



# **OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER**

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**2005 – 2006 ANNUAL REPORT**

**“An appropriate access to information regime is a key part of the transparency that is an essential element of modern public administration. A shift in culture can yield significant benefits. The Commission supports the need for effective public access to information about the workings of government.”**

*Restoring Accountability Recommendations, Commission of Inquiry Into The Sponsorship Program & Advertising Activities, Public Works and Government Services Canada, 2006, p. 178.*

**“No one, of course, denies that modern governments have valid reasons to collect information about individuals for a wide variety of matters in the public interest. The Supreme Court has made it clear, however, that such information is in a fundamental way that of the individual and must remain confidential and restricted to the purposes for which it was divulged.”**

*The Offices of The Information and Privacy Commissioners: The Merger And Related Issues, Report of the Special Advisor to the Minister of Justice, Gérard V. La Forest, November 15, 2005.*



November 9, 2006

The Honourable P. Myron Kowalsky  
Speaker of the Legislative Assembly  
Rm 129 Legislative Building  
2405 Legislative Drive  
REGINA SK S4S 0B3

Dear Mr. Speaker:

I have the honour to present to the Legislative Assembly the Office's 2005-2006 Annual Report. This is done pursuant to Section 62(1) of *The Freedom of Information and Protection of Privacy Act*, Section 52(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* and Section 60(1) of *The Health Information Protection Act*.

Respectfully submitted,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

R. Gary Dickson, Q.C.  
Information and Privacy Commissioner





# TABLE OF CONTENTS

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	PAGE
I. INTRODUCTION .....	1
II. MANDATE OF THE COMMISSIONER .....	1
III. COMMISSIONER'S MESSAGE .....	2
A. NOTEWORTHY PROGRESS .....	2
B. PRIVACY & ACCESS: A SASKATCHEWAN ROADMAP FOR ACTION .....	4
C. STATISTICAL SNAPSHOT .....	7
D. EMERGING ISSUES .....	7
i. ELECTRONIC HEALTH RECORD (EHR) .....	8
ii. SHARED SERVICE DELIVERY .....	8
IV. PRIVACY AND ACCESS: A SASKATCHEWAN ROADMAP FOR ACTION-REVISITED.....	10
A. RENEW THE GOVERNMENT CULTURE OF OPENNESS .....	10
B. CONDUCT A REVIEW OF FOIP AND LA FOIP .....	11
C. INTEGRATE FOIP AND LA FOIP INTO A SINGLE LAW .....	13
D. EXTEND PRIVACY PROTECTION TO EMPLOYEES IN THE PRIVATE SECTOR .....	13
E. ADDRESS THE ISSUE OF PRIVACY AND PUBLIC REGISTRIES .....	14
F. MAKING THE LAWS WORK FOR CITIZENS AND GOVERNMENT .....	15
i. THE ROLE OF THE FREEDOM OF INFORMATION AND PRIVACY COORDINATOR .....	16
ii. KEEPING PERSONAL INFORMATION SECURE .....	17
iii. IDENTITY OF APPLICANTS .....	19
iv. PROMOTING TRANSPARENCY .....	20
V. COMMUNICATION INITIATIVES .....	21
A. OIPC WEBSITE .....	21
B. THE SASKATCHEWAN FOIP FOLIO .....	22
C. BROWN BAG LUNCHEON WORKSHOPS .....	22
VI. HOW TO MAKE AN ACCESS REQUEST .....	23
VII. <i>THE HEALTH INFORMATION PROTECTION ACT (HIPA)</i> .....	24
A. PUBLIC CONSULTATION .....	24
B. HIPA AND CONSENT .....	25
C. QUESTION OF RESOURCES .....	26
D. LOCAL LEADERSHIP .....	26

# TABLE OF CONTENTS

---

	PAGE
E. TRUSTEES .....	27
F. HEALTH REGION TOURS.....	27
G. ADVICE AND CONSULTATION .....	28
H. SASKATCHEWAN AND THE PAN-CANADIAN HEALTH INFORMATION PRIVACY AND CONFIDENTIALITY FRAMEWORK .....	28
VIII. CASE SUMMARIES.....	28
A. REPORT F-2005-004 – SASKATCHEWAN GOVERNMENT INSURANCE – MAY 6, 2005.....	29
B. REPORT F-2005-005 – SASKENERGY INCORPORATED – JULY 20, 2005.....	29
C. REPORT F-2005-006 – SASKATCHEWAN LIQUOR AND GAMING AUTHORITY –AUGUST 12, 2005 .....	30
D. INVESTIGATION REPORT LA-2005-003 – CITY OF SASKATOON – OCTOBER 24, 2005.....	30
E. REPORT F-2005-003 – CROWN INVESTMENTS CORPORATION – MAY 5, 2005.....	30
F. REPORT F-2006-001 – SASKATCHEWAN CORRECTIONS AND PUBLIC SAFETY) – MARCH 31, 2006 .....	31
G. INVESTIGATION REPORT H-2005-002 – PREVENTION PROGRAM FOR CERVICAL CANCER – APRIL 27, 2005 .....	32
H. REPORT F-2005-007 – SASKATCHEWAN GOVERNMENT INSURANCE – NOVEMBER 3, 2005.....	33
IX. BUSINESS PLAN, BUDGET, AND STATISTICS .....	34
A. ORGANIZATIONAL STRUCTURE.....	34
B. OUR THREE YEAR BUSINESS PLAN .....	34
C. STATISTICS .....	40
X. FINANCIAL STATEMENTS AS AT MARCH 31, 2006.....	43
XI. APPENDIX A – DEFINITIONS.....	52
XII. APPENDIX B – SAMPLE LIST OF PRESENTATIONS .....	55
XIII. APPENDIX C – LIST OF BODIES SUBJECT TO OIPC OVERSIGHT .....	56

## I. INTRODUCTION

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Saskatchewan was the first province in western Canada to enact a comprehensive freedom of information and protection of privacy law. In 1992, *The Freedom of Information and Protection of Privacy Act*<sup>1</sup> (FOIP) was proclaimed. This enshrined two principles: (1) public information must be accessible to the public, and (2) personal information must be protected by public bodies. It applies to all government institutions. This would capture all departments of the Saskatchewan Government plus Crown corporations, boards, commissions and agencies. In 1993, *The Local Authority Freedom of Information and Protection of Privacy Act*<sup>2</sup> (LA FOIP) was proclaimed. This is very similar to FOIP but applies to local authorities such as schools, universities, regional health authorities, municipalities, and library boards. In 2003, *The Health Information Protection Act*<sup>3</sup> (HIPA) was proclaimed. This applies to organizations and individuals designated as a health information “trustee”, defines the rules for what is “personal health information” and how that personal health information can be collected, used and disclosed. It also provides a right of access and a right to seek correction of errors.

For each of these three laws oversight is provided by the Information and Privacy Commissioner. The Commissioner is appointed by the Legislative Assembly and reports to that Assembly.

This Annual Report covers the second full fiscal year of the Office of the Information and Privacy Commissioner (OIPC) with a full-time commissioner.

The OIPC is supported by the Legislative Assembly Office that provides legal, administrative, financial reporting, library resources and information technology resources. Financial statements are prepared by the Provincial Auditor’s office. We appreciate and rely on those resources.

## II. MANDATE OF THE COMMISSIONER

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There are four major elements in the Commissioner’s mandate defined by FOIP, LA FOIP and HIPA:

1. The Commissioner responds to requests for review of decisions made by government institutions, local authorities or health information trustees in response to access requests, and makes recommendations to those bodies.

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<sup>1</sup> *The Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. F-22.01

<sup>2</sup> *The Local Authority Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. L-27

<sup>3</sup> *The Health Information Protection Act*, S.S. 1999, c. H-0.021



## **II. MANDATE OF THE COMMISSIONER (CONT'D)**

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2. The Commissioner responds to complaints from individuals who believe their privacy has not been respected by government institutions, local authorities or health information trustees, and makes recommendations to those bodies.
3. The Commissioner provides advice to government institutions, local authorities or health information trustees on legislation, policies or practices that may impact access or privacy rights.
4. The Commissioner provides education with respect to information rights including both access to information and protection of privacy.

The vision of the OIPC is that the people of Saskatchewan shall enjoy the full measure of access to information and privacy rights (information rights) that have been affirmed by the Legislative Assembly of Saskatchewan.

## **III. COMMISSIONER'S MESSAGE**

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Our mandate is broad. Our workload is substantial. This report documents considerable activity in each element of our mandate. What has been achieved has only been possible because of the skill, resourcefulness and industry of the remarkable members of our OIPC team. I specifically thank Diane Aldridge, our senior Portfolio Officer, and Sandra Barreth, our new Portfolio Officer, for their contributions to this office. The core work of the OIPC was ably supported by Pam Scott, our Office Manager, until July 2005 and by her successor, Candace Malowany, our current Manager of Administration. The OIPC is grateful for having had the part-time assistance of Sandra Merk.

### **A. NOTEWORTHY PROGRESS**

The year 2005-2006 has witnessed remarkable progress in many privacy and access areas. One of the most important achievements this year was the decision of the Saskatchewan Government to terminate the practice of using the Social Insurance Number as the identifier for all provincial government employees. Commencing in January 2006, all of those employees were assigned an employee number. Such action closes one of the most serious gaps in the campaign to reduce the risk of identity theft. It was further evidence that the Saskatchewan Government takes seriously the challenge to protect the privacy of its employees.

### III. COMMISSIONER'S MESSAGE (CONT'D)

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Another major development was the launch in the fall of 2005 of the Access and Privacy Branch of the Department of Justice. This new dedicated unit is focused on developing resources and providing education for employees of the province and of local authorities. Our office has been working collaboratively with the Access and Privacy Branch to promote statutory compliance in our public service.

I frequently encounter examples of public bodies that do an excellent job of publishing material about their activities to keep citizens informed. It is not uncommon to encounter public bodies that voluntarily create new documents in order to respond to requests for information in cases where there are no responsive records. This is in spite of the fact that there is no obligation under the laws I oversee for any public body to create new records. I have also been encouraged by the open approach the Saskatchewan Government takes to public opinion surveys and its voluntary release of survey results is commendable.

A lot of attention is being paid by Crown corporations and by Executive Government to the 'privacy file', and we have found an encouraging commitment to do a better job of protecting the privacy of Saskatchewan residents. The Crown corporations have developed some excellent training materials and have been provincial leaders in ensuring their staff is exposed to such materials.

There is now a significantly growing access and privacy 'community' in the province. This includes a number of persons recently tasked with responsibility to comply with HIPA, FOIP and LA FOIP. These individuals are sometimes described as FOIP Coordinators or as Access and Privacy Officers. In our investigations and reviews, we tend to work very closely with these individuals. In terms of operationalizing access and privacy requirements, these FOIP Coordinators are our 'local leaders'. There is evidence of a strong motivation among these local leaders to ensure that in their respective government institutions, local authorities and health information trustees, the many requirements of these three laws are being addressed and satisfied.

I should add that this office has received excellent cooperation from the Deputy Minister of Executive Council and I have had the opportunity to meet with most of the Deputy Ministers to discuss my role and what we observe in their organizations.

These are all very 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<sup>4</sup> I have noted that much of the implementation work for these Acts has yet to be done, even for FOIP. This work includes:

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<sup>4</sup> Office of the Saskatchewan Information and Privacy Commissioner, *Annual Reports*, available at [http://www.oipc.sk.ca/annual\\_reports.htm](http://www.oipc.sk.ca/annual_reports.htm)

### III. COMMISSIONER'S MESSAGE (CONT'D)

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- development of a detailed manual or guide for both public sector employees and the public;
- development of forms, sample letters and sample consent forms;
- comprehensive training of all public sector employees engaged in the work of promoting and supporting transparency in government activities as well as the protection of privacy;
- identification and tasking of a high-level FOIP Coordinator in every public sector organization to manage the access, privacy and, where appropriate, the health information file; and
- an unambiguous and clearly understood mission for all public sector workers to respect the 'information rights', including both access to information and protection of privacy, of all Saskatchewan residents.

In the result, while it is always timely and appropriate to consider that much good work has been done in 2005-2006, we must be resolute and focused in completing the foundation work for our fourteen year old access to information and privacy regime.

#### **B. PRIVACY & ACCESS: A SASKATCHEWAN ROADMAP FOR ACTION**

In my last Annual Report I sketched a plan to complete the foundation work for access and privacy in Saskatchewan – *Privacy and Access: A Saskatchewan Roadmap for Action*. In this Report I will consider sequentially each of the elements of that document and assess what progress has been made.

I would observe that there has been excellent capacity-building work evident in many government institutions, local authorities and health information trustees. I will consider those achievements in that section of this Report.

This past year has also revealed problems that, unless rectified, may frustrate and limit future capacity-building work. These problems include the following:

- a high-turnover of FOIP Coordinators aggravates poor succession planning;
- the prominence given the *Overarching Privacy Framework for Executive Government*<sup>5</sup> (Privacy Framework) confuses government employees since some of its key messages are inconsistent with FOIP;

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<sup>5</sup> Government of Saskatchewan, *An Overarching Personal Information Privacy Framework For Executive Government*, available at <http://www.gov.sk.ca/newsrel/releases/2003/09/11-648-attachment.pdf>

### III. COMMISSIONER'S MESSAGE (CONT'D)

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- FOIP Coordinators that are so busy with their other job responsibilities that they cannot devote the requisite time and energy to the access and privacy file;
- diffused and fragmented distribution of the responsibilities of a FOIP Coordinator cause time delays, inconsistency, and considerable inefficiency in managing the access and privacy file;
- it appears that some FOIP Coordinators are not receiving adequate support by their supervisors;
- FOIP Coordinators may consider that doing a good job in meeting FOIP, LA FOIP or HIPA responsibilities is not valued in their organization and by their supervisors;
- doing a good job of providing citizens with access to public records may be seen as more career-limiting than career-enhancing.

It would be unfair and simplistic to attribute all of these problems to any single cause. Nonetheless, I find that these problems likely cannot be satisfactorily remedied without addressing the role of leadership. This would be leadership at the level of the Minister in Executive Government and Chief Executive Officer (CEO) for the Crown corporations, local authorities and health information trustees. No matter how dedicated FOIP Coordinators may be, their impact in their particular public body will be limited by the degree to which their work is facilitated and supported by the Minister, Deputy Minister or CEO.

