access.⁸⁹

1. MANDATORY EXEMPTIONS

- Information obtained in confidence from another government, foreign or domestic.⁹⁰
- Personal information of an individual.⁹¹
- Third party information.⁹²

2. DISCRETIONARY EXEMPTIONS

- Disclosure injurious to conduct of federal-provincial affairs.⁹³
- Disclosure injurious to conduct of international affairs, defence of Canada or the detection, prevention or suppression of subversive or hostile activities.⁹⁴
- Law enforcement and investigations.⁹⁵
- Information that could reasonably be expected to facilitate the commission of an offence.⁹⁶
- Threat to the safety of individuals.⁹⁷
- Economic interests of Canada.⁹⁸

⁸⁷ ATIA, s. 11

⁸⁸ ATIA, s. 11(6)

⁸⁹ *Rubin v. Canada (Minister of Transport) v. Canada (Immigration and Refugee Board)* (1997), 140 F.T.R. 140 (F.C.T.D.)

⁹⁰ ATIA, s. 13

⁹¹ ATIA, s. 19

⁹² ATIA, s. 20

⁹³ ATIA, s. 14

⁹⁴ ATIA, s. 15

⁹⁵ ATIA, s. 16(1)

⁹⁶ ATIA, s. 16(2)

⁹⁷ ATIA, s. 17

⁹⁸ ATIA, s. 18

- Advice or recommendations by or for a government institution or minister of the Crown.⁹⁹
- Information relating to testing or auditing procedures.¹⁰⁰
- Solicitor-client privilege.¹⁰¹
- If the information will be published within 90 days.¹⁰²

B. THE SOLICITOR-CLIENT PRIVILEGE EXEMPTION

The solicitor-client privilege exemption incorporates the common law doctrine of solicitor-client privilege.¹⁰³ The Information Commissioner has expressed a number of concerns with the application of this exemption. He stated:

*It has become obvious during the last 10 years that the application and interpretation of section 23 by the government (read: Justice Department) is unsatisfactory. Most legal opinions, however stale, general or uncontroversial, are jealously kept secret. **In the spirit of openness, the government's vast storehouse of legal opinions on every conceivable subject should be made available to interested members of the public.***

Tax dollars are paid for these opinions and, unless an injury to the conduct of government affairs could reasonably be said to result from disclosure, legal opinions should be disclosed. These opinions are to lawyers what advance tax rulings are to accountants and should be equally accessible.

One final matter on section 23. The Act is unequivocal that section 23 is subject to section 25: any information in a record which does not qualify for solicitor-client privilege must be released. Section 25 is the so-called "severance" requirement. The courts, too, have decided that section 23 is subject to the severance requirement. Nevertheless, the Justice Department continues to advise institutions not to apply severance to a record containing solicitor-client material. Justice clings to the view that, if any portion of a record is disclosed from a record containing privileged material, the privileged portions may somehow be stripped of their privilege.

For this reason, section 23 should be amended to spell out that the application of severance to a record under the authority of section 25 does not result in loss of privilege on other portions of the record.

These clarifications along with the earlier recommendation that this exemption be made

⁹⁹ ATIA, s. 21(1)

¹⁰⁰ ATIA, s. 22

¹⁰¹ ATIA, s. 23

¹⁰² ATIA, s. 26

¹⁰³ *Stevens v. Canada (Prime Minister)*, (1997), 144 D.L.R. (4th) 553; 72 C.P.R. (3d) 129 (F.C.T.D.); aff'd [1998] 4 F.C. 89 (C.A.)

