



**SASKATCHEWAN INFORMATION AND
PRIVACY COMMISSIONER**

2007 – 2008 ANNUAL REPORT

“There is no magic solution to the shortcomings of the system. A healthy access to information system needs:

- ***All its parts functioning well in order to deliver the outcomes intended by parliament***
 - ***The right systems to process requests***
 - ***Skilled staff***
 - ***Supportive managers and Ministers***
 - ***Adequate resources***
 - ***Good information management***
 - ***Good understanding of the principles and the rules by all, including third parties***
 - ***And effective approaches to oversight.”***

2002 Delagrave Report

.....

Belobaba J. of the Ontario Superior Court of Justice found the Ontario Amendment to the *Vital Statistics Act* in regard to access to adoption records constituted:

“an invasion of the dignity and self-worth of each of the individual applicants, and their right to privacy as an essential aspect of their right to liberty in a free and democratic society has been violated.”

***Cheskes v. Ontario (Attorney General), 2007
CanLII38387 (ON S.C.), September 19, 2007***

**Saskatchewan
Information and Privacy
Commissioner**



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June 30, 2008

Hon. D. Toth
Speaker of the Legislative Assembly
129 Legislative Building
Regina, Saskatchewan
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Dear Mr. Speaker:

I have the honour to present to the Legislative Assembly my 2007-2008 Annual Report in accordance with the provisions of 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, appearing to read "R. Gary Dickson".

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

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INTRODUCTION

The role of the Information and Privacy Commissioner has sometimes been described as that of the umpire in the information age.

That role has also been described as follows:

Our recent comparative analysis of privacy protection policy has concluded that, regardless of legislative powers, every data-protection commissioner in Canada and elsewhere is expected at some point to perform seven interrelated roles: ombudsman, auditor, consultant, educator, policy adviser, negotiator, and enforcer.¹

In 1992, *The Freedom of Information and Protection of Privacy Act*² (FOIP) was proclaimed. This enshrined two principles:

1. public information must be accessible to the public; and
2. “personal information”³ must be protected by public bodies.

FOIP applies to all “government institutions”⁴. This captures all Ministries of the Saskatchewan Government plus Crown corporations, Boards, Commissions and Agencies.

In 1993, *The Local Authority Freedom of Information and Protection of Privacy Act*⁵ (LA FOIP) was proclaimed. This law is very similar to FOIP, but applies to “local authorities”⁶ such as schools, universities, regional health authorities, municipalities, and library boards.

In 2003, *The Health Information Protection Act*⁷ (HIPA) was proclaimed. This applies to organizations and individuals designated as a health information “trustee”⁸, defines the rules for what is “personal health information”⁹ and how that personal health information can be collected, used and disclosed. It also provides a right of access to personal health information and a right to seek correction of errors.

The Supreme Court of Canada has declared that laws like FOIP, LA FOIP and HIPA are special kinds of laws that define fundamental democratic rights of citizens. They are “quasi-constitutional” laws that generally are paramount to other laws.¹⁰

MANDATE OF THE COMMISSIONER

There are four major elements in the Saskatchewan Information and Privacy Commissioner's (Commissioner) 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.
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 citizens' access or privacy rights.
4. The Commissioner provides education with respect to information rights including both access to information and protection of privacy.

The Mission statement of the OIPC is that:

The people of Saskatchewan shall enjoy the full measure of information rights that have been affirmed by the Legislative Assembly of Saskatchewan (Assembly).

COMMISSIONER'S MESSAGE

A Quick Overview

This is my fifth Annual Report as Saskatchewan's first full-time Commissioner.

Some good progress has been achieved in terms of access to information and privacy compliance in a number of areas. In other areas, not enough has been achieved.

My intention is that this Annual Report provide both some perspective on the last four and one-half years and an outline of the challenges ahead for this office.

The people of Saskatchewan deserve an access and privacy regime that is both robust and effective.

My commentary in this Annual Report needs to be qualified by the recognition that achieving such a regime captures much more than just the activities of our oversight office. It entails other features such as:

- Effective and up-to-date legislation;
- Strong network of FOIP Coordinators in all government institutions and local authorities;
- Comprehensive training program for all new public sector employees and contractors;



- System of in-service training for all existing public sector employees; and
- Detailed and practical manual that explains statutory requirements in plain language with checklists, specimen forms, and 'decision trees'.

