

LA FOIP 101: Clarifying the Act for Beginners

Diane Aldridge, Executive Director of Compliance

Deepa Pawar, Analyst

Office of the Saskatchewan Information and Privacy Commissioner

Outline

- Disclaimer
- Application
- HIPA
- Access to information basics
- The review process
- Privacy basics
- IMSPs
- Safeguards
- Privacy breaches
- The investigation process
- Resources
- Q & A

Disclaimer

- Materials prepared are by the IPC are to assist persons in understanding the laws discussed and access and privacy best practices;
- Only offered as non-binding, general advice as we cannot give advanced rulings; and
- Unable to discuss specific past or present cases unless Report issued or details otherwise publicly known and would not breach confidentiality requirements.

Two-sides of the same coin

- Twin themes of LA FOIP:
 - Public information should be accessible; and
 - Personal information should be protected.



LA FOIP

- In force effective July 1, 1993
- Significant amendments January 1, 2018
- What it does:
 - Sets out the rules for **access** to records in the possession or under the control of a local authority; exceptions are **limited and specific**; and provides right to request **correction/amendment**
 - It sets out the rules for the **collection, use and disclosure** of **personal information** by those same bodies
 - It provides a **right to complain** to the Commissioner

Application

- LA FOIP applies to “local authorities” which includes:
 - School boards,
 - Library boards,
 - Municipalities,
 - Saskatchewan Health Authority or affiliates,
 - University of Regina and University of Saskatchewan,
 - Police services,
 - Saskatchewan Polytechnic,
 - Regional colleges and more...

What about HIPA?

- *The Health Information Protection Act* (HIPA) applies to “personal health information” in the custody or control of a trustee.
- Government institutions are bound to *The Freedom of Information and Protection of Privacy Act*, but are also trustees.
- Some local authorities are also trustees, but not all.
 - Examples:
 - U of S is not a trustee, but is a local authority so personal health information is caught in the definition of personal information in LA FOIP
 - Saskatchewan Health Authority is a local authority and a trustee so personal information is covered under LA FOIP and personal health information is covered under HIPA

Access to Information

- About being open and accountable
- Right is to access to copies of source documents
- Summary, condensation, or secondary document is no satisfactory substitute
- Information in any recorded form or format
- Possession or control
- Not answers to questions
- Not time limited in terms of when created
- Proactive disclosure

Disregarding requests

- New since January 1, 2018
- Process outlined on our website
- Applies to requests for access and correction of personal information
- Must happen within 30 days, but sooner the better
- If your application is accepted, you will be informed that the clock has stopped
- If your application is not accepted, you will be informed that the clock has not stopped
- If the IPC proceeds, then a report will be issued in approximately 20 days and either the application must be processed or it is disregarded with no further appeal

Processing requests

- Once you have the \$20 application fee, and have sufficient detail to identify responsive records, you have 30 days to complete the process
- Steps:
 - Contact the applicant
 - Develop a search strategy
 - Find responsive records
 - Determine if a fee estimate is warranted
 - Provide third party notice, where appropriate
 - Seek consent to release, where appropriate
 - Apply any necessary extensions (cannot exceed another 30 days)
 - Decide what can and cannot be released

Reasons to Withhold

- Exemptions: mandatory or discretionary
 - For example, third party personal information, solicitor-client privilege, advice from officials, lawful investigation, harm economic interests, trade secrets
- Exclusions
- Another Act prevails
- Publish in 90 days
- Must apply severance

Could be released

- Exercise of discretion
- Public interest override
- Time period has expired
- Consent of third party or decision maker
- De-identified, statistical or aggregate data
- Otherwise publicly available
- Laws that require or permit disclosure

- i.e. *The Cities Act*

91(1) Any person is entitled at any time during regular business hours to inspect and obtain copies of :

(a) Any contract approved by the council, any bylaw or resolution and any account paid by the council relating to the city;

Other outcomes

- Transfer the access to information request
- Refuse to confirm or deny
- Records do not exist

Section 7 response

- Last step of the process
- Send decision letter to applicant
- Templates available at <https://publications.saskatchewan.ca/#/categories/341>
 - Tailor as necessary

(9) Records Fully Denied

NOTE TO DRAFTER: The purpose of this letter is to advise the applicant that his/her access request has been fully denied.