*subject to an injury test and a public interest override will bring one of the most carefully guarded bastions of reflexive secrecy into line with the principles of open government.*¹⁰⁴

There is provision that the head of an institution may disclose any record requested that contains confidential financial, commercial or technical information, information that if disclosed may prejudice the competitive position of a third party or interfere with contractual negotiations of a third party if the disclosure would be in the public interest.¹⁰⁵

There is specific provision that requires severance of information that an institution is authorized to withhold and disclosure of the balance. This is qualified by the requirement that the exempt portions can "reasonably be severed" from the balance.¹⁰⁶

There is a prescribed procedure for notice to third parties in the event that an institution has reason to believe the record might contain trade secrets, confidential financial, commercial, scientific or technical information, or information that could prejudice a third party's competitive position or interfere with its contractual or other negotiations.¹⁰⁷

The Information Commissioner is empowered to receive and investigate complaints related to access requests under the Act.¹⁰⁸ Such a complaint must be made in writing to the Information Commissioner within one year from the time when the access request was received.¹⁰⁹

The Information Commissioner has powers to summon and enforce the appearance of witnesses, to administer oaths, to enter any premises occupied by any government institution and to examine any books or records relevant to the investigation.¹¹⁰

If the Information Commissioner determines that a complaint is well founded, notice is given to the institution and the applicant. If the institution fails to provide access in accordance with such a

¹⁰⁴ Information Commissioner of Canada, *Response to the Report of the Access to Information Review Task Force, A Special Report to Parliament*, (September, 2002) at 69; available at www.infocom.gc.ca.

¹⁰⁵ ATIA, s. 20(6)

¹⁰⁶ ATIA, s. 25

¹⁰⁷ ATIA, s. 27

¹⁰⁸ ATIA, s. 30

¹⁰⁹ ATIA, s. 31

¹¹⁰ ATIA, s. 36

finding by the Information Commissioner, the applicant or the Information Commissioner may apply to the Federal Court Trial Division within 45 days after receiving notice of the Information Commissioner's determination.¹¹¹

In August of 2000 the Minister of Justice and the President of the Treasury Board created a Task Force of government officials to review the federal access to information regime. The report of the Task Force was published in June 2002. The Task Force recommended expansion of ATIA's coverage to many Crown Corporations. It also proposed to double the number of exemptions and exclusions to justify refusal of access requests. The Information Commissioner responded by submitting a Special Report to Parliament in September 2002.¹¹² Further amendments were recommended by Mr. Justice Gomery in his second report arising from the 'sponsorship scandal'. It is not known what, if any, amendments of ATIA may result.

V. **THE HEALTH INFORMATION PROTECTION ACT**

HIPA deserves some consideration in any discussion of obtaining records and information about individuals. HIPA was proclaimed September 1, 2003 and consolidated the rules governing the collection, use or disclosure of personal health information by health information *trustees*¹¹³ in Saskatchewan. The various 'moving parts' of HIPA were discussed and interpreted in OIPC Investigation Report H-2005-002¹¹⁴.

Unlike Part II of FOIP and ATIA, there is no provision for general information access requests. Information about surgical outcomes in a particular facility or bed vacancy statistics or such general information can still be obtained through an access request directed to the Regional Health Authority under LA FOIP or from Saskatchewan Health under FOIP.

HIPA does however provide a statutory right to persons and their solicitors who wish to access that patient's own personal health information. It also sets out procedures for requesting amendment of

¹¹¹ ATIA, s. 41

¹¹² *Supra*, note 104

¹¹³ *Supra*, note 28

¹¹⁴ Saskatchewan Information and Privacy Commissioner, *Investigation Reports*, available at www.oipc.sk.ca/reviews.htm

one's own personal health information. This right of access was discussed in OIPC Report H-2006-001.¹¹⁵

The interplay between FOIP/LA FOIP and HIPA can be tricky. Section 4 of HIPA provides as follows:

4(1) Subject to subsections (3) to (6), where there is a conflict or inconsistency between this Act and any other Act or regulation with respect to personal health information, this Act prevails.

(2) Subsection (1) applies notwithstanding any provision in the other Act or regulation that states that the provision is to apply notwithstanding any other Act or law.

(3) Except where otherwise provided, The Freedom of Information and Protection of Privacy Act and The Local Authority Freedom of Information and Protection of Privacy Act do not apply to personal health information in the custody or control of a trustee.