From the perspective of the individual in Saskatchewan, a robust access and privacy regime would feature:

- Relatively simple process to access one's own personal information and to correct errors in that information;
- Full and timely response to any access requests;
- Relatively simple process to make a complaint that privacy requirements for a public body have not been met;
- A senior, properly trained and qualified FOIP Coordinator for the relevant public body who can assist the citizen to exercise the rights created by our three access and privacy laws; and
- Reviews by our office to be completed in majority of cases within five months.

Two central themes have crystallized since I started in November 2003.

1. One is the largely unfinished state of our access and privacy regime despite the fact that FOIP is 16 years old.
2. The other is the burgeoning demand by Saskatchewan citizens and organizations for assistance from us in coping with what is seen as a fragmented, confusing and under-resourced trio of laws.

This includes demand from public sector employees who want to do the right thing and who do wish to ensure their organizations meet access and privacy requirements.

Our last four and one-half years have seen significant increases in almost all areas of service. Formal reviews of access decisions and privacy complaints received by our office for the 2007-2008 fiscal year are 40% higher than the previous fiscal year. Requests to our office for summary advice are up 29%. Visitors to our website are up 20% over the previous year.

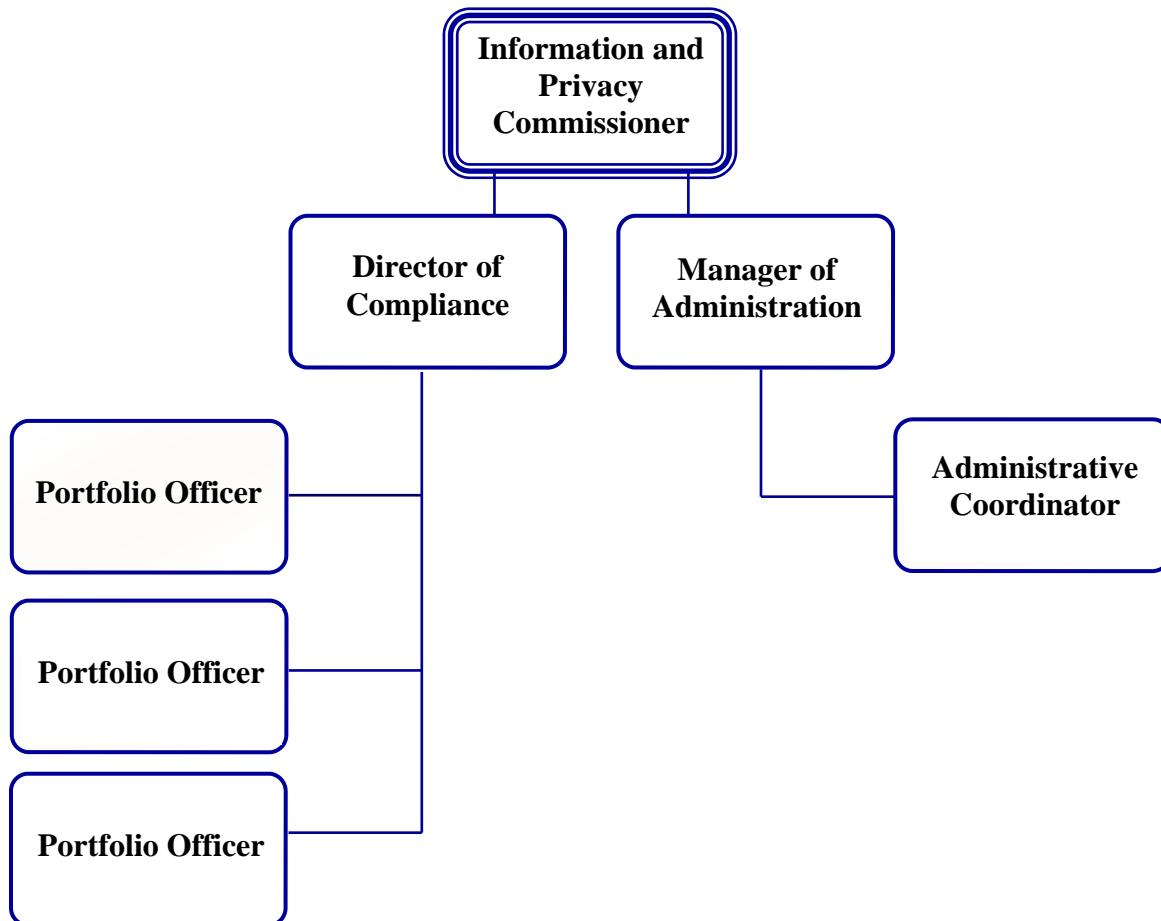
This increase in demand for assistance may be at least partly attributable to a lack of tools and resources available to those who need them.