THIS TEXT BOX SHOULD BE REMOVED PRIOR TO SENDING THE LETTER.

RED SQUARE BRACKETED TEXT ARE INSTRUCTIONS TO THE DRAFTER AND SHOULD BE REPLACED OR REMOVED PRIOR TO SENDING THE LETTER.

Disclaimer: The information in this document does not constitute legal advice. Please consult with your own legal counsel for legal advice related to either The Freedom of Information and Protection of Privacy Act or The Local Authority Freedom of Information and Protection of Privacy Act.

[Date]

[Applicant's Name and Address]

Dear [Applicant's Name]:

RE: Your Access to Information Request Number [Application Number]

Thank you for your access to information request received in this office on [date], requesting access to [quote information being requested by applicant].

Access to the records you have requested is denied pursuant to section [or sections – cite all relevant exemptions upon which you have based your decision not to disclose, including section, subsection, clause, subclause, etc.] of *The Local Authority Freedom of Information and Protection of Privacy Act* (the Act). The reason [or reasons] for refusal of these records is [provide applicant with reasons for refusal]. For your information, I have included a copy of all above-noted sections of the Act. *[NOTE: Enclose a copy of the relevant sections of LAFOIP.]*

If you would like to exercise your right to request a review of this decision, you may do so by completing a "Request for Review" form and forwarding it to the Saskatchewan Information and Privacy Commissioner within one year of this notice. Your completed form can be sent to #503 – 1801 Hamilton Street, Regina, Saskatchewan, S4P 4B4. This form is available at the same location which you applied for access or by contacting the Office of the Information and Privacy Commissioner at (306) 787-8350.

If you have any questions, please contact [name of the Access Co-ordinator] at [phone number].

Yours truly,

[Name of the Access Officer]
Access Officer *[NOTE: or other appropriate title]*

Enclosures

cc: [Name of the Access Co-ordinator]

Request for Review

- Trigger
 - Access to information request is made
 - Local authority denial or 30 days elapses without a response
 - Applicant or third party requests a review by IPC
- IPC intervention
 - Early resolution attempts
 - Notification letter/email, if proceeding
 - Index of records
 - The record – IPC will not release
 - Submission requested within 30 days
- Draft Report
 - Comment on factual errors within 7 days
- Final Report
 - On IPC website within 3 days or later
 - Local authority has 30 days to respond
- Applicant or third party can appeal to the Court of King's Bench

Tips and tricks

- Communicate with the applicant
- Don't delay as the clock is ticking
- Document everything
- Create an index of records
- Prepare two copies of the responsive record
- Know what records you have and how to find them (paper, electronic, other, on and off site)