(4) Subject to subsections (5) and (6), Parts II, IV and V of this Act do not apply to personal health information obtained for the purposes of:

(a) The Adoption Act or The Adoption Act, 1998;

(b) Part VIII of The Automobile Accident Insurance Act;

(c) section 16 of The Cancer Foundation Act;

(d) The Child and Family Services Act;

(e) The Mental Health Services Act;

(f) The Public Disclosure Act;

(g) The Public Health Act, 1994;

(g.1) The Vital Statistics Act, 1995 or any former Vital Statistics Act;

(h) The Workers' Compensation Act, 1979;

(h.1) The Youth Drug Detoxification and Stabilization Act; or

(i) any prescribed Act or regulation or any prescribed provision of an Act or regulation.

A. RIGHT OF ACCESS

HIPA provides that an individual has a right of access to any record containing personal health

¹¹⁵ Saskatchewan Information and Privacy Commissioner, *Review Reports*, available at www.oipc.sk.ca/reviews.htm

information about the individual that is in the custody or under the control of a trustee.¹¹⁶ That right can also be exercised by any one of seven types of surrogates as defined by Section 56 of the Act. That list includes *"any person designated in writing by the individual pursuant to section 15"*.¹¹⁷ A trustee must make every reasonable effort to assist the applicant and to respond openly, accurately and completely.¹¹⁸ The trustee must also provide at the request of an applicant and if reasonably practicable, an explanation of any term, code or abbreviation used in the record.

The Act sets out 6 discretionary exceptions to access.¹¹⁹ These are:

- 1) If disclosure could reasonably be expected to endanger the mental or physical health or the safety of the applicant or another person;
- 2) If the disclosure would reveal personal health information about another;
- 3) If the disclosure could reasonably be expected to identify a third party who supplied the information in confidence under circumstances in which confidentiality was reasonably expected;
- 4) If the information was collected and used solely for peer review by health professionals, review by standards or quality of care committee, for purposes of self-governing health professional body;
- 5) If the information was collected in anticipation of a civil, criminal or quasi-judicial proceeding; and
- 6) If the disclosure could interfere with a lawful investigation or be injurious to enforcement of an Act or regulation.

¹¹⁶ HIPA, s. 12

¹¹⁷ HIPA, s. 56(f)

¹¹⁸ HIPA, s. 35

¹¹⁹ HIPA, s. 38

If the information that would be caught by the above noted exceptions can "*reasonably be severed from a record*", the individual must be provided access to the remainder of the record.¹²⁰

The trustee must respond to an access request within 30 days.¹²¹ There is provision to extend this for another 30 days in limited circumstances.

B. DISCLOSURE OF HEALTH INFORMATION

There is a second way that personal health information may be accessed. The disclosure rules in section 27 of HIPA permit disclosure by a trustee to the individual who is the subject of the information or that individual's surrogate pursuant to section 57. That would include a solicitor acting under the client's written authority.

Section 27(1) permits a trustee to disclose personal health information to a person other than the subject if the subject has consented to the disclosure.

The Act also permits the disclosure of diagnostic, treatment and care information without the subject's consent for some 17 different purposes¹²² including the following:

- For the purpose of a court proceeding or a proceeding before a quasi-judicial body to which the trustee is a party;
- To comply with a subpoena, warrant or order from a court or body with authority to compel production or with a rule of court that relates to production of information; and
- If the disclosure is authorized or required by an Act or regulation of either Saskatchewan or Canada.

It is now possible for a patient/client to review what disclosures have been made of that person's health information.¹²³ If personal health information is to be disclosed to anyone not engaged in providing continuing treatment and care to an individual, there are important general duties on the disclosing trustee. The trustee must ensure that the least amount of identifying information necessary for the purpose of the disclosure is shared.¹²⁴ It must also take steps to ensure that the

¹²⁰ HIPA, s. 38(2)

¹²¹ HIPA, s. 36

¹²² HIPA, s. 27(4)

¹²³ HIPA, s. 10

¹²⁴ HIPA, s. 23

recipient, if not a trustee and where there is no consent, can verify their identity and understands that the information must not be used or disclosed for any collateral purpose.¹²⁵

The patient may attempt to direct his trustee to omit certain prejudicial information from the "disclosure" package. The cover letter to a trustee seeking a medical-legal report should explicitly outline the extent of the information sought. The authorization signed by the individual should address the possibility of selective disclosure in addition to meeting the statutory requirements.

