

## COMMENTS FROM THE COMMISSIONER

Thanks very much Minister Quennell for launching this conference.

In my first 3 and ½ years in this job, I have seen a remarkable growth in an identifiable ‘access and privacy community’ in Saskatchewan. More public bodies have now specifically tasked individuals to manage access requests and privacy complaints. We have seen new resources, new tools and generally much greater awareness of access and privacy responsibilities.

Much of the credit goes to Minister Quennell who has been the Minister of Justice for that same 3 and ½ years. He, and I also want to acknowledge his Deputy Minister, Doug Moen, have provided very clear signals that this government is taking its statutory responsibilities under the FOIP, LA FOIP and HIPA very seriously.

FOIP is the acronym for *Freedom of Information and Protection of Privacy Act*. LA FOIP is the acronym for the *Local Authority Freedom of Information and Protection of Privacy Act* and HIPA is the acronym for the *Health Information Protection Act*.

As the Minister has said,

- the creation of the Access and Privacy Branch within Saskatchewan Justice;
- the development of online training tools;
- the new Privacy Policy for government websites;
- the new listing of contact information for the FOIP Coordinator in each government institution and
- the ongoing meetings and dialogue between our office and Justice all represent significant improvements.

## DEVELOPMENTS AT THE OIPC

Like other Information and Privacy Commissioner offices (OIPC) there are 4 major parts to our mandate:

- (1) Review access decisions by government institutions and local authorities.
- (2) Investigate Breach of privacy complaints
- (3) Advice and commentary
- (4) Education

We now have 4 portfolio officers:

Diane Aldridge is our senior Portfolio Officer

Sandra Barreth started with us more than 1 and ½ years ago,

You will hear from Diane and Sandra in different breakout sessions today.

Our third Portfolio Officer, Larissa McWhinney is on leave

Our latest Portfolio Officer, Clint Krismer, started in February and is here today.

When I started in November 2003 I told everyone we dealt with that we would operate as much as possible on a “no surprises” basis. In other words we would be transparent about the way we interpret the three laws we oversee, FOIP, LA FOIP and HIPA. We have also tried to be transparent in our plans for the OIPC. Hence our rolling 3 year business plan with 48 key performance measures. That business plan is available on our website: [oipc.sk.ca](http://oipc.sk.ca). When we report to the public and when we report to the Legislative Assembly we will continue to be open and transparent about those key performance measures we achieved but also those we did not achieve.

I also said at the start that in our dealings with government institutions, local authorities and trustees, we would focus on cooperation, collaboration and consultation, the three C’s. So far our focus has been on education, on working with public bodies to build capacity to meet statutory requirements. We have continued to consult with SaskJustice and major departments and Crowns we deal with and now of course regular meetings with the Access and Privacy Branch in SaskJustice.

In the last four years we have undertaken more than 400 reviews and investigations. I am happy to report that we are resolving by mediation and informal resolution more than 80% of the complaint and review files. We want that percentage to be even higher.

In addition we have opened more than 90 files in the last fiscal year for advice and commentary. This involves our review of things like the Youth Drug Detoxification and Stabilization Act and recommendations for amendment that are now reflected in Bill 6. Working with public sector organizations to strengthen access and privacy features.

Now, there is no requirement for any public body to consult with us before they adopt a new policy, program or law that impacts access and privacy of Saskatchewan residents, as has been pointed out to me by several Ministers.

Nonetheless, it is important to recognize that our mandate is to review these things and to provide commentary to the public and to the Legislative Assembly. As a public body, there is an obvious win-win opportunity in early informal consultation. By this I mean, we may be able to persuade the public body that changes can be made to better protect access or privacy. If that is the case, the public body is able to proceed knowing it isn’t likely going to hear criticism from the OIPC and in fact is more likely to be praised by our office. Even if we agree to disagree, in the public body you can now go to the Deputy Minister and advise him or her that if the public body proceeds, you can expect public criticism from the OIPC on this element or that element. What you’ve succeeded in doing is to narrow and define the issues of disagreement. I think that is useful to the Deputy Minister or CEO.

We continue to produce our monthly E-newsletter, the Saskatchewan FOIP FOLIO, now more than 36 issues archived on our website, [www.oipc.sk.ca](http://www.oipc.sk.ca). Copies are available at our display table in the concourse area. If you wish to subscribe and receive it monthly there is no charge. We need only your email address.

We have published on our website approximately 28 Reports. These are full-text reports that explain exactly how we analyzed a case, our findings of fact, our recommendations. We do not disclose the identity of the applicant or complainant. We always identify the public body in the interests of public accountability. In the majority of cases, our recommendations are accepted and adopted by the public body.

Last year our office was also happy to participate in the first Right to Know Week in Saskatchewan. This resulted in the award of the Chief Justice E.M. Culliton Right to Know Award to the city of Regina for notable achievements in promoting and respecting the public's right to know. With the help of Lieutenant-Governor we announced an essay contest for high school students and another for post-secondary students on the importance of access to information in a modern democracy.

Last year we started the Brown Bag luncheon workshops for FOIP and HIPA coordinators. These have been coordinated by Sandra Barreth and focus on predictable problem areas for FOIP compliance.

We have published a number of brochures to explain the 3 laws, our mandate and process. Samples are available at our display booth.

As part of the focus on capacity building we have emphasized education. In the last 3 and ½ years we have done more than 400 presentations in more than 28 different Saskatchewan communities.

