



## **June 9, 2020 – UPDATED – Advisory from the Office of the Information and Privacy Commissioner of Saskatchewan on pandemic, travel restrictions and checkpoints**

On April 24, 2020, the Chief Medical Health Officer issued an Order restricting travel into and out of the Northern Saskatchewan Administration District (NSAD) to essential travel. On April 30, 2020, the Order was amended to restrict travel between communities in NSAD on May 6, 2020, the Order was further amended and on May 20, 2020 the Order was amended to only apply to the northwest region. The May 20, 2020 Order provides:

**1. I hereby ORDER and DIRECT effective immediately:**

a. Subject to subsection (c), no person shall travel to or out of the Northwest Region, whether from within the Province of Saskatchewan or otherwise.

b. Subject to subsection (c), no person within the Northwest Region shall travel outside the community in which their primary residence is located.

c. Travel is permitted as follows:

i. Persons may return to their primary residence;

ii. Employees of, and persons delivering, critical public services and allowable business services, a listing of which is found on the Government of Saskatchewan website: [Saskatchewan.ca](http://Saskatchewan.ca);

iii. Aboriginal persons engaging in activities such as exercising their constitutionally protected right to hunt, fish and trap for food or engaged in other traditional uses of lands such as gathering plants for food and medicinal purposes or carrying out ceremonial and spiritual observances and practices;

iv. Persons who are travelling for medical treatment;

v. Persons travelling for the purposes of attending court where legally required to do so; and

vi. Persons whose primary residence is within the Northwest Region may travel to the community closest to their community of primary residence within the Northwest Region taking the most direct route to obtain essential goods and services, when those goods or services are not available in their community of primary residence, a maximum of twice per week. Each household shall only utilize one vehicle and each vehicle must only contain household members.

vii. When persons are traveling outside the Northwest Region for medical treatment they may also stop to obtain essential goods and services outside of the Northwest Region. Only one person in the vehicle may enter a retail establishment outside of the Northwest Region to purchase such essential goods and services.

On June 7, 2020, the Chief Medical Officer issued a new [Order](#) which did not contain the travel restrictions as quoted above. To my knowledge, this is the first time such travel restrictions were imposed in Saskatchewan. With the travel restrictions removed, the issues discussed below only become relevant if travel restrictions are imposed in the future (e.g. a second wave).

*The Public Health Act, 1994*, gives the Chief Medical Health Officer broad powers in emergencies and we all agree these are exceptional times.

The Saskatchewan Public Safety Agency is a government institution and subject to *The Freedom of Information and Protection of Privacy Act* (FOIP). That also makes the agency a trustee under *The Health Information Protection Act* (HIPA). Highway patrol officers and conservation officers would be employees of ministries which are government institutions and trustees.

If checkpoints are merely providing information to travelers into or out of a community, then no privacy issues arise. Checkpoints can provide information about COVID-19 regarding how many in the community have been diagnosed, related risks and best practices to help prevent the spread. If checkpoints are collecting personal information or personal health information from travelers, privacy legislation is applicable.

HIPA allows for the collection of personal health information for specified purposes. The purpose here is restricting travel according to Order 1(c). FOIP allows the collection of personal information for specified purposes.

*The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) also allows for the collection of personal information by local authorities. Municipalities, villages and towns are local authorities. Local authorities can collect personal information for a specified purpose. The purpose here would be the restriction of travel into and out of a community according to Order 1(c).

The challenge will be to ensure the questions asked at checkpoints are limited to addressing the specific purpose set out by the Order. Questions such as:

- Are you coming from or returning to your primary residence? If so, what community are you coming from or returning to? Order 1(c)(i)
- Are you an employee of an organization providing critical public services or allowable business services? If so, what community are you coming from or returning to? Order 1(c)(ii)
- Are you an employee of an organization delivering, critical public services or allowable business services, to this community? If so, what community are you coming from or returning to? Order 1(c)(ii)
- Are you an Aboriginal person exercising your constitutional protected rights? Order 1(c)(iii)
- Are you going to a medical appointment or coming from a medical appointment? If so, which community are you going to or coming from? Order 1(c)(iv)
- Are you a person traveling to this community from your community of primary residence to obtain essential goods and services not available in your community of primary residence a maximum of two times per week? If so, what community are you coming from or returning to? Order 1(c)(iv)

- Are you traveling to attend court? If so, what community are you coming from or returning to?  
Order 1(c)(v)

Other questions beyond these need to be analyzed as to whether they are necessary to restrict travel according to Order 1(c). A further issue is that after the questions are asked, are the responses recorded? If so, by whom and for what purpose? If recorded, the record may be accessible under HIPA, FOIP or LA FOIP.

Once the questions are asked and answered, possibly recorded, does the information need to be shared with anyone? If so, who and for what purpose? Is there authority to share that information beyond the checkpoint? There is a principle known as “need-to-know”. Who needs to know or must know for the specified purpose? If you don’t need-to-know, then the information should not be given to you.

Finally, if personal information or personal health information is recorded, the trustee, government institution or local authority should make a decision as to how long the information is kept. The purpose here is to restrict travel according to Order 1(c). Now that travel restrictions are removed, the purpose for checkpoints are gone. I would recommend government institutions, local authorities and trustees make a decision now as to how long the information will be kept and then destroyed.

The pandemic has created unusual circumstances in our province and actions must be taken quickly, but in that process privacy legislation still exists and needs to be respected and followed to protect privacy to the extent possible. I believe we can do both, but it takes decision-makers carefully thinking through the actions they take.

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