Although the Supreme Court of Canada has described these kinds of laws as particularly important since they address fundamental democratic rights of citizens and has even described these rights as “quasi-constitutional”<sup>6</sup>, it may be that such a declaration is not sufficient motivation for all leaders.

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<sup>6</sup> 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. (4<sup>th</sup>) 58, 32, C.P.R. (4<sup>th</sup>) 464, 117 C.P.R. (2d) 85, 2004 FC 431, rev'd (2005), 253 D.R.R. (4<sup>th</sup>) 590, 335 N.R. 8, 40 C.P.R. (4<sup>th</sup>) 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. (4<sup>th</sup>) 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. 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.

### III. COMMISSIONER'S MESSAGE (CONT'D)

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In my last Annual Report, I suggested there would be value if the Premier were to send an open letter to each of his Ministers stressing the importance of compliance with these quasi-constitutional laws. Such a letter would ideally require those Ministers to ensure that where the Minister must exercise discretion to disclose or withhold records, except in the clearest cases where there is likely injury to the public body, the Minister should disclose the record.

I am now advancing a further suggestion. My understanding is that when a Deputy Minister is appointed in Saskatchewan he or she is provided in writing with a very short list of criteria against which his or her job performance will be measured. My suggestion is that an additional criterion be included in that letter of appointment. This new criterion would be a requirement that the department fully comply with its obligations and responsibilities under FOIP and HIPA. I would suggest that something similar be done with the CEOs of Crown corporations and the CEOs of all local authorities. My hope is that as a result, all Deputy Ministers and all CEOs of Crown corporations and local authorities would ensure that more attention was paid to the vital role of FOIP Coordinators in their respective organizations and to the kind of support these key individuals require.

When we discuss improving access and privacy compliance in Saskatchewan I am frequently reminded by FOIP Coordinators, Deputy Ministers and others of serious resource limitations. I offer a two-fold response to this explanation for non-compliance or partial compliance with FOIP, LA FOIP and HIPA.

1. If an organization is severely limited in resources, that may well constitute the most powerful reason for ensuring that careful attention is paid to considering the most efficient way of managing access and privacy responsibilities. For example, if resources are severely limited, how can it make sense to have six or more different individuals who have not all had comprehensive access and privacy training, involved in deciding what to do with a single access request? Yet, that is exactly what is currently happening in some public bodies. How can it make sense to ignore a poor or inefficient file management system that means much unnecessary and unproductive effort is expended to locate a record responsive to an access request? Our investigators frequently see evidence of problems in terms of information and records management. How can it make sense to ignore best practices for handling access responsibilities that have been tried and tested in most other Canadian jurisdictions over the last 24 years?
2. My further response to the lack of resources argument is that the Legislative Assembly enacted these laws and spelled out what would be required to comply with them. Surely after fourteen years of devoting relatively little attention and the most minimal resources to access to information procedures, there has to now be a fair evaluation by Deputy Ministers and CEOs of what additional resources may be required to ensure

### **III. COMMISSIONER'S MESSAGE (CONT'D)**

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full compliance. At the very least, there needs to be a reasonable plan that details what changes still need to be made within a public organization and what a reasonable time schedule would be to achieve full compliance.

#### **C. STATISTICAL SNAPSHOT**

In 2005-2006, our office received more than 1333 inquiries from individuals and organizations in Saskatchewan seeking assistance and information with respect to the laws we oversee or access, privacy or health information more generally. This is an increase of 11.45% over the 2004-2005 year.

Our office has approximately 120 open files dealing with a breach of privacy complaint or a review of a decision by a Saskatchewan public body to deny all or grant only partial access to a record. Eighty-eight of those files were opened in this fiscal year. The balance represents a backlog from previous years. This statistic does not capture complaints or review requests that can be easily and quickly mediated or diverted to another process such as a health profession regulatory body pursuant to the provisions of HIPA. The number of files also does not represent the number of individuals who have requested a review or investigation. It is not uncommon that a number of individuals contact our office with the same complaint or access review request. In such cases we typically open a single file although we may be dealing with and reporting to multiple complainants.

We have also been consulted for advice and commentary by many public bodies. This is different than summary advice in two respects. It involves responding to a request for assistance from a body we oversee. It typically requires hours of research and internal discussions. Invariably this entails a written response whereas much summary advice is provided verbally. We have opened 117 files with respect to that consultation work.

In this fiscal year, our office has provided approximately 166 education presentations. Appendix B is a sample list of organizations that have received such a presentation. From the time the OIPC first had a full time Commissioner in November 2003 to March 31, 2006, our office delivered more than 358 education presentations in 28 different Saskatchewan communities.

Our statistical information is presented in graph form at the end of this Annual Report.

#### **D. EMERGING ISSUES**

I wish to highlight two emerging privacy and access issues that warrant careful attention by members of the Assembly:



### III. COMMISSIONER'S MESSAGE (CONT'D)

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- i. development of an 'electronic health record' for each man, woman and child in the province; and
- ii. the 'shared service delivery' model.

#### i. **ELECTRONIC HEALTH RECORD (EHR)**

In Commissioner Fyke's report, *Caring for Medicare* (2001)<sup>7</sup>, the EHR was described as the "...cornerstone of an efficient and responsive health care delivery system, quality improvement and accountability." Saskatchewan Health and a number of regional health authorities have collaborated with Canada Health Infoway on a number of projects that will in time be integral parts of the EHR. Many more projects will ensue. The economic cost will be substantial. The impact to the information rights of citizens will also be substantial. As a province, our creativity and our ingenuity will be seriously challenged to achieve a fully operational EHR system with which the people of the province will feel completely comfortable and that they will trust.

As an oversight agency, a sample of the questions we put to those responsible for the 'building blocks' of the EHR include:

- (a) To what extent will these proposals reflect the patient autonomy model that has been developed at common law, the Supreme Court of Canada interpretation of the *Charter of Rights and Freedoms* and the relevant recommendations of Commissioner Romanow's report, *Building on Values: The Future of Health Care in Canada* (2002)?
- (b) How will the EHR accommodate the wish of the individual that information about something particularly prejudicial to them such as a mental health episode or an abortion or an HIV test will only be available to their physician and few others?
- (c) How will the people of Saskatchewan learn about the new and proposed projects and what that will mean for the collection, use and disclosure of their personal health information and when will they learn this?

#### ii. **SHARED SERVICE DELIVERY**

Like other provinces, Saskatchewan is committed to increasing the information sharing among government institutions, local authorities and other organizations. This information sharing is key to new shared service initiatives. We have been consulted on some of these initiatives but not on many others. For example, the School Plus program has been discussed for a number of years. Nonetheless, from what our office

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<sup>7</sup> Commissioner Kenneth Fyke, *Caring for Medicare: Sustaining a Quality System*, (Government of Saskatchewan, April 2001), p.68

### **III. COMMISSIONER'S MESSAGE (CONT'D)**

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has been able to determine, it appears that little attention has been paid to the access to information and privacy rights of parents and children. For purposes of FOIP and LA FOIP, each government institution and each local authority is responsible for the records and information in their possession. I understand how children may be advantaged by School Plus. I recommend however that more attention be paid to ensure that broader of sharing of personal information conforms to FOIP and LA FOIP and privacy 'best practices'.

I am very optimistic about the future of privacy and access in Saskatchewan. I look forward to our continued collaboration with government institutions, local authorities and health information trustees to achieve strong and vital information rights for the residents of this province.



**Gary Dickson**  
**Information and Privacy Commissioner for Saskatchewan**



## **IV. PRIVACY AND ACCESS: A SASKATCHEWAN ROADMAP FOR ACTION-REVISITED**

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This Plan first appeared in our Annual Report for 2004-2005. The purpose of the Plan is to achieve full statutory compliance and includes six different elements:

- Renew the government culture of openness;
- Conduct a review of FOIP and LA FOIP;
- Integrate FOIP and LA FOIP into a single law;
- Extend privacy protection to employees in the private sector;
- Address the issue of privacy and public registries; and
- Making the laws work for citizens and government

Each of these six elements will be dealt with sequentially including what progress has been made in the intervening twelve months.

### **A. RENEW THE GOVERNMENT CULTURE OF OPENNESS**

The extensive experience in Canada and elsewhere with freedom of information and privacy laws is that there will be no culture shift and subsequently, no adequate focusing on information rights of individuals unless and until there is clear and strong leadership in this area. The Premier and Cabinet have sent very clear signals about the importance of privacy protection since early 2003. This includes the adoption of the Privacy Framework and mandated privacy training for senior government staff. We have seen no equivalent message in respect of the other twin theme of FOIP and LA FOIP namely, public information must be accessible.

Earlier I discussed my suggestions for an open letter to all Ministers and a new key performance measure dealing with access and privacy in the letter of engagement of Deputy Ministers.

As the Access and Privacy Branch within Saskatchewan Justice develops new training tools and modules, there is an excellent opportunity for a direct message from the Premier to all public sector employees to be incorporated into those materials. Such a message could underscore the importance of compliance with the spirit and letter of our provincial access and privacy laws.

Yet another way to contribute to a strong culture of openness would be to ensure that each Minister appoint in writing a single individual responsible for compliance with access and privacy requirements. Indeed, this is contemplated by section 60 of FOIP and ensures that the designated FOIP Coordinator is invested with authority both symbolically and practically to ensure compliance.

## IV. PRIVACY AND ACCESS: A SASKATCHEWAN ROADMAP FOR ACTION-REVISITED (CONT'D)

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A further measure to promote a culture of openness is via the approach that the Assembly takes in legislating exclusions from these general, rights-based laws. In the past year we have seen laws enacted that completely exclude the package of information rights afforded by FOIP, LA FOIP and HIPA. For example, *The Youth Drug Detoxification and Stabilization Act*<sup>8</sup> denies parents and children fundamental access and privacy rights by being declared exempt from FOIP and key parts of HIPA. This exemption was applied without any persuasive argument that FOIP or HIPA critically impede the important aims of the new legislation. Furthermore, such blanket exemptions send a powerful signal that somehow FOIP and HIPA are unworkable or cumbersome and most significantly, unimportant. Similarly, *The Pawned Property (Recording) Act*<sup>9</sup> (PPRA) permits the mandatory collection by police services of vast amounts of personal information from citizens who are engaged in a lawful activity. This collection, use and disclosure of personal information is not subject to any review by our independent office. The amendments to *The Police Act, 1990*<sup>10</sup> again do not address the question of why Saskatchewan police and local police commissions should not be subject to the same access and privacy requirements as are all other public sector bodies.

### B. CONDUCT A REVIEW OF FOIP AND LA FOIP

As noted earlier, Saskatchewan was the first province in western Canada to enact a comprehensive access and privacy law. In the intervening fourteen years, other Canadian jurisdictions have enacted access and privacy laws that have built upon, and improved on, first generation laws, but Saskatchewan has not revised its original laws since they were first enacted. The last two Saskatchewan Commissioners recommended updating our legislation in their respective Annual Reports.

Since November 2003, our office has continued to urge updating of our access and privacy laws to ensure they can meet modern challenges such as the single portal access to government services, increased risk when personal information is contracted out to service providers, contracting out and the *USA Patriot Act*<sup>11</sup>, computer data breaches, data profiling and the exploitation of weaknesses in public registries by those who would undertake identity theft. Interestingly, the Privacy Commissioner of Canada and the Information Commissioner of Canada are also advocating for updating and overhauling of the 'first-generation' federal *Privacy Act*<sup>12</sup> and *Access to Information Act*<sup>13</sup>. We understand

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<sup>8</sup> *The Youth Drug Detoxification and Stabilization Act*, S.S. 2005, c. Y-1.1

<sup>9</sup> *The Pawned Property (Recording) Act*, S.S. 2004, c. P-4.2

<sup>10</sup> *The Police Act, 1990*, S.S. 1990-91, c.P-15.01

<sup>11</sup> *USA PATRIOT Act*, (H.R. 3162), 2001 available at <http://www.epic.org/privacy/terrorism/hr3162.html>

<sup>12</sup> *Privacy Act*, R.S. 1985, c. P-21

<sup>13</sup> *Access to Information Act*, R.S. 1985, c. A-1

## IV. PRIVACY AND ACCESS: A SASKATCHEWAN ROADMAP FOR ACTION-REVISITED (CONT'D)

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that Nova Scotia is developing new legislation to deal specifically with the threat posed by the *USA Patriot Act*. PEI is reviewing its three year old legislation. British Columbia, Alberta, Manitoba, Ontario, Quebec and Newfoundland and Labrador have already completed or initiated updating of their respective access and privacy legislation.

In our last two Annual Reports we endorsed the outstanding recommendations from former Commissioner Rendek for review and amendment of FOIP. Our 2003-2004 Annual Report included a recommendation that an all-party committee of the Legislative Assembly should review FOIP and LA FOIP to determine how these laws might be revised to better achieve the purposes of the legislation. I have recommended this be done by means of a public consultation. These recommendations have not been acted upon.

In our last Annual Report, 25 matters were identified that warranted particular attention and possible amendment of FOIP and LA FOIP. To that earlier list should be added the following additional items:

- add a provision that deems an access request abandoned if there is no response from an applicant within 60 days after receipt of a fee estimate;
- add whistleblower protection for complainants;
- create an offence for a public body to destroy records to defeat or frustrate an access request;
- define terms such as “use” and “disclosure”;
- build in a mandatory review of the Acts every three or five years to ensure our legislation is current and effective;
- allow standing in court for the OIPC when our jurisdiction is in question;
- ensure that the positive duty to create records reasonably necessary to the business of a public body can be reviewed by the OIPC.