VI. CONCLUSION

Access to information statutes and processes should not be seen as a substitute for the traditional discovery processes available to litigants. It can at times be a lengthy and frustrating process. If it becomes necessary to seek a review by an oversight officer who, at the end of the day, can only issue recommendations, many of the usual advantages over discovery processes may not apply.

Nonetheless, it is a tool that offers lawyers significant advantages in many cases. It should be considered more often as an approach to complement the usual litigation tools.

¹²⁵ HIPA, s. 21

VII. APPENDIX A

Books and Manuals:

McNairn and Woodbury, *Government Information: Access and Privacy*, (2005, Thomson Carswell, Toronto)

Drapeau and Racicot, *Federal Access to Information and Privacy Legislation Annotated 2006*, (2006, Thomson Carswell, Toronto)

McIsaac, Shields Klein, *The Law of Privacy in Canada*, (2006, Thomson Carswell, Toronto)

Government of Alberta, *Freedom of Information and Protection of Privacy Guidelines and Practices*, (2005, Government of Alberta Access and Privacy Branch, Edmonton)

Elizabeth Wilcox and Alberta Queen's Printer, *The Annotated Alberta Freedom of Information and Protection of Privacy Act*, (2005, Alberta Queen's Printer, Edmonton)

Alberta Health and Wellness, *Health Information Act Guidelines and Practices Manual*, (2001, Alberta Health and Wellness, Edmonton)

Rozovsky and Inions, *Canadian Health Information, A Practical Legal and Risk Management Guide*, 3d Ed. (2002, Butterwoths Canada Ltd, Markham)

Case Law:

Provincial:

City Collection Co. v. Saskatchewan Government Insurance (Sask.Q.B.), [1993] S.J. No. 535; Q.B.M. No. 665 of 1993 J.C.R.

Fogal v. Regina School Division No. 4, [2002] S.J. No. 141; 2002 SKQB 92; Q.B. No. 2363 of 2001 J.C.S.

G.L. v. Canada (Attorney General), [2003] S.J. No. 757; 2003 SKQB 476; Q.B.G. No 3557 of 1998 J.C.R.

General Motors Acceptance Corp. of Canada v. Saskatchewan Government Insurance (Sask. C.A.), [1993] S.J. No. 601; Appeal File No. 1534

Liik v. Saskatchewan (Minister of Health) (Sask. Q.B.) [1994] S.J. No. 399; Q.B. No. 214 of 1994 J.C.B.

Weidlich v. Saskatchewan Power Corp., [1998] S.J. No. 133; Q.B.G. No. 834 OF 1997 J.C.R.
Federal:

Nautical Data International Inc. v. Canada (Minister of Fisheries and Oceans), 2005 FC 407

Canada (Attorney General) v. Canada (Information Commissioner), [2005] F.C.J. No. 926; 2005 FCA 199; Docket A-223-04

Canada (Attorney General) v. Canada (Information Commissioner) (F.C.), [2004] 4 F.C.R. 181 [part]; [2004] F.C.J. No. 524; 2004 FC 431

Canada (Attorney General) v. Canada (Information Commissioner), [2004] 4 F.C.R. 181 at para. 20, 255 F.T.R. 56, 15 Admin. L.R. (4th) 58, 32, C.P.R. (4th) 464, 117 C.P.R. (2d) 85, 2004 FC 431, rev'd (2005), 253 D.R.R. (4th) 590, 335 N.R. 8, 40 C.P.R. (4th) 97, 2005 FCA 199, leave to appeal to S.C.C. requested

Canada (Attorney General) v. Canada (Information Commissioner), [2002] 3 F.C. 630 at para. 20, 216 F.T.R. 247, 41 Admin. L.R. (3d) 237, 2002 FCT 128, 2430901

Canada Inc. v. Canada (Minister of Industry), [2002] 1 F.C. 421 at para. 102, (2001), 282 N.R. 284, 45 Admin L.R. (3d) 182, (2001) 14 C.P.R. (4th) 449, 2001 FCA 254, leave to appeal to S.C.C. refused, [2001] S.C.C.A. No 537 (Q.L.)]