That demand for service also reflects new developments that have dramatically sharpened the focus on personal health information, technical threats to privacy and the demand for transparent and accountable government at all levels.

The OIPC is supported by the Legislative Assembly Office that provides an array of services. We appreciate and rely on those resources.

I am very proud of what our small office has accomplished in the last four and one-half years. The credit goes to the wonderful team of men and women in this office led by Diane Aldridge, Director of Compliance and Pamela Scott, Manager of Administration.

Organization Chart



THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

Legislative Review

In Saskatchewan, successive Annual Reports of the current and past Commissioners have identified the need for a legislative overhaul and updating¹¹

In our *2004-2005 Annual Report*, I outlined a plan for renewal – *Privacy and Access - A Saskatchewan Roadmap for Action (Saskatchewan Roadmap)*.

This was an attempt to enhance or strengthen the various elements enumerated above that make up Saskatchewan's access to information and privacy regime. The changes proposed by this office included:

- Ways that Saskatchewan can build a robust culture of openness;
- Updating and strengthening legislation that is now 16 years old;
- Integrating FOIP and LA FOIP into a single law;
- Extending privacy protection to employees in the private sector;
- Addressing the issue of privacy and public registries; and

- Making our access and privacy laws work better for the Saskatchewan public and for public bodies and health information trustees.

The major changes I recommended at that time have not been implemented. Those outstanding recommendations included a comprehensive review of this province's access and privacy legislation and for the Premier to underscore the importance of compliance with these three laws.

Since this is my first Annual Report after the November 2007 general election, I reiterate those recommendations for the benefit of the new government.

In addition to the items identified for legislative change in the *Saskatchewan Roadmap*, I would add there is need to describe the investigative powers in case of a breach of privacy. FOIP authorizes me to "*from time to time, carry out investigations with respect to personal information in the possession or under the control of government institutions to ensure compliance with this Part*,"¹² but there is no description of the power to obtain documents and information, to take evidence under oath or other powers that are available to me when undertaking the review of an access decision under Part VII of FOIP.

We have encountered cases where public bodies have challenged our power to review documents in their control for a breach of privacy investigation.

In terms of access to information, when FOIP came into force in 1992, Saskatchewan was the first province in western Canada to enact access and privacy legislation. FOIP was modeled on the 25 year old federal *Access to Information Act*¹³ (ATIA) and the federal *Privacy Act*.¹⁴

When those federal laws were enacted, it was a time of innocence in terms of the challenges to information privacy. There was no internet, no pervasive video surveillance, no global positioning systems, no radio frequency identification devices and no powerful search engines. Identity theft was largely unknown; and electronic health records only existed in people's imaginations. Information privacy is now an important issue for Canadians as confirmed by countless opinion surveys¹⁵ and the experience of the OIPC over the last four and one-half years.

In terms of access to information, the model Saskatchewan adopted for FOIP and LA FOIP was very new and largely untested. There is now a wealth of experience across Canada since every province and territory has such a law.

As a result of that experience, all other provinces in western Canada and most Canadian jurisdictions have extensively revised and modernized their access and privacy laws.

Saskatchewan, almost alone among Canadian jurisdictions, has not updated its legislation to incorporate new features that would make the legislation work better for both public bodies and citizens alike.

There has been no review of FOIP in the past 16 years. Neither has there been a review of LA FOIP since it went into force in 1993, nor HIPA since it went into force in 2003.

By contrast, most other access and privacy laws in Canada contain a statutory requirement for a review by a legislative committee after a fixed period of three or five years.

Appendix I summarizes the extensive legislative activity in other Canadian jurisdictions.

Advice and Commentary

Our office continues to be widely consulted by government institutions and local authorities in connection with the planning of new legislative or program initiatives. These consultations have been a priority for this office.

It means that the specialized resources concentrated in this office can be made available to many public bodies that do not currently have that kind of capacity. To ensure our independence, we may only offer general, non-binding advice with the caveat that at some point we may receive a request to review an access decision or a breach of privacy complaint. At that time, we must proceed to deal with that business on the basis of full submissions from both the public body or trustee and the individual guided only by the evidence and submissions and the applicable law.