As noted earlier, the new PPRA that enables the indiscriminate collection, use and disclosure of significant volumes of personal information of Saskatchewan residents warrants further attention. I assume that the majority of residents who use pawn shops engage in a completely lawful activity. However, data on all pawn shop users is collected indiscriminately. We have raised concerns with the Minister of Justice about the extensive warehousing of data collected via PPRA that is being undertaken by police services throughout the province. Control of this program appears to be vested in municipal chiefs of Police. Unlike the Royal Canadian Mounted Police who, when providing municipal

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## **IV. PRIVACY AND ACCESS: A SASKATCHEWAN ROADMAP FOR ACTION-REVISITED (CONT'D)**

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policing in many Saskatchewan communities, are subject to the provisions of the federal *Access to Information Act* and the federal *Privacy Act*, municipal police services operate completely outside of FOIP and LA FOIP. A comprehensive review of FOIP and LA FOIP as suggested above would provide an excellent opportunity to consider whether it is appropriate in 2006 to have this large gap in our access and privacy legislation coverage. At present, to our knowledge, no such review has been initiated by the government.

### **C. INTEGRATE FOIP AND LA FOIP INTO A SINGLE LAW**

This office continues to witness confusion caused by the existence of two statutes that are very similar and yet contain just enough differences to surprise the unwary. The existence of two laws leads to other problems. Saskatchewan Justice produces an Annual Report on the operation of FOIP but there is nothing comparable on the operation of LA FOIP. There will be a potential duplication of effort for the government in preparing training materials to reflect the two different laws even though their respective aims are identical. There are two separate forms for anyone wishing to make an access request and these forms are frequently confused by applicants. A number of public bodies, including local authorities, are providing incorrect information to citizens who wish to make access requests or a breach of privacy complaint. This incorrect information is about which law applies and which particular forms are required to make a request for access or a request for review.

I have initiated discussions with a number of government institutions and local authorities about such a merger of FOIP and LA FOIP into a single legislative instrument. I am not aware of any imminent plan of the Saskatchewan Government to act on this recommendation.

### **D. EXTEND PRIVACY PROTECTION TO EMPLOYEES IN THE PRIVATE SECTOR**

As noted in our last two Annual Reports, there is a serious gap in legislative privacy protection for employees of private businesses in Saskatchewan. Such employees have no easy recourse under FOIP or LA FOIP if they are denied access to information their employer has about them or have concerns about how that personal information is collected, used or disclosed. Such employees do not have the same statutory remedy available to public sector workers when their personal information is collected, used or disclosed improperly. Most private sector employers do not have statutory obligations to protect the privacy of their staff.

This office continues to receive complaints and inquiries from Saskatchewan residents employed in the private sector. Those individuals are surprised and disappointed to learn that they do not enjoy the same measure of privacy protection that is afforded all public

## IV. PRIVACY AND ACCESS: A SASKATCHEWAN ROADMAP FOR ACTION-REVISITED (CONT'D)

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sector employees in Saskatchewan. Increasingly, surveillance practices, biometric identifiers and other privacy-invasive measures are proliferating among Saskatchewan businesses. The failure to protect the privacy interests of employees in the private sector reflects badly on this province.

We note that preparations are underway by Industry Canada for the statutorily mandated review of the federal *Personal Information Protection and Electronic Documents Act*<sup>14</sup> (PIPEDA). From the feedback we have received from diverse organizations and individuals in Saskatchewan, it is apparent that PIPEDA is not working satisfactorily for many Saskatchewan small and medium-sized businesses and most employees in the private sector. We encourage the Government of Saskatchewan to act on our recommendation in our 2003-2004 Annual Report and consider the adoption of private sector privacy legislation similar to the *Personal Information Protection Acts*<sup>15</sup> in British Columbia and Alberta. Alternatively, the Saskatchewan Government should consider actively participating in the formal Industry Canada consultation and advance recommendations for amendment of PIPEDA to better address the needs of small and medium-sized businesses.

I further recommend that the Saskatchewan Government undertake a public consultation on the question of private sector privacy similar to what has taken place in Manitoba, Ontario, British Columbia and Alberta. Such a consultation might:

- raise awareness of the challenges posed by too many different privacy laws that do not work particularly well together;
- consider how we can ensure that Saskatchewan employees enjoy protection of their personal information at least equal to that now available to public sector employees;
- consider the extent to which Saskatchewan businesses may be at a competitive disadvantage relative to competitors in British Columbia and Alberta; and
- provide an opportunity to simplify and harmonize the different access and privacy laws in this province.

### E. ADDRESS THE ISSUE OF PRIVACY AND PUBLIC REGISTRIES

I note that steps are being taken in a number of jurisdictions to reassess the publication of substantial personal information through a host of 'public registries'. I addressed this issue

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<sup>14</sup> *Personal Information Protection and Electronic Documents Act*, R.S. 2000, c. 5

<sup>15</sup> *Personal Information Protection Act*, R.S.A. 2003, c. P-6.5; *Personal Information Protection Act*, S.B.C. 2003, c. 63

## IV. **PRIVACY AND ACCESS: A SASKATCHEWAN ROADMAP FOR ACTION-REVISITED (CONT'D)**

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in part in our Report 2005-001<sup>16</sup> when considering the practice of the Automobile Injury Appeal Commission to publish on its publicly accessible Internet site a great deal of individually identifying information including financial, health and relationship personal information. To date, no action has been taken to address this. I continue to urge the Assembly to turn its attention to this issue. Given that identity theft is a major criminal threat to all of us, that powerful search engines facilitate the compilation of dossiers of personal information, and that private sector organizations are now regulated to protect the privacy of citizens, it is critical to reassess public registries and the extensive personal information they make accessible to anyone who pays a fee.

### **F. MAKING THE LAWS WORK FOR CITIZENS AND GOVERNMENT**

Since the need to build capacity was a key recommendation in my last Annual Report, I want to stress that there has been considerable progress in 2004-2005. The Access and Privacy Branch of Saskatchewan Justice is working hard to build capacity for our three access and privacy laws. I appreciate the positive working relationship and the regular information sharing that occurs between that Branch and the OIPC. We have had the opportunity to preview some of the materials in development for training purposes. We were particularly impressed with a module specifically focused on access to information which presents key information in an accurate and accessible way. Another excellent initiative by this Branch has been the implementation of training sessions for FOIP Coordinators.

To be realistic, however, the challenge for the two person Access and Privacy Branch is daunting, and there are vast amounts of work yet to be done. In the experience of the OIPC, far too many government institutions and local authorities are wholly unprepared to deal with access requests and privacy complaints. Much of this is attributable to a lack of training and training materials for the first fourteen years of FOIP.

There is also a demonstrable need for a comprehensive manual to assist FOIP Coordinators. Such a manual, that is common to other Canadian jurisdictions, would include specimen forms, information flow charts and decision 'trees' that lead a FOIP Coordinator through the sequential issues and decisions required to deal with access to information requests.

Too many Saskatchewan public bodies still have weak information management systems despite the fact that information management is the foundation for any effective access and privacy regime. Some of the practical consequences of such weakness are:

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<sup>16</sup> Office of the Saskatchewan Information and Privacy Commissioner, *Review Report F-2005-001*, available at [http://www.oipc.sk.ca/Reviews\\_files/Report%20No.%202005--001%20--%20File%202029--2004.pdf](http://www.oipc.sk.ca/Reviews_files/Report%20No.%202005--001%20--%20File%202029--2004.pdf)



## IV. **PRIVACY AND ACCESS: A SASKATCHEWAN ROADMAP FOR ACTION-REVISITED (CONT'D)**

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- extra time is required to locate and retrieve responsive records when an access request is received;
- extra time is required for many government employees to consult with each other to determine what needs to be done with an access request or complaint; and
- inconsistent approaches taken by different employees in the same government institution when responding to an access request cause delays and inefficiencies.

In order to complete all of the above in a timely fashion, it will be important for the Saskatchewan Government to address the resource needs of the Access and Privacy Branch office. Although there is an urgent need to develop training materials and a comprehensive manual, the modest resources committed to the Access and Privacy Branch to date suggest that it will take a number of years before Saskatchewan achieves a reasonable level of statutory compliance, and such a delay on top of the fourteen years already elapsed would be far from ideal.

### i **THE ROLE OF THE FREEDOM OF INFORMATION AND PRIVACY COORDINATOR**

Perhaps the single most important improvement this province could make in meeting the requirements of the applicable legislation would be to ensure that every government institution has a properly designated, adequately trained FOIP Coordinator. There are four key aspects to this recommendation:

1. Each Minister should properly designate in writing an individual with responsibility to coordinate, on the Minister's behalf, FOIP compliance efforts. This designation is permitted by section 60 of FOIP. The legal responsibility to comply with FOIP is clearly that of each Minister or CEO. The section 60 requirement reinforces meaningful responsibility. If delegated, the responsibility for FOIP should be given to a senior official who may delegate tasks to others but who is in a position to make recommendations to the Deputy Minister and Minister on compliance with both access to information requests and protection of privacy.
2. The FOIP Coordinator should be responsible for in-service training of all staff in the department with particular attention to those employees dealing with the public and dealing with records.

## IV. **PRIVACY AND ACCESS: A SASKATCHEWAN ROADMAP FOR ACTION-REVISITED (CONT'D)**

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3. Compliance with both the access requirements and the protection of privacy requirements of FOIP should be fully integrated in a single position rather than being fragmented among a number of different individuals within a department.
4. A number of FOIP and HIPA Coordinators have job descriptions that curiously mandate a relationship with the Departments of Justice or Health respectively but are silent on the need to liaise with the OIPC. Dealing with the OIPC is a basic feature of the FOIP Coordinator's job description in most other Canadian jurisdictions. It would be harder for the public body and the OIPC to consult, cooperate and collaborate if this is not clearly identified as one of the responsibilities of that FOIP Coordinator.

A common problem is a lack of succession planning in a number of government institutions. There seem to be many revolving doors in government, and too often, the departure of one individual in a department means that there is no one else equipped to assume the responsibility of dealing with the access and privacy file. I am mindful that such an issue is not unique to access and privacy compliance. It is nonetheless a critical gap since the knowledge and familiarity with FOIP and LA FOIP is often concentrated in so few individuals in Executive Government.

### ii. **KEEPING PERSONAL INFORMATION SECURE**

In our last Annual Report we discussed “a gaping hole” in FOIP. This referred to the absence in our legislation of any specific duty on government institutions or local authorities to safeguard personal information in their possession or under their control. There has been no action to remedy that gap in the intervening year. That gap therefore continues to exist, and consequently, there continues to be an unacceptable risk to the privacy and confidentiality of Saskatchewan residents in those cases where government institutions, local authorities and health information trustees continue to outsource personal information to contractors located both in Canada and outside of the country.

Saskatchewan Justice has developed certain tools to mitigate this risk. In that respect I would offer three observations:

1. A policy and standard contract language may mitigate the risk to some extent but this cannot be a satisfactory substitute for a clear statutory obligation reinforced by an offence provision and a substantial penalty for breach.
2. The approach taken by the Saskatchewan Government has been to focus exclusively on standard contract language. This includes a *Personal Information Contract Checklist - Version 2.1* that appears to be useful and appropriate. The



## IV. PRIVACY AND ACCESS: A SASKATCHEWAN ROADMAP FOR ACTION-REVISITED (CONT'D)

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Checklist alerts the government institution to the specific risk posed by the *USA Patriot Act* and the prospect that the personal information or personal health information of Saskatchewan residents could be accessed through the procedures of the United States of America *Foreign Intelligence Surveillance Act*<sup>17</sup>.

Saskatchewan Justice has also produced a number of sample clauses. The sample clauses that we have seen characterize all information provided by a government institution to a contractor as “confidential information”. This is problematic since the issues in terms of ‘proprietary information’ of any government institution are different than the privacy interests of Saskatchewan residents. Conflating personal information/personal health information with other kinds of information fails to adequately address the very real threats to privacy posed in 2006. Public sector employees should be clear that personal information of individuals needs to be identified, collected, used and disclosed only in accordance with FOIP, LA FOIP and privacy best practices such as a ‘need to know’ requirement and the requirement to use aggregate information or de-identified information wherever possible and to use personal information only when aggregate information or de-identified information would not be sufficient for the purpose.

At the same time, these sample clauses are problematic in terms of the transparency obligations of government institutions under Part II of FOIP. Describing all information provided by government to the contractor as confidential is inconsistent with the requirements of FOIP. There is no exemption for “confidentiality” generally and the government institution is required to consider and invoke only the mandatory or discretionary exemptions detailed in FOIP. Contractors may be encouraged by the standard contract language to assume that all or most of the information involved in any contract with government will not be accessible under FOIP. This approach will likely be misleading to contractors and government workers alike. Rather, contracts should use the definition of “personal information” from section 24 of FOIP.

3. I note that the last Commissioner, Richard Rendek, recommended to government institutions in early 2003 that the recommendations from the British Columbia Information and Privacy Commissioner on outsourcing personal information be adapted for Saskatchewan. Subsequently, the British Columbia government developed a standard *Privacy Protection Schedule*<sup>18</sup>. I find that this is a relatively simple, efficient and accurate way of addressing through contract the privacy risks inherent with outsourcing personal information. In considering the approach

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<sup>17</sup> *Foreign Intelligence Surveillance Act*, 1978, Title 50, c. 36

<sup>18</sup> Government of British Columbia, *Privacy Protection Schedule*, available at <http://www.lcs.gov.bc.ca/privacyaccess/PPS/default.htm>

## IV. PRIVACY AND ACCESS: A SASKATCHEWAN ROADMAP FOR ACTION-REVISITED (CONT'D)

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taken in other Canadian jurisdictions, it appears that the British Columbia model is consistent with privacy 'best practices'. A number of the Crown corporations have adapted that British Columbia model for use in their outsourcing contracts. I recommend that Saskatchewan Justice follow that approach so that we can minimize confusion and ensure government institutions meet privacy best practices in their contracting out activities.

### iii. IDENTITY OF APPLICANTS

An observable practice in a number of public bodies is to treat the identity of an applicant under FOIP and LA FOIP as public information. This is a troubling practice and one to be discouraged. The identity of an applicant is the personal information of the applicant. It should only be disclosed to those persons within the particular public body with a need to know for purposes of processing the access request.