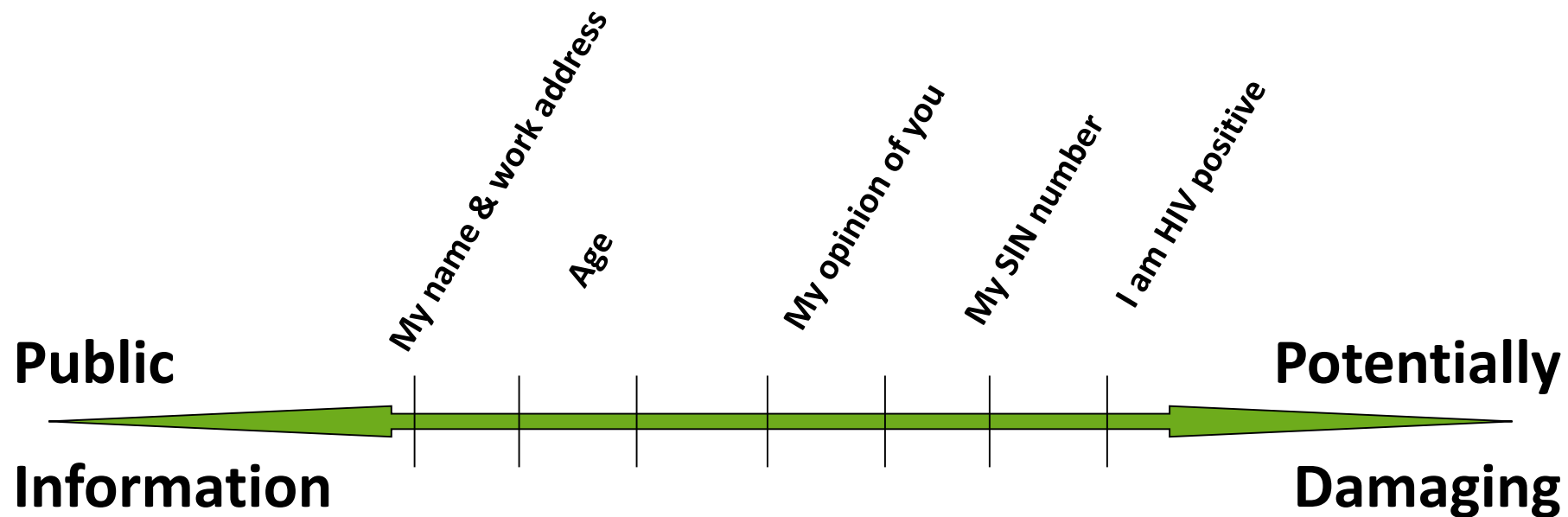


It's all about me

- Information or data privacy defined:
 - Right of an individual to determine for him/herself when, how and to what extent he/she will share his/her “**personal information**”
- Personal information defined:
 - Generally, its is information about an identifiable individual that is personal in nature
 - Defined by the applicable privacy law
 - Others opinions about me are my personal information