VITAL STATISTICS

We provided input with respect to Bill 61, *The Vital Statistics Act, 2007*. I wrote to the Assembly identifying positive features in the Bill but also identified areas of remaining concern. My letter to the Speaker is available at www.oipc.sk.ca under the *What's New* tab.

We congratulate the Ministry of Health's Health Registration and Vital Statistics Branch for incorporating a number of important privacy/confidentiality features in the Bill.

AUTOMOBILE INJURY APPEAL COMMISSION

The Automobile Injury Appeal Commission has adopted a new policy in relation to publication of its decisions on the internet. Effective June 1, 2008, decisions will be de-identified prior to posting on the Commission and CANLII websites. This new policy is consistent with recommendations made in our Investigation Report H-2005-001 in 2005.

VEHICLE CLAIMS HISTORY

Earlier this year, *The Regina Sun* reported that "SGI [Saskatchewan Government Insurance] has launched a new online service for used car buyers."¹⁶ The article stated that "[c]ustomers can now type in the VIN (Vehicle Identification Number), which can be found on both the vehicle and the registration certificate, in order to find out if the vehicle has had any damage claims in Saskatchewan since Jan. 1, 1998." SGI's website offers further details of this new service in the following news release: "SGI has introduced a free online Saskatchewan Damage Claims History Search, which gives customers the ability to check a vehicle's history of damage claims in the province since Jan. 1, 1998, as well as its most recent Saskatchewan registration expiry date and if it has been given a status such as rebuilt, stolen, non-repairable or a total loss."¹⁷

In our 2005-2006 Annual Report, we provided the following update with respect to SGI's response to the recommendations made in my Report F-2005-007¹⁸ issued 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.¹⁹

Based on my findings in the above referenced Report, we view this new approach by SGI to be a positive one.

WORKERS' COMPENSATION BOARD

In the fall of 2006, this office made a submission to the Workers' Compensation Act Committee of Review (Committee) dealing with *The Workers' Compensation Act, 1979*²⁰ (WCA) and the operations of the Saskatchewan Workers' Compensation Board (WCB). In that submission we contended that the operations of the WCB should be fully subject to FOIP and that claimants should have the same right of access to their personal information that they enjoy when dealing with any other government institution. In its *Saskatchewan Workers' Compensation Act Committee of Review 2006 Report*²¹ published in 2007, the Committee agreed.

The Committee has now recommended that the WCB should be subject to all provisions of FOIP and HIPA. The recommendations of the Committee relevant to FOIP and HIPA can be found in Chapter 9 at page 228. In considering the application of FOIP, "[t]he Committee has concluded there is no overriding purpose or reason that the Board should be exempt from these parts."

The Committee also recommended the repeal of the exemption that the WCA has from Parts II, IV and V of HIPA.

The Committee went on to say that: *“Once these recommendations are enacted, the Board will have to review and adopt new processes and procedures for the collection, use and disclosure of personal information that will respond to the submissions the Committee received.”*²²

The Committee further commented that:

The Committee can find no compelling public policy purpose or basis for the Board to continue to be exempt from, or have a special position with respect to, the legislation and administration protecting information or personal health information that applies generally in Saskatchewan.

*The Committee recognizes the unique mandate and decision-making role of the Board in the administration of justice, but does not consider the Board’s mandate and role to be so unique or special that the law and remedies that apply to other administrative agencies and public bodies should not apply to the Board.*²³

The OIPC submission is accessible at www.oipc.sk.ca under the *What’s New* tab.

Tools and Publications

Following the 2007 provincial general election, we revised our *Access and Privacy Guide for Saskatchewan Constituency Offices*.²⁴ We distributed this document to all Members of the Assembly to assist them and their constituents to utilize the three laws we oversee and to utilize our office as a resource on access to information and privacy issues.

In the last year, we decided that too many of the requests for review of decisions on access in respect of both government institutions and local authorities were a direct result of a failure of those public bodies to respond to access requests in conformity with section 7 of FOIP or section 7 of LA FOIP.

Common deficiencies in the review files that come to our office were:

- No identification of the specific statutory authority for a decision;
- No explanation of the reason for a decision;
- No explanation of the reason for extension;
- Severance that fails to meet the requirements of section 8;
- Deficient fee estimate; and
- Failure to respond to fee waiver request.