In our September 2004 e-newsletter, *The Saskatchewan FOIP FOLIO*<sup>19</sup> we stated as follows:

*Some government institutions have asked whether there are any rules around the identity of someone who has made an access request. You will have noticed that in our formal Reports we refer to the "applicant" and do not identify that person. At the initial stage of a request for access a couple of considerations apply. Our view is that a government institution should not disclose the identity of the applicant to anyone who does not have a legitimate need to know. Need to know relates to the processing of the access request. Our view is that it is improper to treat applicants differently depending on who they are or what organization they may represent. It would also be improper to broadcast the identity outside of that particular department. To avoid differential treatment we encourage the FOIP Coordinator to mask the applicant's identity. This approach is consistent with direction from the Federal Court of Canada and the practices in other provinces. There is a useful discussion of this issue in the Annual Report of the Information Commissioner of Canada 2001-2002 at pages 22 to 24. [page 7]*

One of the consequences of widespread disclosure of an applicant's identity may be that the access request is treated in a different way than would be the case if the requester was someone else. The concern is that a member of the media, an MLA or a well-known advocate on a particular issue may encounter delays and perhaps a greater likelihood that a discretionary exemption will be invoked to deny access than might be the case if the applicant is unknown to the public body. Also, FOIP and LA FOIP

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<sup>19</sup> Office of the Saskatchewan Information and Privacy Commissioner, *Foip Folio*, available at <http://www.oipc.sk.ca/newsletters.htm>

## IV. PRIVACY AND ACCESS: A SASKATCHEWAN ROADMAP FOR ACTION-REVISITED (CONT'D)

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clearly do not set up different classes of applicants. Attempting to control who gets or does not get access to public records under the Acts is clearly contrary to the purpose and objects of the Acts.

### iv. PROMOTING TRANSPARENCY

#### 1. DEPARTMENT WEBPAGES

Most provincial government departments have a webpage that can be accessed independently or through the Government of Saskatchewan website. The Internet is becoming an increasingly popular way to provide information to Saskatchewan residents on their provincial government, its operations and activities. Those websites offer an excellent opportunity to provide key information about citizen's democratic rights to access and privacy.

Some webpages have a link to a Privacy Policy, but more often than not this turns out to be nothing more than a policy relating to that webpage and visits to that webpage. A notable exception is the Saskatchewan Learning webpage<sup>20</sup> that has done an excellent job of:

1. Identifying the applicable access and privacy law as FOIP;
2. Identifying the FOIP Coordinator for that department and providing relevant contact information; and
3. Identifying the right to appeal to the OIPC if dissatisfied with the departmental response and providing the OIPC's contact information.

The Privacy Policy on the webpage and in particular the above three items of information are a good model for other public bodies to follow.

Some Saskatchewan Government webpages also contain confusing or inaccurate information about the applicability of the Canadian Standards Association *Model Code for the Protection of Personal Information*<sup>21</sup> (CSA Model Code), PIPEDA or the Privacy Framework. PIPEDA does not apply to provincial government institutions as it is a federal law. The CSA Model Code does not apply as it was designed for private businesses and not government. For the reasons described in our *Report on the*

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<sup>20</sup> Saskatchewan Learning, Privacy webpage, available at [http://www.sasked.gov.sk.ca/admin/privacy\\_policy.shtml](http://www.sasked.gov.sk.ca/admin/privacy_policy.shtml)

<sup>21</sup> Canadian Standards Association, *Model Code for the Protection of Personal Information*, available at <http://www.csa.ca/standards/privacy/code/Default.asp?language=English>

## IV. PRIVACY AND ACCESS: A SASKATCHEWAN ROADMAP FOR ACTION-REVISITED (CONT'D)

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*Overarching Privacy Framework for Executive Government* (see [www.oipc.sk.ca](http://www.oipc.sk.ca)), the references to the Privacy Framework may be more confusing than helpful. In this regard, we refer particularly to the sections dealing with accountability and consent. A number of government webpages suggest that “The Government of Saskatchewan’s “Privacy Framework” is consistent with this Act [FOIP]”. As noted in our *Report on the Overarching Privacy Framework*<sup>22</sup>, we have come to a different conclusion.

On some Saskatchewan Government webpages, the Internet visitor is referred to the Access and Privacy Branch of Saskatchewan Justice if they have problems or cannot get satisfaction from the department’s own Privacy Officer or FOIP Coordinator. Actually, dealing with specific access requests and privacy complaints is not part of the current mandate of that office. In addition, FOIP contemplates that individual departments are directly responsible for FOIP responsibilities and any dissatisfied individual should be entitled to proceed directly to the OIPC without further delays and levels of appeals to departments such as Justice.

## V. COMMUNICATION INITIATIVES

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### A. OIPC WEBSITE

Our website, [www.oipc.sk.ca](http://www.oipc.sk.ca), has proven to be a useful vehicle for sharing information about our office and Saskatchewan legislative access and privacy requirements. The site attracts approximately 3,700 visitors each month. It includes archived copies of all Reports issued by our office under FOIP, LA FOIP and HIPA, as well as other resources designed to assist both members of the public and public bodies. It also has hyperlinks to 34 other access/privacy websites including relevant Saskatchewan bodies, other provincial oversight offices, national information and privacy commissioners and international access and privacy bodies. The site also features our three-year business plan, our Annual Reports and ad hoc reports such as our response to draft HIPA regulations and our analysis of the Privacy Framework.

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<sup>22</sup> Office of the Saskatchewan Information and Privacy Commissioner, *Report on the Overarching Personal Information Privacy Framework for Executive Government*, available at <http://www.oipc.sk.ca/resources.htm>

## V. COMMUNICATION INITIATIVES (CONT'D)

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### B. THE SASKATCHEWAN FOIP FOLIO

In this fiscal year we published 11 more issues of our E-newsletter, the *Saskatchewan FOIP FOLIO*. We are advised by a number of subscribers that they routinely distribute the *FOIP FOLIO* to co-workers in their respective organizations.

Each month the *FOIP FOLIO* includes a wide variety of topics aimed at different segments of Saskatchewan's population, professional and public. Some past headlines include: Canadian Newspaper Association gives Saskatchewan an "F" Grade; Preparing for an OIPC review; Should the Federal Information Commissioner and Privacy Commissioner offices be merged?; Employee Privacy; When To Raise An Exemption Under FOIP; What Does "Advice Or Recommendations" Mean?; FOIP Is Not Just Another Law !; When Can An Employer Disclose Personal Information To A Union Without Your Consent?; Two Federal Commissioners Better Than One; Your Privacy Will Outlast You!; Mr. Justice Gomery's first and second reports into the federal sponsorship; Canada's Newest Health Information Law Displaces PIPEDA; OIPC Brown Bag Luncheon Workshops; Contractors Guide to Access and Privacy; HIPA Facilitates Sharing of Health Information for the Treatment of a Patient; Public Bodies Should Streamline Access and Privacy Management; Privacy Impact Assessments; Your Right of Privacy; Avoid Barriers to Access; Accessing Government Information: General Tips; What are the Rules for Personal Information of Employees?; Public Sector Outsourcing and Risks to Privacy; Possession and Control--What Does It Mean?; and Concerns with Youth Detox Law.

All copies of the *FOIP FOLIO* are archived on our website: [www.oipc.sk.ca](http://www.oipc.sk.ca) under the tab: "Newsletters". To become a subscriber, our office requires only an e-mail address.

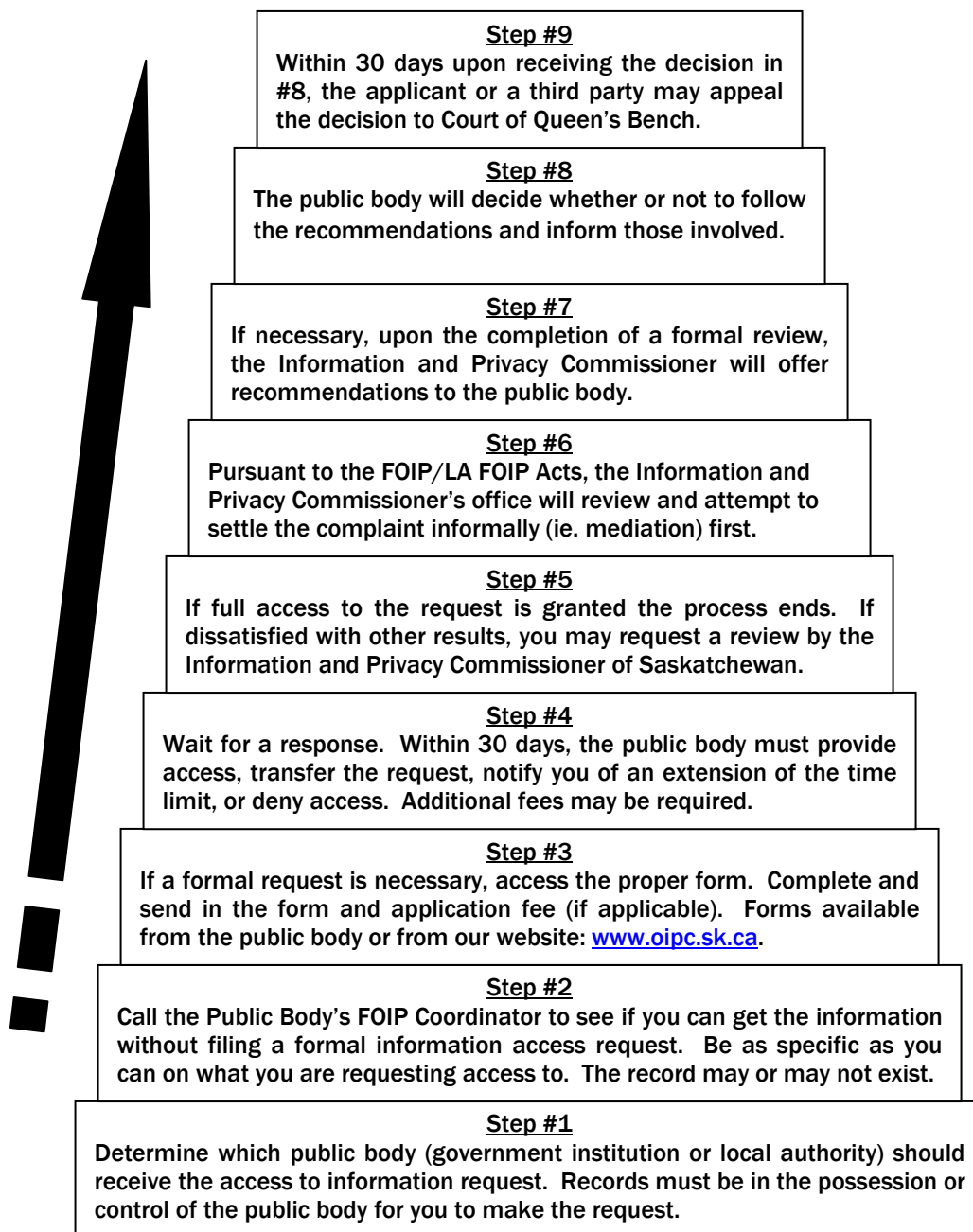
### C. BROWN BAG LUNCHEON WORKSHOPS

In January 2006 our office initiated a new program called "*Brown Bag Luncheon Workshops*" which is open to FOIP and HIPA Coordinators. It consists of a series of free workshops delivered in our office boardroom. Participants are encouraged to bring their lunch and join us for a discussion of key access and privacy issues. Discussions are led by the Commissioner or a Portfolio Officer. Handouts and materials are provided to accompany each workshop.

The topics of the "Brown Bag Luncheon Workshops" to date include: How to survive and even have fun as the FOIP/HIPA Coordinator; How and where to look for records – the Duty to Search – What does 'duty to assist' mean?; How much is too much? Simplifying Fees and Fee estimates; Severing made easy or at least a lot easier; and A FOIP Love Triangle! The Public Body, The Applicant and the Third Party (FOIP Part V).

## VI. HOW TO MAKE AN ACCESS REQUEST

*The Freedom of Information and Protection of Privacy Act (the FOIP Act) & The Local Authority Freedom of Information and Protection of Privacy Act (the LA FOIP Act)*



## VII. *THE HEALTH INFORMATION PROTECTION ACT* (HIPA)

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Stand-alone health information laws such as HIPA are complex and challenging. Although HIPA has obviously been designed to codify many existing health information sharing practices, there are a number of features of HIPA that are new. These include:

- a statutory right for individuals to apply for access to one's own personal health information and to request correction of that recorded personal health information;
- a 30 day time limit for a trustee to respond;
- an obligation on the part of trustees to inform anyone of anticipated uses and disclosures of their personal health information;
- a duty on the part of trustees to develop policies and procedures for statutory compliance;
- limits on what personal health information can be collected, used or disclosed by trustees;
- a requirement for trustees to collect, use and disclose the least amount of information necessary for the purpose;
- a requirement for Research Ethics Committee approval for research initiatives involving personal health information; and
- oversight by the Information and Privacy Commissioner.

Approximately one half of our resources over the 2005-2006 year were committed to addressing HIPA compliance. In addition to dealing with formal complaints and access requests, much of this work involved summary advice provided to individuals and to trustees. This also includes more extensive advice and consultation with trustees on programs, new information systems and staff training opportunities.

### A. PUBLIC CONSULTATION

It is perhaps useful to reflect on the single public consultation exercise that has been undertaken on the issue of protection of personal health information in the province. In 1998 Saskatchewan Health produced a *Consultation Paper on Protection of Personal Health Information*<sup>23</sup> to report on findings of a public consultation undertaken by the department the previous year. Those findings included the following:

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<sup>23</sup> Saskatchewan Health, *Consultation Paper on Protection of Personal Health Information*, available at [http://www.health.gov.sk.ca/ph\\_br\\_health\\_leg\\_hipa\\_consultpaper.pdf](http://www.health.gov.sk.ca/ph_br_health_leg_hipa_consultpaper.pdf)



## VII. *THE HEALTH INFORMATION PROTECTION ACT* (HIPA) (CONT'D)

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- 81.4% agreed that "...responsibility for the record should remain with the doctor, hospital, or whoever is closest to the client/provider relationship, not with a central agency managing data collection."
- 95% indicated agreement with the statement: " the individual has rights to access her or his own information and has some control over what happens to that information."
- 90% had some level of agreement that: "Wherever possible and practical, information about individuals should be collected directly from the individual the information is about."
- 83.5% had some agreement with the statement that: "Individuals, in certain circumstances, should have the right to refuse to give certain information or to limit its use."