Lavigne v. Canada (Office of the Commissioner of Official Languages), [2002] 2 S.C.R. 773, (2002) SCC 53

R. v. Dymont, [1988] 2 S.C.R. 417

R. v. Mills, [1999] 3 S.C.R. 668

Dagg v. Canada (Minister of Finance), [1997] 2 S.C.R. 402

R. v. Plant, [1993] 3 S.C.R. 281

R. v. Duarte, [1990] 1 S.C.R. 30

R. v. Edward, [1996] 1 S.C.R. 128

Canada (Information Commissioner) v. Canada (Commissioner of the Royal Canadian Mounted Police), [2003] 1 S.C.R. 66, 2003 SCC 8

Websites:

Quicklaw

<http://www.lexisnexis.ca/ql/index.php>

CanLII

<http://www.canlii.org/sk/laws/index.html>

Saskatchewan Justice, Access and Privacy Branch

<http://www.saskjustice.gov.sk.ca/FOI/>

Saskatchewan Health

http://www.health.gov.sk.ca/ph_pp_privacy_hipa_your_rights.html

Treasury Board of Canada, Access to Information Policies and Publications

http://www.tbs-sct.gc.ca/Pubs_pol/gospubs/TBM_121/siglist_e.asp

Treasury Board of Canada, Access to Information Forms

http://www.tbs-sct.gc.ca/atip-aiprp/forms/list_e.asp

Info Source Publications

http://www.infosource.gc.ca/index_e.asp

Department of Justice Canada, Access to Information and Privacy Index

<http://www.justice.gc.ca/en/ps/atip/index.html>

Privacy Commissioner of Canada Findings

http://www.privcom.gc.ca/cf-dc/index_e.asp

Information Commissioner of Canada

<http://www.infocom.gc.ca/menu-e.asp>

ON OIPC Annotated Act

http://www.ipc.on.ca/scripts/index_.asp?action=31&P_ID=51&N_ID=1&PT_ID=25&U_ID=0

ON Subject Index

http://www.ipc.on.ca/scripts/index_.asp?action=31&P_ID=55&N_ID=1&PT_ID=25&U_ID=0

ON Judicial Review of Provincial Orders

http://www.ipc.on.ca/scripts/index_.asp?action=31&P_ID=11019&N_ID=1&PT_ID=25&U_ID=0

ON Government, Access and Privacy Office

<http://www.accessandprivacy.gov.on.ca/english/index.html>

ON Government, Access and Privacy Office, FOI Manual

<http://www.accessandprivacy.gov.on.ca/english/manual/index.html>

BC Government, Policies and Procedures Manual

<http://www.msar.gov.bc.ca/privacyaccess/manual/toc.htm>

AB Government, Freedom of Information and Protection of Privacy

<http://foip.gov.ab.ca/>

AB OIPC website

<http://www.oipc.ab.ca/orders/>

BC OIPC website

http://www.oipc.bc.ca/orders_reports.htm

MB OIPC website

<http://www.gov.mb.ca/chc/fippa/index.html>

NB OIPC website

<http://www.gnb.ca/0073/index-e.asp>

NFL OIPC website

<http://www.oipc.gov.nl.ca/>

NWT OIPC website

<http://www.justice.gov.nt.ca/ATIPP/atipp.htm>

NS OIPC website

<http://www.gov.ns.ca/foiro/>

Nunavut OIPC website

<http://www.info-privacy.nu.ca/>

ON OIPC website

<http://www.ipc.on.ca/>

PEI OIPC website

<http://www.gov.pe.ca/foipp/index.php3>

QB OIPC website

<http://www.cai.gouv.qc.ca/index-en.html>

Yukon OIPC website

http://www.ombudsman.yk.ca/infoprivacy/info_index.html

Privacy Commissioner of Australia

<http://www.infocom.gc.ca/menu-e.asp>

Hong Kong Privacy Commissioner for Personal Data

<http://www.pcpd.org.hk/>

Privacy Commissioner of New Zealand

<http://www.privacy.org.nz/home.php>

Information Commissioner for the United Kingdom

<http://www.ico.gov.uk/>