Consistent with our 'no surprises' approach with public bodies, we shared a draft of our new 'Section 7 procedure' with the Access and Privacy Branch in the Ministry of Justice (Access and Privacy Branch) in the spring of 2007 and solicited feedback. We announced that it would go into force September 1, 2007 to ensure that all public bodies could consider what changes they would need to make to ensure compliance.

The focus is on making it clear that if a request for review reveals a failure of a public body to meet its section 7 requirements, there will be an immediate notice to the FOIP Coordinator in the public body. If the deficiency is not remedied within 7 days, the matter is escalated to the Commissioner who then contacts either the Deputy Minister or Chief Executive Officer of the public body.

I am pleased to report that since this new procedure has been in place, there has been no section 7 response that has been required to be elevated to the Deputy Minister. We expect that this can also be attributed, in part, to ongoing training provided by the Access and Privacy Branch.

We have further revised the *Helpful Tips* document that is published on our website under the *Resources* tab. We are encouraged by the advances made by government institutions and local authorities in preparing a "record"²⁵ for purposes of OIPC reviews that clearly identifies the portions of the record withheld and the authority for withholding.

Overall, written submissions from public bodies to address the burden of proof they bear are much improved. The preparatory work done by public bodies considerably reduces the time that applicants need wait for a decision from our office.

There is an obvious need for Frequently Asked Questions (FAQs), accessible via the internet, for each of the various sectors covered by our legislation. Unfortunately, we have not yet had the capacity to develop these tools in conjunction with key Ministries such as Municipal Affairs and Advanced Education, Employment and Labour.

Early in this fiscal year we produced, with assistance from the Regina Public Library, a new brochure, *Privacy and Access for Saskatchewan Libraries*. This is available on our website, www.oipc.sk.ca under the *Resources* tab.

Our March 2008 issue of the *Saskatchewan FOIP FOLIO* (FOIP FOLIO) will be the 48th issue of this electronic newsletter designed for FOIP/HIPA Coordinators and the growing access and privacy community in Saskatchewan.

All past copies of the *FOIP FOLIO* are archived at our website, www.oipc.sk.ca under the *Newsletter* tab. This has proven to be a useful way of sharing with FOIP/HIPA Coordinators throughout the province current information about access to information and privacy developments through a Saskatchewan perspective.

Our website has proven to be a valuable tool in making information about our laws and processes readily available to citizens. In 2007-2008, our website attracted 270,319 hits and 77,131 visits to the site or an average of 210 visitors per day. This was an increase of 19% over hits in the previous year and an increase of 20% in the number of visits in the previous year.

Right to Know

This was the second consecutive year that our office participated with others in organizing the 'Right to Know Week' in Saskatchewan.

There were formal proclamations issued by the cities of Saskatoon and Regina and the Saskatchewan Government.

The week's events were supported by McKercher McKercher & Whitmore LLP, Saskatchewan Law Foundation, Canadian Bar Association, Saskatchewan Institute for Public Policy, City of Regina, McPherson Leslie & Tyerman LLP, the Regina Public Library, the Regina Leader-Post and the Saskatoon Star-Phoenix.

The keynote presentation was delivered in both Regina and Saskatoon by former Information Commissioner of Canada John Reid. There was also a further presentation by Mr. David Fewer, Staff Counsel, Canadian Internet Policy and Public Interest Clinic, University of Ottawa.

The Regina Public Library showed films during the week related to the public's right to know.

There was also a presentation of a \$300 award to a Saskatoon high school student for his essay on "**Why access to information is important in a modern democracy**".

Fraud Awareness Month

In March of 2008, we collaborated with the RCMP in promotion of Fraud Prevention Month and in particular promoted identity theft avoidance and mitigation strategies for the Saskatchewan public. This included presentations and material published on our website, www.oipc.sk.ca, under the *Resources* tab.

Access and Privacy Regime

The Access and Privacy Branch plays an important role in Saskatchewan's access and privacy regime. It provides a relatively new resource for employees in government institutions and local authorities who are looking for information about their statutory obligations.

My office meets regularly with the Executive Director of the Access and Privacy Branch to discuss how we can best collaborate in achieving the objectives of the legislation.

The Access and Privacy Branch, as noted in past Annual Reports, has adapted and promoted an on-line introductory training package for employees of government institutions.