Our observation is that trustees are still wrestling with how best to address the question of patients' control over their own information. I find that many trustees understand the importance of bolstering patient/client confidence in trustee privacy and confidentiality practices and that may mean doing more than relying on minimal no-consent provisions in HIPA. Strong public confidence will be essential in ensuring public acceptance of the developing electronic health record for all Canadians.

### **B. HIPA AND CONSENT**

Even though there is provision in HIPA for no consent or "deemed consent", I note that increasingly, trustees are recognizing that in fact, HIPA contemplates three different kinds of consent and that trustees are responsible to determine which kind of consent is appropriate for any particular collection, use or disclosure activity unless otherwise stipulated by HIPA. Those three kinds of consent can be described as follows:

- express consent (the individual has the right to revoke this consent)
- implied consent (the individual has the right to revoke this consent)
- deemed consent (the individual has no right to revoke this consent)

Although HIPA only requires express consent in two circumstances, express consent is clearly a privacy best practice in many cases. Implied consent is something of a national standard since it is a feature of the following instruments:



## VII. *THE HEALTH INFORMATION PROTECTION ACT* (HIPA) (CONT'D)

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- *PIPEDA and the PIPEDA Awareness Raising Tools*<sup>24</sup>;
- *Pan-Canadian Health Information Privacy and Confidentiality Framework*<sup>25</sup>;
- Ontario's *Personal Health Information Protection Act*<sup>26</sup>.

Implied consent is most reflective of the patient autonomy model manifest in Canadian jurisprudence.

I suggest that on the basis of what we have heard from Saskatchewan residents, implied consent also is likely closest to the expectations of many residents in their interaction with health information trustees.

### C. QUESTION OF RESOURCES

In my 2003-2004 Annual Report I drew attention to the concern that Saskatchewan Health had not committed adequate resources to the implementation of HIPA. That concern remains. That concern is compounded by staff turn-over and the demands on the department from the increasing use of Privacy Impact Assessments by Saskatchewan Health itself and a variety of projects managed by the department. It may be a product of inadequate resources, but a number of the educational materials produced by Saskatchewan Health tend to be 'high-level' or overviews. These materials are not perhaps as helpful as they could be for staff working in trustee organizations and requiring a comfortable understanding of what they can and cannot do in light of HIPA. This office has and will continue to provide input in the development of further tools for trustees. In my advice to trustees I have recommended a focus on very practical, concrete information to assist trustees. This could involve specimen forms, decision-trees, checklists, diagrams to simplify the process of assessing whether a particular collection, use or disclosure is appropriate and assessing requests for access or correction and other practical tools.

### D. LOCAL LEADERSHIP

There is a need for the CEOs of trustee organizations to provide leadership on the access and privacy file. There is also a need for a single individual in every organization to be tasked by the CEO with organizational responsibility for HIPA compliance. At the same time, many trustees such as health regions are also subject to LA FOIP. A best practice is to consolidate those responsibilities in the same individual or at least in the same office within a trustee organization. Many of the issues and problems will be common to LA

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<sup>24</sup> Industry Canada, *PIPEDA Awareness Raising Tools*, available at [http://strategis.ic.gc.ca/epic/internet/inecic-ceac.nsf/en/h\\_gv00207e.html](http://strategis.ic.gc.ca/epic/internet/inecic-ceac.nsf/en/h_gv00207e.html)

<sup>25</sup> Health Canada, *Pan-Canadian Health Information Privacy and Confidentiality Framework*, available at [http://www.hc-sc.gc.ca/hcs-sss/pubs/ehealth-esante/2005-pancanad-priv/index\\_e.html](http://www.hc-sc.gc.ca/hcs-sss/pubs/ehealth-esante/2005-pancanad-priv/index_e.html)

<sup>26</sup> *Personal Health Information Protection Act*, S.O. 2004, c. 3 Sched. A

## **VII. *THE HEALTH INFORMATION PROTECTION ACT* (HIPA) (CONT'D)**

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FOIP and HIPA. It is inefficient and cumbersome to fragment those responsibilities within a single organization.

A number of job descriptions for Privacy Officers in trustee organizations do not include the need to liaise with this office. I encourage trustees to revise those job descriptions. Otherwise, all access and privacy issues investigated by our office would have to be routinely the subject of communication between our office and the CEO or Minister. Presumably, the Minister or CEO will not have a detailed understanding of specific privacy complaints and concerns and will need to consult with the Privacy Officer in any event.

### **E. TRUSTEES**

Many of the complaints or inquiries received by our office in respect to HIPA concern physicians in private practice. Our routine practice is to first refer those complaints to the Saskatchewan College of Physicians and Surgeons. This is authorized by section 43 of HIPA. Our experience is that almost all of those complaints are resolved satisfactorily at that stage, or at least, we receive no further communication from those complainants.

We have heard from a number of individuals who report that their trustee's office has no printed material such as posters or brochures on HIPA, privacy and confidentiality available for patients. It will be important for physicians and other health care providers to provide information to clients about their privacy policy, including the rights and requirements of HIPA and the right to complain to the OIPC. Patient education can be achieved by brochures, posters, website notices and through other means, but it is a requirement of both HIPA and PIPEDA. Our office has in the past held that a trustee cannot rely on the provisions in HIPA unless it has first satisfied this transparency requirement as well as the other 'general duties' in sections 6, 9, 10, 16, 19 and 23 of HIPA.

### **F. HEALTH REGION TOURS**

In 2005-2006, our office toured health facilities in four different regions: Keewatin Yatthé, Prairie North, Sun Country and Heartland. Typically, this includes physically touring the facilities, with particular attention to the admitting and health records areas, meeting the Privacy Committee or staff working with the Privacy Officer, meeting the CEO and, in many cases, the Regional Health Authority Boards. Usually we do at least one education session on HIPA and the oversight role of the OIPC. In Prairie North, our education session was simulcast to another health centre in the region. In several of these centres, we spoke with local media to explain the role of the OIPC and the operation of HIPA. A radio interview with CHPN Radio in La Loche was translated into Cree and

## VII. *THE HEALTH INFORMATION PROTECTION ACT* (HIPA) (CONT'D)

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Dene languages. A subsequent radio interview with MBC Radio was broadcast repeatedly throughout much of Saskatchewan in Cree and Dene.

### G. ADVICE AND CONSULTATION

As noted earlier, a substantial amount of our time related to HIPA involves providing advice to, and consulting with trustees on more significant privacy and access matters. The purpose is to work collaboratively with trustee organizations to establish good access and privacy processes in all new programs and legislative initiatives. In many respects, this is much preferable to exercising our formal investigative powers after we receive a complaint.

### H. SASKATCHEWAN AND THE PAN-CANADIAN HEALTH INFORMATION PRIVACY AND CONFIDENTIALITY FRAMEWORK

In our last Annual Report we raised concerns with the fact that Saskatchewan Health appears to be out of step with other provincial and territorial governments, as well as the federal government and the *Charter of Rights and Freedoms*<sup>27</sup> by reason of its unwillingness to substitute “implied consent” and a right to revoke consent for the deemed consent or no-consent provision in section 27(2) of HIPA. Our concern has been underscored by the announcement that the new Ontario *Personal Health Information Protection Act* (PHIPA) is “substantially similar” to the federal public sector privacy law, PIPEDA. Ontario’s PHIPA is based on “implied consent” and appears to be consistent with the traditional ‘patient autonomy’ model that Canadian courts have followed for many years.

## VIII. CASE SUMMARIES

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Many of the complaints and requests for review undertaken by our office are resolved informally or through one or another form of mediation. If a mediated settlement is achieved, we normally contact the concerned parties to confirm our understanding of the resolution and to advise both sides that we will proceed to close our file rather than issue a formal report.

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<sup>27</sup> *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11

## VIII. CASE SUMMARIES (CONT'D)

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This year's cases where no informal settlement was achieved and it became necessary for our office to issue a Report<sup>28</sup> are summarized below.

### FULL COMPLIANCE WITH ALL REPORT RECOMMENDATIONS

In the following cases, either the public bodies listed fully complied with the Commissioner's recommendations or the Commissioner found the complaint to be not 'well founded'.

#### A. **REPORT F-2005-004 – SASKATCHEWAN GOVERNMENT INSURANCE – MAY 6, 2005**

The Applicant applied under FOIP for access to personal information related to his injury file. The government institution originally refused access to 30 documents to the Applicant invoking section 17(1)(b)(i) [consultations and deliberations involving employees of government institution]. After discussions with the OIPC, SGI agreed to release almost all of the documents, some with sections severed. This only left six documents withheld from the Applicant. The Commissioner upheld the denial of the remaining documents as well as those portions severed from those records that were released.

#### B. **REPORT F-2005-005 – SASKENERGY INCORPORATED – JULY 20, 2005**

The Applicant requested records from SaskEnergy Incorporated (SaskEnergy). SaskEnergy produced a fee estimate. The Applicant requested that the Commissioner review the fee estimate. The Commissioner found that he had authority to review the fee estimate under section 7(2)(a) of the Act. The Commissioner found that SaskEnergy had discharged its duty to assist the Applicant insofar as the communication with respect to fees is concerned. The OIPC found that there are 3 different kinds of fees under FOIP: (1) fees for searching for a responsive record; (2) fees for preparing the record for disclosure and (3) fees for the reproduction of records. The cost of reproduction was not at issue. The Commissioner determined that "preparing the record for disclosure" includes the time anticipated to be spent physically severing exempt information from records. However, that provision would not contemplate time for:

- deciding whether or not to claim an exemption;
- identifying records requiring severing;
- identifying and preparing records requiring third part notice;
- packaging records for shipment;
- transporting records to the mailroom or arranging for courier service;

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<sup>28</sup> Office of the Saskatchewan Information and Privacy Commissioner, *Review and Investigation Reports*, available at <http://www.oipc.sk.ca/reviews.htm>

## VIII. CASE SUMMARIES (CONT'D)

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- time spent by a computer compiling and printing information;
- assembling information and proofing data;
- photocopying; and
- preparing an index of records

In the result, the Commissioner found that the fee estimate was excessive and recommended that SaskEnergy reduce it. Soon after issuing the Report, SaskEnergy advised us that they intended to follow the Commissioner's recommendations in full.

### **C. REPORT F-2005-006 – SASKATCHEWAN LIQUOR AND GAMING AUTHORITY – AUGUST 12, 2005**

The Applicant applied under FOIP for a copy of a 2003 customer satisfaction survey relating to retail liquor stores operated by a government institution. The survey was prepared by a third party. The government institution withheld portions of the record invoking section 18(1)(b) of FOIP, but released the remainder to the Applicant. The Commissioner found the denial of the severed portions of the record by the body to be authorized pursuant to FOIP.

### **D. INVESTIGATION REPORT LA-2005-003 – CITY OF SASKATOON – OCTOBER 24, 2005**

The Complainant raised with the OIPC a concern that when he applied to the City of Saskatoon for a building permit for renovations to his residence, personal information from the permit application form appeared to have been sold to contractors and suppliers. The Commissioner determined that section 4(a) and (b) of LA FOIP applied. The complaint was not well-founded.

### **PARTIAL OR NO COMPLIANCE WITH REPORT RECOMMENDATIONS**

The public bodies in each of the cases summarized below either did not comply or only partially complied with the Commissioner's recommendations:

### **E. REPORT F-2005-003 – CROWN INVESTMENTS CORPORATION – MAY 5, 2005**

The Applicant made an access request for records. Responsive records had been exchanged between the government institution, Crown Investments Corporation (CIC) and a third party. The documents related to the third party's role in assessing the validity of features contemplated within the government institution's utility bundle proposal. CIC withheld the records citing s. 19(1)(b) and 19(c)(ii) of FOIP. After hearing from the

## VIII. CASE SUMMARIES (CONT'D)

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parties to this review, the Commissioner found that CIC had not satisfied the burden of proof to justify the exemptions claimed. Accordingly, the Commissioner recommended that CIC release the records to the Applicant.

In its response to our office, CIC stated that it would comply with the Commissioner's recommendations in part. It informed us that they would provide a copy of the record to the Applicant after severing portions of the record containing "personal information" and "confidential pricing methodology".

This may reflect confusion on the part of CIC as to what is or is not personal information. Personal information as defined in FOIP is a mandatory exemption and therefore, if information qualifies as personal, the records must not be released. The definition of "personal information" clearly provides that information about the name of a government employee when used in connection with the "classification, salary, discretionary benefits or employment responsibilities of an officer or employee of a government institution..." is not personal information and therefore, is not protected. Furthermore, FOIP does not treat 'work product' as personal information.

Since there is no requirement for a government institution that refuses to follow recommendations from the OIPC to particularize its reasons, there is the risk that government institutions are labouring under various misunderstandings of FOIP which may go unaddressed.

### **F. REPORT F-2006-001 – SASKATCHEWAN CORRECTIONS AND PUBLIC SAFETY) – MARCH 31, 2006**

The Applicant sought access to personal information and other records pertaining to a fire investigation. Saskatchewan Corrections and Public Safety (CPS) that was in possession of those records refused to provide access to all records citing sections 15(1)(c), 13(2), and 29(1) of FOIP. The Commissioner found that CPS had not met the burden of proof with respect to the application of the exemptions in question and accordingly recommended the release of the record to the Applicant after severance of third party personal information. CPS advised us that it agreed with some of the conclusions drawn in the Report and would release some additional documents. However, CPS did not agree to provide the Applicant with a copy of any of the records provided by the local authority unless the local authority consented to the release. The effect of the CPS decision is to suggest that it will treat all records received from a local authority as exempt from disclosure contrary to the purpose of FOIP that requires disclosure unless the public body discharges the burden of proof that a specific exemption applies.