We get a lot of telephone calls, correspondence and emails from Saskatchewan residents as well as from government institutions, local authorities and health trustees looking for summary advice. We define summary advice as a call we can immediately respond to or can do so with no more than one hour of research.

As of the end of 2006-2007 we handled 2168 of those summary advice requests.

As an independent officer of the Legislative Assembly, we rely on the power of persuasion. That means you need to be confident that we know what we are talking about. That is why it is a requirement of the Portfolio Officer position that you either have the Information Management Access and Privacy Certificate from the U. of A., the only online access and privacy program in Canada or be enrolled in and complete that program within a prescribed time.

## **ORGANIZING TO MANAGE FOIP/LA FOIP AND HIPA EFFICIENTLY**

In Saskatchewan we have typically fewer resources than some other provinces. We have a tradition of having to do more with less. This is also probably the most compelling reason why all public bodies should pay careful attention to organize as efficiently as possible to manage access and privacy responsibilities. This was the focus of our 2005 **Privacy and Access: A Saskatchewan Roadmap for Action.** This was a key feature in our 2004-2005 Annual Report.

We issued Report 2007-001 earlier this year. If you are a FOIP Coordinator I certainly encourage you to become familiar with that Report. To our amazement, we discovered that to process a single access request involved 11 different persons in 5 different Departments. Public bodies need to be a lot more efficient at responding to access requests.

I urge you to consider the Role of a single, senior FOIP Coordinator or Officer. This is the tried and proven optimal device or system developed over 24 years of Canadian experience. Allow that person to develop some expertise in access and privacy. Ensure he or she is senior enough to be able to report directly to the DM or CEO. Make that individual the access and privacy leader in your organization.

I encourage you to read:

- our recent WCB Investigation Report 2007-001,
- our big report on the Prevention Program for Cervical Cancer Investigation Report 2005-002 and
- the FOIP FOLIO January 2004.

In those materials you will find lots of information about best practices in terms of leadership within public bodies.

## **INTERPRETATION OF ACCESS AND PRIVACY LAWS**

We are sometimes asked how is it we interpret the three laws in the way we do. Why does our interpretation sometimes differ from the dictionary or ordinary meaning of certain words?

The reason is outlined in our February 2007 FOIP FOLIO, page 2. We apply, as the Supreme Court of Canada has directed, the Modern Principle of statutory interpretation. That requires that we look at the intention of the Assembly, the object of the Act and the scheme of the Act. Unfortunately, our legislature did not include a purpose clause in FOIP or LA FOIP or HIPA. But 3 years ago, we looked at everything we could find and came up with what we take to be the purpose of the Assembly when they passed FOIP. That is described in our early Reports.

We are also governed by section 10 of the Sask *Interpretation Act*. Every enactment shall be interpreted as being remedial and shall be given the fair, large and liberal construction and interpretation that best ensure the attainment of its objects. That means that just looking at a dictionary or just relying on your best guess as to what some phrase or another is not good enough.

The other thing to consider is that every jurisdiction in Canada has a FOIP law. There are far more similarities than differences in these laws. Our view is that if our legislation is different than other laws, we will decide what that means in this province. Where our legislation is similar to other provinces, we will be guided by the way those provincial Information and Privacy Commissioners and the courts are interpreting those laws.

Sometimes, the Department of Justice or the Department of Health will interpret FOIP or HIPA differently than the OIPC. Fortunately this doesn't happen often. I am concerned that when it does happen that makes your jobs more difficult.

We work hard to try to communicate to those departments how we are interpreting the laws, in accordance with the *Interpretation Act* and direction from the Supreme Court of Canada. At the end of the day, we need to remember that if the Assembly intended Saskatchewan justice would be the body to decide what FOIP means or that SaskHealth would be the body to decide what HIPA means they would not have given oversight responsibility to an independent officer of the Assembly but that is exactly what the Assembly did. Our commitment to you is that we will do everything we can to work with both Justice and Health to minimize those disagreements, those conflicting interpretations and wherever possible harmonize our messages. I am sure Justice and Health will work just as hard to that same end.

## **WHAT'S NEW**

We are now in discussions with Duane Mombourquette at the Access and Privacy Branch about a proposed new policy in cases where a review involves a failure of the public body to meet its section 7 requirements. Procedural defects in the response to an access request. No exemption cited. No response at all. No proper fee estimate, etc. In the January 2007 FOIP FOLIO we indicated this was in the works.

Also, we will soon be publishing a new tool to clarify our expectations when dealing with a breach of privacy complaint.

We are modifying the *Helpful Tips* sheet to provide more detail about how to prepare a record and how to prepare a written submission for purposes of a review.

We are working on FAQs in a number of areas including local government issues.

We have a number of new Reports that will be published on our website in next number of months.

## **CONCLUSION**

In my 2005-2006 Annual Report I said:

*These are all heartening developments. If these three laws had just been proclaimed, we could pronounce ourselves well-satisfied with this progress. That however, is not the case. FOIP is now fourteen years old. LA FOIP is thirteen years old. The third anniversary of HIPA will be marked on September 1, 2006. In past Annual reports I have noted that much of the implementation work for these Acts has yet to be done, even for FOIP.*

Hopefully today's sessions will be helpful in furthering our implementation work. All of us in the OIPC look forward to collaborating with you and your organization to expedite and simplify that implementation work.

In closing, all of us at the OIPC want to help you and your organization achieve excellence in your access to information and privacy responsibilities. As we go forward let us know how we can help you. But in the end we will be successful because of your resourcefulness, your industry and your professionalism.