The Access and Privacy Branch now has a much improved website: www.justice.gov.sk.ca/accessandprivacy and easy-to-find information under the heading "Access and Privacy". The website includes a list of contacts by institution.

Our experience is that in some cases, inquiry to those contacts will lead the public to a senior officer who may serve as FOIP Coordinator and who ensures the government institution is fully compliant with FOIP. Other contacts lead to a junior person who is not equipped to answer basic questions about the legislation.

I continue to encourage the government to mandate the role and responsibility of a FOIP Coordinator so that all government institutions are in a position to provide a reasonable level of service including accurate information on FOIP and HIPA.

The Access and Privacy Branch has now produced a number of advisory documents to help government institutions understand how FOIP works and to provide some useful tools to manage access requests and privacy complaints.

An important area that still requires considerable work is in the development of advisory material that will help public bodies navigate the mandatory exemptions and discretionary exemptions prescribed by FOIP and LA FOIP.

This advisory material ideally should be available to the public in both hard copy and electronic format. The material produced to date by the Access and Privacy Branch tends to focus on procedural elements of FOIP. That is certainly important but in our experience most questions tend to focus on how to interpret and apply mandatory and discretionary exemptions, the most challenging part of the legislation.

I encourage the Saskatchewan government to ensure that adequate resources are made available to the Access and Privacy Branch to ensure that this educational material on FOIP and LA FOIP can be developed without further delay.

THE LOCAL AUTHORITY FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

It is very common that citizens encounter difficulty and frustration when they attempt to exercise their information rights in regard to a local authority.

I have described this statute, proclaimed in 1993, as the 'orphaned child' of Saskatchewan's body of legislation.

Unlike FOIP, there is no requirement for any kind of annual report comparable to that required under FOIP. The result is that the Annual Report contemplated by section 62(1) of FOIP can provide a very skewed snapshot of access and privacy compliance in Saskatchewan since it does not capture any local authorities although they substantially outnumber the less than 100 government institutions under FOIP.

There appears to be no government wide tracking of access requests and breach of privacy complaints against local authorities.

In this last year, the Access and Privacy Branch undertook a series of orientation sessions in 6 different Saskatchewan communities. I understand that these sessions were oversubscribed and could not accommodate all who wished to attend. I also understand that there has been an effort to adapt the online training tool developed for FOIP and government institutions for local authorities.

In April of 2007, we produced the Saskatchewan Access and Privacy Conference. The focus was on local authorities and their compliance with LA FOIP. Approximately 132 people attended. We are grateful to the representatives from the City of Regina, the Saskatoon Regional Health Authority (SRHA), the Access and Privacy Branch, Ministry of Health, and the University of Saskatchewan Archives who comprised the Steering Committee for this conference. The presentation material from the various speakers is available at <http://www.verney.ca/sapc2007/>.

There is no requirement that a local authority designate a senior officer as FOIP Coordinator. Nonetheless, such a designation would make for more efficient compliance.

There is no directory that lists names of and contact information for FOIP Coordinators in local authorities.

THE HEALTH INFORMATION PROTECTION ACT

I have been very encouraged by the commitment and hard work undertaken by the team at the Ministry of Health led by the Director of Health Information Policy and Analysis/Chief Privacy and Access Officer, including staff from the Policy and Planning Branch of that Ministry and staff from the Health Information Solutions Centre (HISC) within that Ministry. This team has achieved a good deal in terms of HIPA compliance over the last fiscal year. Our office has met regularly with this team over the year to compare our plans and activities and to identify issues and areas that could benefit from collaborative action. I encourage that Ministry to find ways to support this team and its activities including a strong focus on retention of individuals who have developed practical experience in addressing access and privacy issues. As there has been a high degree of turnover²⁶ in this Ministry over the last four and one-half years there is a need for more stability and continued growth.

It is important to note that after more than four years with HIPA, regional health authorities (RHA) and larger trustee organizations appear to be coming to a point of compliance with section 16 of HIPA. This requires technical, administrative, and physical safeguards of personal health information and reasonable measures to meet the obligations under HIPA. RHAs are now

rolling out more detailed policy and procedures and training has progressed significantly.

Leadership

Our office has stressed in past Annual Reports and in investigation and review reports the importance of leadership on the access and privacy file within any organization.