## VIII. CASE SUMMARIES (CONT'D)

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### G. INVESTIGATION REPORT H-2005-002 – PREVENTION PROGRAM FOR CERVICAL CANCER – APRIL 27, 2005

This Report deals with the Prevention Program for Cervical Cancer (the PPCC) operated by the Saskatchewan Cancer Agency (the Agency). As part of our investigation into the PPCC, we reviewed all of the appropriate information collection, use, and disclosure transactions; interviewed relevant staff; and undertook site visits to review the administrative, technical, and physical safeguards implemented to protect the personal health information of those Saskatchewan women that were involuntarily enrolled in the PPCC. Although our focus was principally the Agency that operates the PPCC, we were also required to consider the role played by Saskatchewan physicians, Saskatchewan Health, and the laboratories in the Regina Qu'Appelle Regional Health Authority (RQRHA) and Saskatoon Regional Health Authority (SRHA). Most of our findings relate to the Agency. Since we did not have the same kind of extensive discussions with these other organizations as had occurred with the Agency, we only made a minimal number of findings with respect to those other organizations. It would not have been fair to make more extensive findings without giving those organizations greater opportunity to make representations. We did, however, make a number of recommendations for those other organizations that flowed directly from this investigation.

As will be apparent from the specific findings of the Report, we determined that for the most part the PPCC complies with HIPA. In terms of security, for example, we found that the steps taken by the Agency and the laboratories in the two health Regions meet and exceed statutory standards. We also found that the collection, use, and disclosure provisions in HIPA authorize the collection, use, and disclosure activities integral to the PPCC.

However, we identified three significant issues with respect to the PPCC including: the need for greater transparency; the ability of the Saskatchewan Cancer Agency to rely on the deemed consent provision in HIPA; and the need for an opt-out mechanism for Saskatchewan women.

The OIPC determined that there is authority under HIPA for the Agency to collect registration information of Saskatchewan women from Saskatchewan Health; cervical health information from the laboratories in the RQRHA and the SRHA, and then to disclose that information to women and their physicians. This authority however is contingent on the Agency otherwise meeting the general duties imposed by HIPA on trustees, particularly sections 9 and 16.

The recommendations flowing from this Report are quite lengthy. A copy of the entire Report is available at the following link: [http://www.oipc.sk.ca/Reviews\\_files/Report%20No.%20H-2005-002%20--%20File%20081--2003.pdf](http://www.oipc.sk.ca/Reviews_files/Report%20No.%20H-2005-002%20--%20File%20081--2003.pdf). As a sampling, a few of the key recommendations made are as follows:

## VIII. CASE SUMMARIES (CONT'D)

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1. That the Agency incorporate an 'opt-out' feature into the PPCC that will allow any Saskatchewan woman to opt-out of the PPCC and have her identifiable information purged from the PPCC database.
2. That the Agency provide contact information on its website for its Privacy Officer and provide information for a woman who wishes either to complain or to seek further information about the PPCC. This should include information about the right to seek a review by the OIPC.

The Agency advised us that even though they viewed certain of the recommendations as not being legally required, they would still endeavor to work towards implementing changes to meet our recommendations. We note that the Agency has since built in the requisite opt-out feature and has materials available in print and on its website to inform Saskatchewan women of their options and of the redress mechanisms available to them as recommended by our office.

### **H. REPORT F-2005-007 – SASKATCHEWAN GOVERNMENT INSURANCE – NOVEMBER 3, 2005**

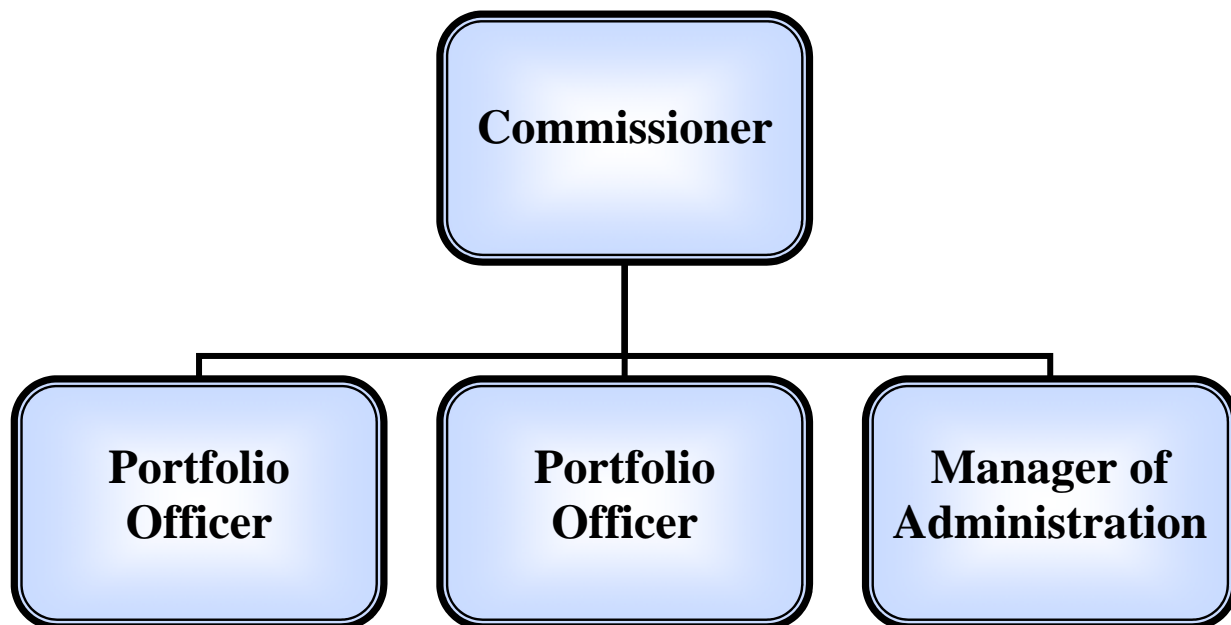
The Applicant sought the detailed claims history of a vehicle owned by the Applicant. SGI denied access on the basis that access would disclose personal information about previous owners of the same vehicle. The Commissioner held that the claims history of a motor vehicle registered in Saskatchewan, once specific identifying information has been severed, is not personal information within the meaning of FOIP. SGI, however, advised that it did not agree with the Commissioner's findings and consequently, did not comply with the Report's recommendations. There has been no explanation to our office or the people of Saskatchewan as to why SGI has taken this position. It is perhaps regrettable that FOIP does not require government institutions to at least offer a public explanation in those cases they elect not to accept the recommendations of the OIPC. Such a requirement would seem to be consistent with FOIP's mandate of transparency.



## **IX. BUSINESS PLAN, BUDGET, AND STATISTICS**

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### **A. ORGANIZATIONAL STRUCTURE**



### **B. OUR THREE YEAR BUSINESS PLAN**

The OIPC produced a rolling three year Business Plan in early 2005 for the period 2005-2008. A copy of this Plan is available at [www.oipc.sk.ca](http://www.oipc.sk.ca) under the “What’s New” tab.

The Plan is constructed on the basis of five “core business” areas and describes 10 different goals. It outlines forty-five performance measures for that three-year period against which the performance of our office may be assessed. The Plan recognizes fiscal pressures facing the government and the need to operate as efficiently and cost-effectively as possible. At the same time, it reflects a marked increase in demand for service from departments, Crown corporations, boards, commissions, agencies, school divisions, universities, colleges, regional health authorities, municipalities and health trustees.

In the Plan, the OIPC committed that all investigatory staff (Portfolio Officers) will have graduated from, or be registered in, the online Information Access and Protection of Privacy Certificate Program<sup>29</sup> (IAPP) offered by the University of Alberta. One Portfolio Officer is completing her fourth course in the five course program. Our newest Portfolio Officer is completing her first course.

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<sup>29</sup> University of Alberta, *Information Access and Protection of Privacy Certificate Program*, available at <http://www.govsource.net/programs/iapp/>

## IX. BUSINESS PLAN, BUDGET, AND STATISTICS (CONT'D)

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For the fiscal year 2005-2006 the Plan outlined the resources required to meet the broad statutory mandate of this office. This included hiring two portfolio officers and a full-time administrative support person prior to October 1, 2005. The approved budget for 2005-2006 permitted the hiring of one new Portfolio Officer only. The Board of Internal Economy directed that new space could not be acquired or the new position filled until arrangements had been concluded to terminate the existing lease. The OIPC was successful in negotiating a surrender of that original lease effective July 1, 2005. New space was acquired for 2,592 square feet. The new Portfolio Officer commenced employment November 1, 2005.

Key features of the 2005-2006 section of the Plan are as follows. This involves consideration of key performance measures for 2005-2006.

### i. **Core Business 1: Reviews of decisions on access requests**

#### **Goal 1 – Reduce time to complete reviews**

**Complete all pending cases and resolve the current backlog.** [page 11]

As of March 31, 2006 the OIPC had:

- 39 files from 2004,
- 57 files from 2005 and
- 21 files from 2006 that are not resolved.

**80% of cases to mediation or report stage within 5 months commencing January 1, 2006.** [page 11]

In 2005-2006, cases were resolved as follows:

- Mediation/informal resolution (83%);
- Formal report (15%);
- Dismissed (2%).

#### **Goal 2 – Publish a body of review reports and recommendations**

**Publish at least 15 reports from cases on the OIPC website.** [page 12]

Eight reports have been published for the fiscal year of 2005-2006.

## IX. BUSINESS PLAN, BUDGET, AND STATISTICS (CONT'D)

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**Goal 3 – Increase awareness on the part of government institutions, local authorities and health information trustees of statutory requirements**

**Collaborate with appropriate departments and agencies to develop Frequently Asked Questions for municipal governments, schools and health information trustees.** [page 14]

This has not been completed.

**Ensure all presentations from the October, 2004 *Privacy and Health Information: Making It Work* conference are available on the OIPC website, [www.oipc.sk.ca](http://www.oipc.sk.ca)** [page 14]

This was completed. More than 30 presentations are available at [www.oipc.sk.ca](http://www.oipc.sk.ca) under the tab “Presentations”.

**Produce our electronic newsletter the *Saskatchewan FOIP FOLIO* on a monthly basis and make this available to our base of approximately 1100 subscribers.** [page 14]

Another 11 issues of the *FOIP FOLIO* have been published. An index of articles of archived issues of *FOIP FOLIO* is now available on the website, [www.oipc.sk.ca](http://www.oipc.sk.ca) under the tab “Newsletter”.

**Increase the number of subscribers to the *Saskatchewan FOIP FOLIO*.** [page 14]

The OIPC sends out 209 hard copies of the *FOIP FOLIO*. Copies are sent by email to the balance of subscribers. Archived copies of the newsletter are available on the website. The OIPC is advised that many subscribers routinely reproduce the newsletter and then distribute it widely within their respective organizations. As a result, the circulation of the newsletter is greater than the number of subscribers. The OIPC will continue to encourage public sector workers to subscribe.

### ii. **Core Business 2: Reviews of breach of privacy complaints**

**Goal 4 – Reduce time to complete investigations**

**Complete all pending cases and resolve the current backlog.** [page 11]

See the discussion of Goal 1 above.

**80% of cases to report stage within 5 months commencing January 1, 2006.**

[page 11]

See the discussion of Goal 1 above.

## IX. BUSINESS PLAN, BUDGET, AND STATISTICS (CONT'D)

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### **Goal 5 – Publish a body of investigation reports**

#### **Publish a report on at least one office-initiated investigation. [page 17]**

The Investigation Report 2005-002 (Prevention Program for Cervical Cancer) was published on April 27, 2005. The OIPC reported to the approximately 100 women who complained about the program and the compulsory registration feature. The Minister of Health accepted our key recommendation that women should have the right to a full opt-out of the PPCC. The OIPC is working with the Saskatchewan Cancer Agency to implement recommendations from the Investigation Report.

### **Goal 6 – Increase awareness on the part of government institutions, local authorities and health information trustees of statutory requirements.**

See the discussion of Goal 3 above. The same performance measures apply here.

### **iii. Core Business 3: Trustee/Government Institution/Local Authority Compliance**

#### **Goal 7 – Improve overall compliance by government institutions, local authorities and health information trustees with respect to FOIP, LA FOIP and HIPA**

#### **Publicly identify public bodies that unduly delay in responding to applicants or to the OIPC. [page 19]**

This has not yet been done.

#### **Publish a protocol for site visits by the OIPC. [page 19]**

A draft protocol was prepared and circulated to regional health authorities and then discussed at a meeting with representatives of all regional health authorities and Saskatchewan Health on June 23, 2005. The OIPC has piloted our site visit protocol and will revise it to reflect our experiences to date.

#### **Undertake at least two site visits to trustee facilities. [page 19]**

The office traveled to the Keewatin Yatthé, Sun Country, Prairie North, and Heartland health regions, toured health facilities and inspected health records facilities.

## IX. BUSINESS PLAN, BUDGET, AND STATISTICS (CONT'D)

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### **Goal 8 – Publish aids and tools that will assist public bodies in statutory compliance efforts**

**Publish Privacy Impact Assessments (PIAs) and explanatory notes on the website, [www.oipc.sk.ca](http://www.oipc.sk.ca), for health information trustees, for local authorities and for government institutions.** [page 20]

The OIPC published three separate Privacy Impact Assessments for FOIP, LA FOIP and HIPA on [www.oipc.sk.ca](http://www.oipc.sk.ca) and revised the accompanying explanations. This is accessible under the tab “Resources”.

**Publish advisory material to reflect areas of concern and confusion among government institutions, local authorities and trustees.** [page 20]

The office published the following brochure:

*Contractor’s Guide to Access and Privacy in Saskatchewan*

This is available at [www.oipc.sk.ca](http://www.oipc.sk.ca) under the tab “Resources”.

The office also collaborated with Saskatchewan Justice’s Access and Privacy Branch on materials sent to all FOIP Coordinators throughout the provincial government. Finally, in many of the 25 issues of the *Saskatchewan FOIP FOLIO*, there have been articles to clarify the responsibilities of public bodies generally and FOIP Coordinators in particular.