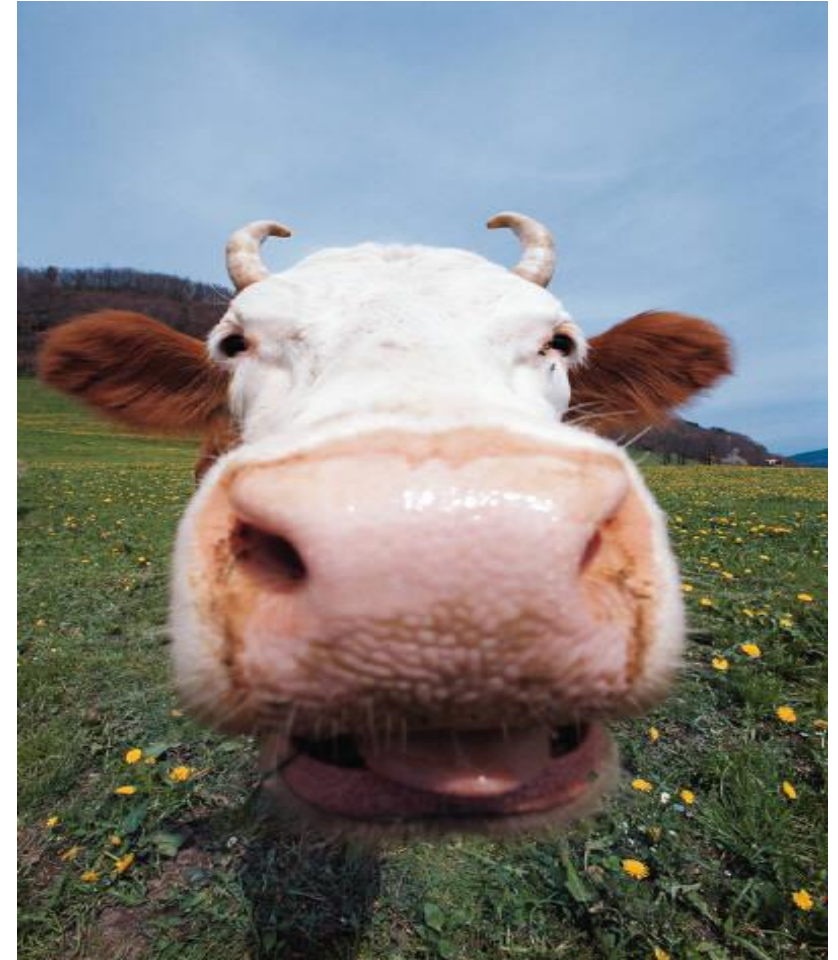
Not personal information

- No concern if de-identified, provided as statistics only, or as aggregate data
- Employment specific information (i.e. business card information, job duties, salary, etc) and ‘work product’
- However, “employment history” is personal information



Privacy basics

- Confidentiality
- Collection, use or disclosure
- Purpose is important
- Consistent use
- Need authority
- Principles:
 - Need-to-know
 - Data minimization



IMSPs

- Role of Information Management Service Providers (IMSPs)
 - Process, store, archive, destroy
 - IT or IM services
 - Take possession or control
 - Combine records containing personal information, or
 - Consulting services
- Need written agreement
- IMSP cannot use personal information for its own purposes

Safeguards

- To prevent privacy breaches, utilize **administrative** , **technical** and **physical** safeguards including:
 - Monitoring, supervising and inhibiting some data practices (need-to-know; user IDs and passwords; locked doors/filing cabinets)
 - Orientation and Annual Training
 - Policies and Procedures
 - Proper Disposal Methods



"I HAVE IDENTIFIED THE SOURCE OF OUR PRIVACY
BREACH AND DEALT WITH IT, SIR!"



Privacy breaches

- If no personal information involved, a privacy breach cannot occur
- Most common involve collection, use or disclosure without authority
- Steps:
 - Contain the breach
 - Notification
 - Investigate
 - Prevent future breaches
- Resources:
 - *Privacy Breach Guidelines for Government Institutions and Local Authorities*
 - *Privacy Breach Investigation Questionnaire*

Investigation by IPC

- IPC will open a file if:
 - Local authority proactively reports
 - If IPC is satisfied with response, most likely will close file informally
 - May end in a public report in some circumstances
 - Complainant asks that IPC investigate
 - IPC requests public body to do internal investigation
 - IPC does further investigation
 - Draft Report to public body (same timelines as in a review)
 - Final Report (same timelines as in a review)
 - Posted on IPC website

Prevention is worth a pound of cure!

- Adhere to need-to-know and data minimization principles
- Information life cycle management
- Confidentiality undertakings or pledges
- Get it in writing (i.e. contracts, agreements, policies, procedures)
- Make sure it's accurate and complete
- Train, train, and train some more
- Restrict, suspend or disable user accounts when individuals on leave, change roles or are terminated
- Monitor & Audit
- Secure destruction

Resources

- Available on www.oipc.sk.ca
 - [IPC Guide to FOIP](#)
 - [IPC Guide to LA FOIP \(Chapter One – Three available\)](#)
 - [The Rules of Procedure](#)
 - [Understanding the Duty to Assist](#)
 - [Best Practices for Responding to Access Requests](#)
 - [A Guide to Submissions](#)
 - [Fee Estimate – Quick Calculation Guide](#)
 - [Responsive Records Search Checklist](#)
 - [Privacy Breach Investigation Questionnaire](#)
 - [Proactively Reported Breach of Privacy Reporting Form for Public Bodies](#)
 - [Guide to Creating an Internal Privacy Breach Investigation Report](#)

Contact Us

- **Saskatchewan Information and Privacy Commissioner 503**
– 1801 Hamilton Street
Regina SK S4P 4B4
- Telephone: 306-787-8350
Toll Free Telephone (within Saskatchewan): 1-877-748-2298
Fax: 306-798-1603
- Email: intake@oipc.sk.ca
- Website: www.oipc.sk.ca
Follow us on Twitter: [@SaskIPC](https://twitter.com/SaskIPC)



Questions