#### **iv. Core Business 4: Clarifying the Access and Privacy Regime in Saskatchewan**

### **Goal 9 – Provide advice to the Legislative Assembly on the consolidation and amendment of the FOIP and LA FOIP Acts**

**To provide a comprehensive list to the Legislative Assembly of the amendments this office believes necessary to achieve the purpose of the FOIP and LA FOIP Acts.** [page 22]

The Annual Report for 2004-2005 included an extensive list of proposed amendments to Saskatchewan access and privacy legislation. [pages 11-16]

**To provide commentary in Annual Report.** [page 22]

The Annual Report for 2004-2005 included *Privacy and Access: A Saskatchewan ‘Roadmap’ for Action*. [pages 11-16] This plan included six key areas for reform:

- Culture of Openness
- Updating Our Law
- One Law Too Many?
- Employees Deserve Privacy Protection Too!
- Public Registries in a New Privacy-Aware World
- Making the Laws Work for Citizens and Government

## IX. BUSINESS PLAN, BUDGET, AND STATISTICS (CONT'D)

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### v. Core Business 5: Public Education

**Goal 10 – Undertake public education initiatives throughout the province with a wide variety of organizations**

#### **Performance measures**

**Make at least 50 presentations to a wide variety of audiences in a number of different Saskatchewan communities.** [page 23]

In 2005-2006, the OIPC made 166 presentations on access and privacy in 28 Saskatchewan communities.

**Produce a series of brochures on access and privacy issues for citizens.** [page 23]

The office produced the following brochure:

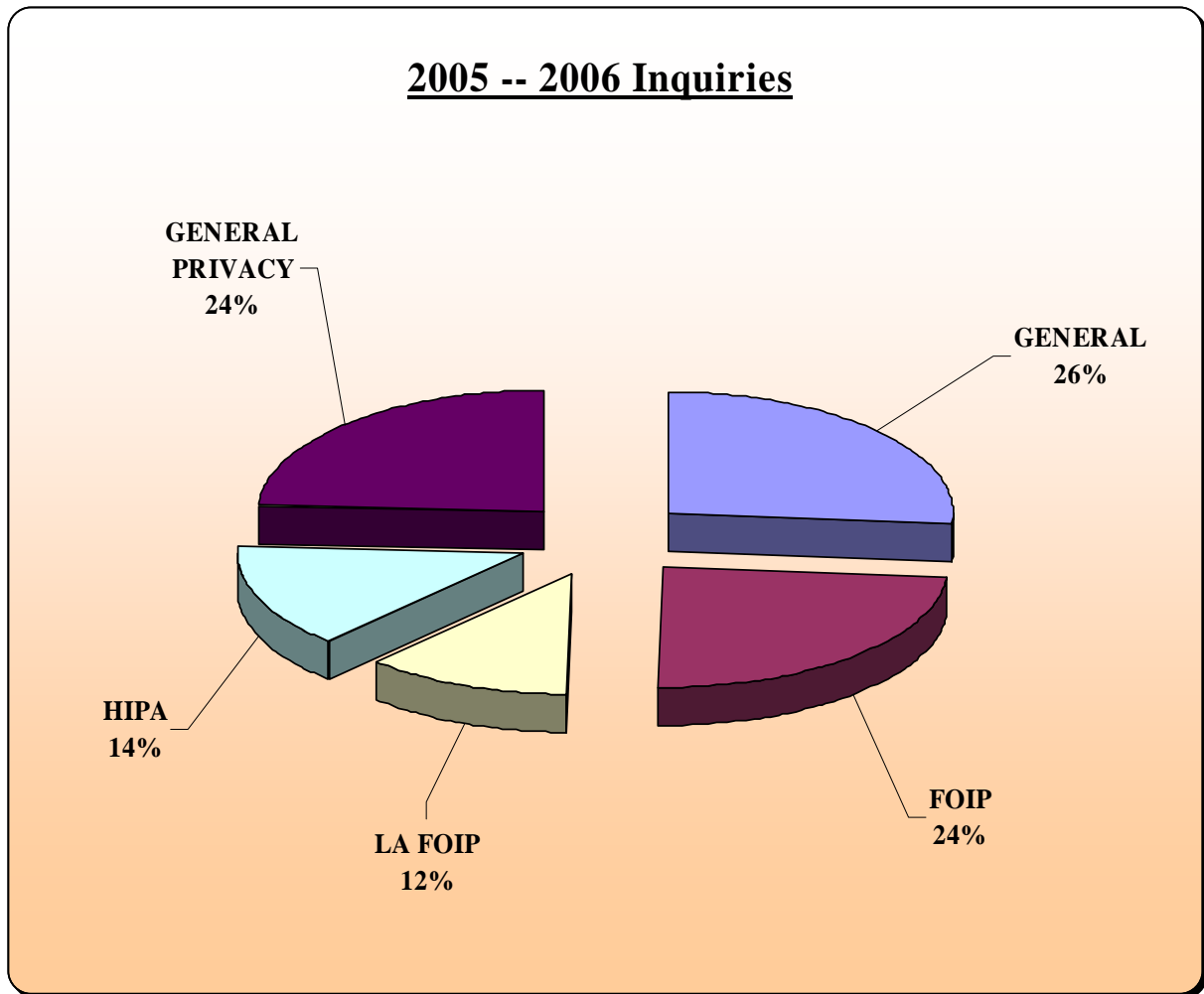
*Your Right to Privacy*

In addition, to ensure better access by citizens to information about rights under FOIP, LA FOIP and HIPA, we revised the *Saskatchewan MLA Constituency Office Guide for Access and Privacy* and distributed this to all 58 constituency offices in Saskatchewan. Both of these documents are accessible at [www.oipc.sk.ca](http://www.oipc.sk.ca) under “Resources”.

## IX. BUSINESS PLAN, BUDGET, AND STATISTICS (CONT'D)

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### C. STATISTICS



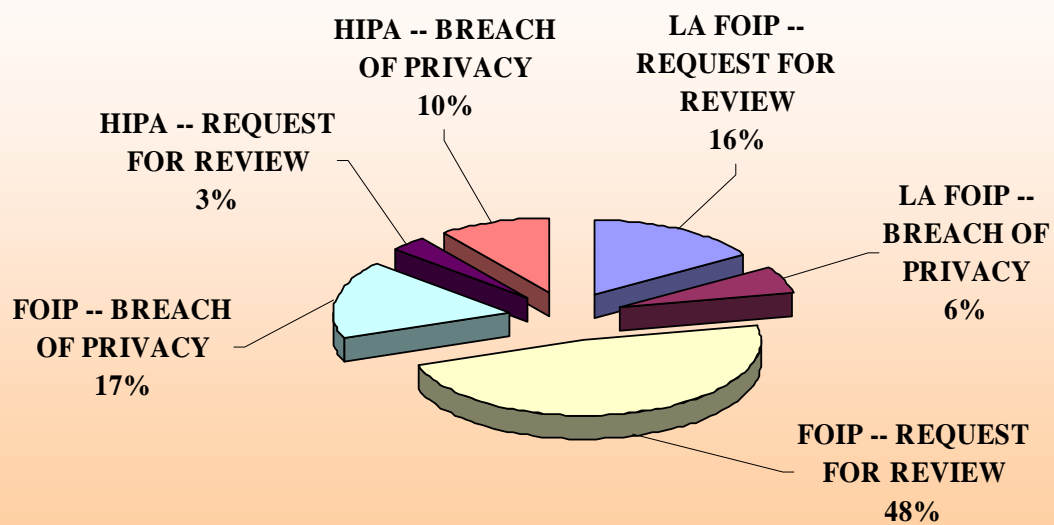
An “inquiry” captures requests for information on the process or the substantive legislation.



## IX. BUSINESS PLAN, BUDGET, AND STATISTICS (CONT'D)

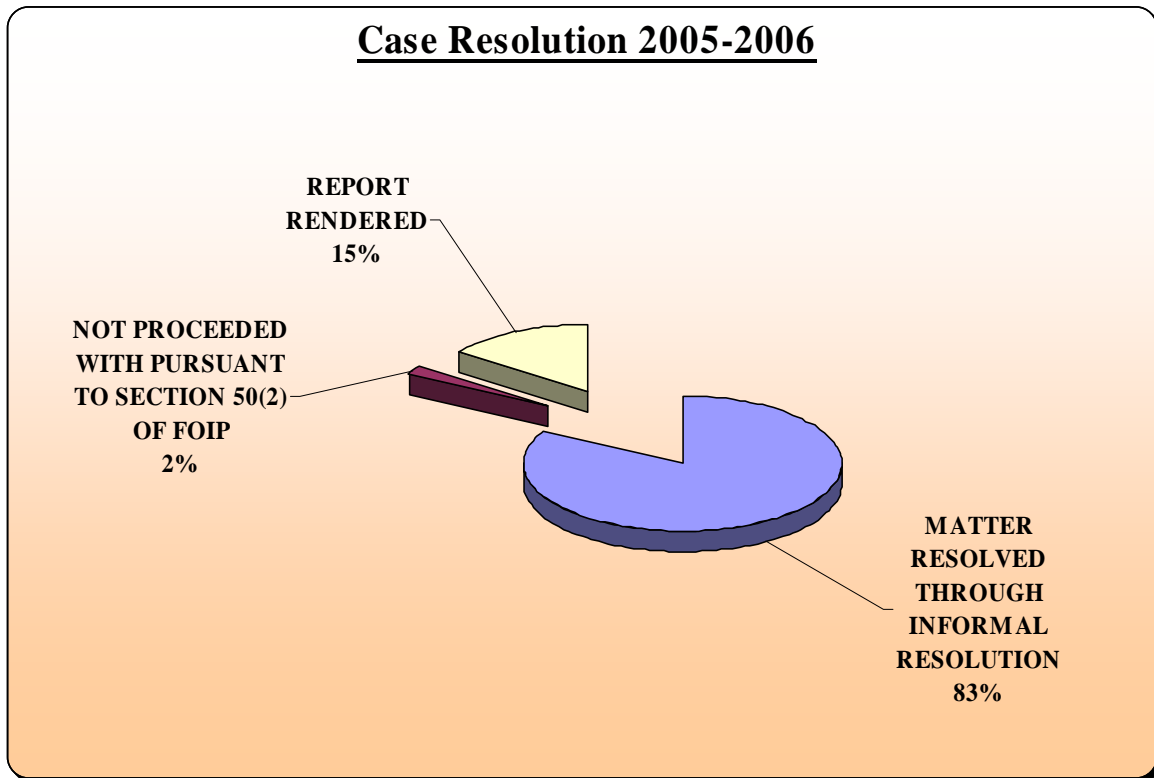
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### Cases Opened 2005 -- 2006



## IX. BUSINESS PLAN, BUDGET, AND STATISTICS (CONT'D)

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## **X. FINANCIAL STATEMENTS AS AT MARCH 31, 2006**

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	<b>PAGE</b>
<b>AUDITOR’S REPORT .....</b>	<b>45</b>
<b>STATEMENT OF FINANCIAL POSITION .....</b>	<b>46</b>
<b>STATEMENT OF OPERATIONS.....</b>	<b>47</b>
<b>STATEMENT OF CHANGE IN NET DEBT.....</b>	<b>48</b>
<b>STATEMENT OF CASH FLOWS .....</b>	<b>49</b>
<b>NOTES TO THE FINANCIAL STATEMENTS .....</b>	<b>50</b>

**OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER**

**FINANCIAL STATEMENTS**

**For the Year Ended March 31, 2006**



## Provincial Auditor Saskatchewan

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SASKATCHEWAN

### AUDITOR'S REPORT

To the Members of the Legislative Assembly of Saskatchewan

I have audited the statement of financial position of the Office of the Information and Privacy Commissioner as at March 31, 2006 and the statements of operations, change in net debt and cash flows for the year then ended. The Office is responsible for preparing these financial statements. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with Canadian generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion, these financial statements present fairly, in all material respects, the financial position of the Office of the Information and Privacy Commissioner at March 31, 2006 and the results of its operations, and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.

Regina, Saskatchewan  
September 18, 2006

Fred Wendel, CMA, CA  
Provincial Auditor

**OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER**  
**STATEMENT OF FINANCIAL POSITION**  
**As at March 31**

	<u>2006</u>	<u>2005</u>
<b>Financial assets</b>		
Due from the General Revenue Fund	\$ 9,606	\$ 7,964
<b>Liabilities</b>		
Accounts payable	9,447	7,801
Accrued vacation pay	<u>159</u>	<u>163</u>
	<u>9,606</u>	<u>7,964</u>
<b>Net debt</b>	<u>---</u>	<u>---</u>
<b>Non-financial assets</b>		
Tangible capital assets (Note 3)	91,706	53,426
Prepaid expense	<u>5,311</u>	<u>4,440</u>
	<u>97,017</u>	<u>57,866</u>
<b>Accumulated surplus</b>	<u>\$ 97,017</u>	<u>\$ 57,866</u>

(See accompanying notes to the financial statements)

## Statement 2

**OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER  
STATEMENT OF OPERATIONS  
For the Year Ended March 31**

	<u>2006</u>		<u>2005</u>
	<u>Budget</u>	<u>Actual</u>	<u>Actual</u>
	<u>(Note 4)</u>		
<b>Revenue:</b>			
General Revenue Fund - Appropriation	\$ 488,000	\$ 488,863	\$ 377,467
Total revenue	<u>488,000</u>	<u>488,863</u>	<u>377,467</u>
<b>Expense:</b>			
Salaries and other employment expenses	277,000	280,540	233,720
Administrative and operating expenses	56,400	31,859	33,140
Rental of space and equipment	73,000	58,461	27,660
Travel	28,000	28,126	30,103
Advertising and promotion	19,300	17,326	21,073
Amortization	---	30,514	16,634
Contractual and legal services	34,300	2,886	2,286
Other Expenses	---	---	770
Total expense	<u>488,000</u>	<u>449,712</u>	<u>365,386</u>
<b>Annual surplus</b>	<u>\$ ---</u>	39,151	12,081
Accumulated surplus, beginning of year		<u>57,866</u>	<u>45,785</u>
<b>Accumulated surplus, end of year</b>		<u>\$ 97,017</u>	<u>\$ 57,866</u>

(See accompanying notes to the financial statements)



**OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER**  
**STATEMENT OF CHANGE IN NET DEBT**  
**For the year ended March 31**

	<u>2006</u>	<u>2005</u>
<b>Annual surplus</b>	<b>\$ 39,151</b>	<b>\$ 12,081</b>
Acquisition of capital assets	(68,795)	(29,502)
Amortization of capital assets	<u>30,514</u>	<u>16,634</u>
	(38,281)	(12,868)
(Increase) use of prepaid expense	<u>(870)</u>	<u>787</u>
	<u>(39,151)</u>	<u>(12,081)</u>
<b>(Increase) decrease in net debt</b>	---	---
Net debt, beginning of year	<u>---</u>	<u>---</u>
<b>Net debt, end of year</b>	<u><u>\$ ---</u></u>	<u><u>\$ ---</u></u>

(See accompanying notes to the financial statements)

## Statement 4

**OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER  
STATEMENT OF CASH FLOWS  
For the Year Ended March 31**

	<u>2006</u>	<u>2005</u>
<b>Operating transactions</b>		
Cash received from:		
General Revenue Fund - Appropriation	\$ 487,221	\$ 405,236
	<u>487,221</u>	<u>405,236</u>
Cash paid for:		
Salaries	280,536	239,275
Supplies and other	<u>137,890</u>	<u>136,459</u>
	<u>418,426</u>	<u>375,734</u>
Cash provided by operating transactions	<u>68,795</u>	<u>29,502</u>
<b>Capital transactions</b>		
Cash used to acquire tangible capital assets	<u>(68,795)</u>	<u>(29,502)</u>
Cash applied to capital transactions	<u>(68,795)</u>	<u>(29,502)</u>
<b>Increase (decrease) in cash and cash equivalents</b>	---	---
Cash and cash equivalents, beginning of year	<u>---</u>	<u>---</u>
<b>Cash and cash equivalents, end of year</b>	<u><u>\$ ---</u></u>	<u><u>\$ ---</u></u>

(See accompanying notes to the financial statements)

**OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER  
NOTES TO THE FINANCIAL STATEMENTS  
MARCH 31, 2006**

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**1. Authority and description of operations**

*The Freedom of Information and Protection of Privacy Act (Act)* states that the Lieutenant Governor in Council, on the recommendation of the Assembly, shall appoint an Information and Privacy Commissioner. The Commissioner is an officer of the Legislative Assembly and is appointed by resolution. The mandate of the Office of the Information and Privacy Commissioner (Office) is to review Government decisions under the Act to ensure the protection of the public's right to access records held or controlled by the Government and to ensure that personal information is only collected and disclosed according to the manner and purposes set out in the Act.

**2. Summary of accounting policies**

The Office uses Canadian generally accepted accounting principles to prepare its financial statements. The following accounting policies are considered to be significant:

**a) Basis of accounting**

The financial statements are prepared using the expense basis of accounting.

**b) Revenue**

The Office receives an appropriation from the Legislative Assembly to carry out its work. General Revenue Fund appropriations are included in revenue when amounts are spent or committed. The Office's expenditures are limited to the amount appropriated to it by the Legislative Assembly.

**c) Tangible capital assets**

Tangible capital assets are reported at cost less accumulated amortization. Tangible capital assets are amortized on the straight-line basis over a life of three to five years.

**d) Accrued vacation pay**

The value of vacation entitlements earned to the end of the year but not taken are recorded as a liability.

### 3. Tangible capital assets

	2006 (000's)			2005 (000's)	
	Hardware & Software	Furniture	Leasehold Improvement	Total	Total
Opening costs of tangible capital assets	\$ 39,496	\$ 40,703	\$ ---	\$ 80,199	\$ 50,698
Additions during the year	9,042	37,918	21,835	68,795	29,502
Disposals during the year	---	---	---	---	---
Closing costs of tangible capital assets	48,538	78,621	21,835	148,994	80,200
Opening accumulated amortization	12,751	14,023	---	26,774	10,140
Annual amortization	10,423	15,724	4,367	30,514	16,634
Disposals	---	---	---	---	---
Closing accumulated amortization	23,174	29,747	4,367	57,288	26,774
Net book value of tangible capital assets	\$ 25,364	\$ 48,874	\$ 17,468	\$ 91,706	\$ 53,426

### 4. Budget

These amounts represent funds appropriated by the Board of Internal Economy to enable the Office to carry out its duties under *The Freedom of Information and Protection of Privacy Act*.

### 5. Costs borne by other agencies

The Office has not been charged with certain administrative costs. These costs are borne by the Legislative Assembly. No provision for these costs is reflected in these financial statements.

### 6. Lapsing of appropriation

The Office follows *The Financial Administration Act, 1993* with regards to its spending. If the Office spends less than its appropriation by March 31, it must return the difference to the General Revenue Fund.

### 7. Financial Instruments

The Office's financial instruments include due from the General Revenue Fund and accounts payable. The carrying amount of these instruments approximates fair value due to their immediate or short-term maturity. These instruments have no significant interest rate and credit risk.

## XI. APPENDIX A - DEFINITIONS

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The following is a list of definitions of terms or abbreviations used in the course of this document or referenced in documents accessible from the website: [www.oipc.sk.ca](http://www.oipc.sk.ca).

Additional definitions are found in the three provincial statutes: *The Freedom of Information and Protection of Privacy Act* (FOIP), *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) and *The Health Information Protection Act* (HIPA).

**Applicant** refers to an individual who has made an access request to a government institution, local authority, or health information trustee.

**Commissioner** refers to the Saskatchewan Information and Privacy Commissioner.

**Complainant** refers to an aggrieved individual who makes a formal request to the Office of the Information and Privacy Commissioner to investigate an alleged “unreasonable invasion of privacy” by that public body pursuant to sections 33 of FOIP, 32 of LA FOIP, or 52 of HIPA.

**Complaint** is an expressed concern that there has been a breach of privacy by a government institution, local authority or trustee.

**Control** is a term used to indicate that the records in question are not in the physical possession of the public body or trustee, yet still within the influence of that body via another mechanism (i.e., contracted service).

**Custody** is the physical possession of a record by a public body or trustee.

**Disclosure** is sharing of personal information with a separate entity, not a division or branch of the public body or trustee in possession or control of that record/information.

**Exclusions** are prescribed records and organizations that are not subject to FOIP, LA FOIP or HIPA.

**Exemptions** are sections of the relevant statutes referenced to justify the denial of access to records by the individual either for mandatory or discretionary reasons.

**FOIP** refers to *The Freedom of Information and Protection of Privacy Act* that came into force in 1992.

**FOIP Coordinator** refers to an individual designated for managing access and privacy issues in any public body with this title.

## **XI. APPENDIX A – DEFINITIONS (CONT'D)**

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**FOIP Regime** means the statute, regulations, practices and procedures followed in the operation of the statutes.

**Government Institution** refers to those public bodies prescribed in the FOIP Act and Regulations and includes more than 70 provincial government departments, agencies, and Crown corporations.

**Head** of a public body is the individual accountable by law for making the final decision on access requests, but may delegate these powers to someone else in the organization. This is typically the Minister of a department and the CEO of a local authority or Crown corporation.

**HIPA** refers to *The Health Information Protection Act* that came into force in 2003.

**LA FOIP** refers to *The Local Authority Freedom of Information and Protection of Privacy Act* that came into force in 1993.

**Local Authorities** means local government including library boards, municipalities, regional colleges, schools, universities, and Regional Health Authorities as prescribed by LA FOIP and LA FOIP Regulations.

**Mediation** is the process of facilitating discussion between the parties involved in an informal investigation by the OIPC with the goal of negotiating a mutually acceptable resolution to the dispute without the issuance of a formal report.

**OIPC** is an abbreviation for the Office of the Information and Privacy Commissioner of Saskatchewan.

**Personal information** is "recorded information about an identifiable individual" and includes details such as your name, address, phone number, SIN, race, driver's license number, health card number, credit ratings, and opinions of another person about you.

**Personal health information** includes information about your physical or mental health and/or information gathered in the course of providing health services for you.

**PIA** is an abbreviation for a Privacy Impact Assessment. A PIA is a diagnostic tool designed to help organizations assess their compliance with the privacy requirements of Saskatchewan legislation.

**Public Bodies** are those in the public sector including government institutions and local authorities.

## **XI. APPENDIX A – DEFINITIONS (CONT'D)**

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**Record** is information in any form or format and includes such items as documents, maps, books, post-it notes, handwritten notes, phone messages, photographs, and tape recordings.

**Report** is a document prepared by the Saskatchewan Information and Privacy Commissioner that issues recommendations to a public body for changes and/or actions in response to the findings of a formal review.

**Research** is the systematic investigation designed to develop or establish principles, facts or generalizable knowledge.

**Third Party** is a person other than the applicant or the public body.

**Trustees** as defined within section 2(t) of HIPA are individuals and corporations who are part of Saskatchewan's health system in custody or control of personal health information.

**Use** indicates the internal utilization of personal information by a public body and includes sharing of the personal information in such a way that it remains under the control of that public body.



## **XII. APPENDIX B – SAMPLE LIST OF PRESENTATIONS**

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### **SAMPLE OF PRESENTATIONS MADE FROM APRIL 1<sup>ST</sup>, 2005 TO MARCH 31<sup>ST</sup>, 2006**

- AIDS Programs South Saskatchewan
- Canadian Association of Rehabilitation Professionals
- Canadian Bar Association Alberta
- Canadian Bar Association Saskatchewan, Administrative and Labour Law South
- Canadian Bar Association Saskatchewan, Business Law South
- Canadian Corporate Counsel Association
- College of Certified Genealogists of Saskatchewan (CCGS)
- Crown Investment Corporation
- Department of Justice, Civil Law Division
- Division of Medical Genetics, Royal University Hospital and University of Saskatchewan
- Dr. Isman Elementary School - Wolsely, Saskatchewan
- Electronic Health and Medical Records Conference – Toronto, Ontario
- Employee Family Assistance Plan (EFAP), Program Administrators
- Farm Stress Unit, Saskatchewan
- Forum on Privacy – University of Regina
- Heartland Regional Health Authority
- Highlights in Medicine Conference - Saskatoon, Saskatchewan
- Human Resources Professionals
- Institute of Public Administration of Canada (IPAC)
- Journalists' Institute on Parliamentary Democracy - University of Regina
- Keewatin Yatthé Regional Health Authority
- Kelsey Trail Regional Health Authority
- Kids First
- Legislative Interns
- Parkside Extendicare
- Physical Therapists Annual General Meeting
- Prairie North Regional Health Authority
- Prairie South School Division
- Prairie West Regional College
- Provincial Government FOIP Coordinators/Privacy Officers
- Qu'Appelle Valley School Division
- Ranch Ehrlo
- Regina Alternative Measures Program
- Regina Eastview Rotary

## **XII. APPENDIX B – SAMPLE LIST OF PRESENTATIONS (CONT'D)**

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- Regina Public School Board, Guidance Counsellors
- Regina Public School Board, Support and Secretarial Staff/Frontline Workers
- Saskatchewan Association for Computers in Education (SACE)
- Saskatchewan Assessment Management Agency
- Saskatchewan Chamber of Commerce, Human Resources Committee
- Saskatchewan Community Resources and Employment
- Saskatchewan Government Relations
- Saskatchewan Learning
- Saskatchewan Library Association
- Saskatchewan Ophthalmic Dispensers Association
- Saskatchewan Pharmacists
- Saskatchewan School Library Conference
- SaskTel, Electronic Technology Staff
- SIAST, Health Information Management Class
- Sun Country Regional Health Authority
- Technology Coordinators in Education Provincial Symposium
- University of Regina, Educational Psychology and Special/Inclusive Education
- University of Regina, Faculty of Administration
- University of Saskatchewan, College of Law
- University of Saskatchewan, College of Medicine Alumni Association
- Western Christian College and High School
- Yorkton Catholic School Division

## **XIII. APPENDIX C – LIST OF BODIES SUBJECT TO OIPC OVERSIGHT**

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### **GOVERNMENT INSTITUTIONS (70+)**

#### **LOCAL AUTHORITIES (includes the following:)**

- SIAST (4 campuses)
- Universities (2)
- Libraries (589)
- Regional Colleges (9)
- Regional Health Authorities (13)
  - School Divisions (82)

## XIII. APPENDIX C – LIST OF BODIES SUBJECT TO OIPC OVERSIGHT (CONT'D)

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- Municipalities:
  - 13 cities and 478 other **urban municipalities** including:
    - 145 towns
    - 290 villages
    - 43 resort villages
  - Southern Saskatchewan has 296 **rural municipalities**
    - The rural municipalities include 166 organized hamlets.
  - In the Northern Saskatchewan Administration District there are:
    - 2 towns
    - 13 northern villages
    - 9 northern hamlets
    - 11 northern settlements

### SASKATCHEWAN HEALTH TRUSTEES INCLUDE

(Others which may be added through regulations):

- Government Institutions
  - 17 Departments
  - 76 Crown Corporations and Agencies
- Regional Health Authorities and Affiliates
  - 13 health authorities
- Special Care Homes
- Personal Care Homes
- Mental Health Facilities
- Laboratories
- Pharmacies
- Community Clinics
- Saskatchewan Cancer Agency
- Ambulance Operators

### SASKATCHEWAN HEALTH TRUSTEES INCLUDE

(Others which may be added through regulations) (CONT'D):

- Regulated Health Professions
  - 1500 physicians and surgeons
  - 9000 registered nurses
- Health Profession Regulatory Bodies
  - Chiropractors Association of Saskatchewan
  - College of Dental Surgeons of Saskatchewan
  - College of Physicians and Surgeons of Saskatchewan
  - Dental Technicians Association of Saskatchewan
  - Denturist Society of Saskatchewan

### **XIII. APPENDIX C – LIST OF BODIES SUBJECT TO OIPC OVERSIGHT (CONT'D)**

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- Registered Psychiatric Nurses Association of Saskatchewan
- Saskatchewan Association of Chiropractors
- Saskatchewan Association of Licensed Practical Nurses
- Saskatchewan Association of Medical Radiation Technologists
- Saskatchewan Association of Optometrists
- Saskatchewan Association of Speech/Language Pathologists and Audiologists
- Saskatchewan College of Physical Therapists
- Saskatchewan College of Psychologists
- Saskatchewan Dental Assistants Association
- Saskatchewan Dental Hygienists Association
- Saskatchewan Dental Therapists Association
- Saskatchewan Dietitians Association
- Saskatchewan Ophthalmic Dispensers Association
- Saskatchewan College of Pharmacists
- Saskatchewan Registered Nurses' Association
- Saskatchewan Society for Medical Laboratory Technologists
- Saskatchewan Society of Occupational Therapists
- Saskatchewan Association of Social Workers