For the last four and one-half years we have promoted the creation of a dedicated office in regional health authorities for a HIPA Coordinator/Privacy Officer as a best practice. I am mindful that HIPA does not explicitly require such an officer. As well, I recognize that many organizations have determined that they do not have the resources to immediately create a full-time HIPA Coordinator/Privacy Officer position – a best practice based on experience in Manitoba, Alberta, Ontario and by the Saskatchewan Ministry of Health.

In this regard, the Saskatoon Regional Health Authority (SRHA) has distinguished itself in creating a dedicated access and privacy office charged with both HIPA and LA FOIP compliance.

In a number of RHAs, the Quality of Care Coordinator (QCC) is also tasked with the responsibility of HIPA Coordinator or Privacy Officer. In our experience, this combination has led to confusion in the two roles and a failure in some organizations to properly meet their HIPA obligations. We have raised this concern with RHAs and the Ministry of Health a number of times over the last four years. This concern was also examined in our Report H–2007–001 (Saskatoon Regional Health Authority).

The position of QCC was mandated for all Saskatchewan RHAs presumably in response to recommendations from the Fyke Commission and its focus on improving quality of care. I acknowledge that both of these positions need to be very much patient focused. Nonetheless, there are significant differences in the two roles. For example, HIPA sets out a simple and straightforward process for any individual patient or client to obtain access to their personal health information and, if there are errors, a simple process to seek amendment of the record. There are strict time lines and a right of appeal to our office if not satisfied with the RHAs response. There is a positive duty on trustees to assist the patient or client by responding to each access request openly, accurately and completely.

We have in several formal reports discussed the importance of meeting access obligations and the limited opportunity for access to be denied. On the other hand, our experience is that a number of QCCs take a different approach in their dealings with

patients/clients. This may involve protracted discussions or negotiations that include probing the motive and intentions of the individual. This is not acceptable when dealing with access requests under HIPA or LA FOIP. It may involve taking additional time to consult with lawyers and risk management officials in the region to assess questions of liability and look to mitigate liability. Again, those issues are typically irrelevant in responding to HIPA access requests.

While both of these positions are important, as is the work they do in their respective regions, this work should not be done at the expense of statutorily mandated requirements such as HIPA. After all, HIPA is a statute, not just a policy directive. What's more, it is a special kind of law, on that the Supreme Court of Canada describes as "quasi-constitutional" and one that is normally paramount to other provisional laws. Yet, it appears that in some RHAs HIPA compliance has been designed to accommodate the quality of care initiative instead of the other way around.

If any RHA decides to combine the two roles, it should be mindful of those differences and develop strategies to ensure both sets of responsibilities can be adequately discharged. I also urge the Ministry of Health to require, and not just recommend, the appointment of a HIPA Coordinator/Privacy Officer in all RHAs and other institutional trustees.

I understand that such a direction was issued from the Ministry of Health with respect to QCCs and Chronic Disease Management Coordinators.

When a RHA does create such a HIPA Coordinator/Privacy Officer position, it is essential that this be communicated to both staff and the public by means of website, brochures, posters, etc. and reinforced in staff orientation and in-service training.

There is a need for much more transparency on the part of regional health authorities and the Ministry of Health when it comes to identification and communication with HIPA Coordinators/Privacy Officers. We continue to receive a significant number of calls from staff in RHAs and institutional trustees who are unaware of the office and identity of the HIPA Coordinator/Privacy Officer and in their own organization. I note that the Ministry of Health's website contains contact information for QCCs in each RHA. A number of RHAs also have simple, accessible links on their websites to information about QCCs and their contact information. We have seen brochures for QCCs, but nothing comparable for residents who may want information about HIPA Coordinators/Privacy Officers and their contact information.

My recommendation is that the Health Ministry require the same kind of things done by each institutional trustee for HIPA compliance that it has already done for the quality of care initiative.

Secondary Uses and Disclosures of Personal Health Information

A "secondary use or disclosure" refers to any use or disclosure of an individual's personal health information for any purpose unrelated to the diagnosis, treatment or care of that person. I recognize that there are from time to time compelling public interests that justify a particular secondary use or disclosure. My focus is on the threshold that must be met before allowing a secondary use or disclosure.

HIPA permits authorization for any new secondary use or disclosure of personal health information simply by the enactment of a new regulation. We already have numerous uses and disclosures that have been enabled in that fashion. This includes disclosure of personal health information for purposes of issuing big game hunting licences, for fuel tax accounting purposes, for tracking truant students, for law enforcement purposes plus many more.

I have suggested that any proposed new secondary uses or disclosures of personal health information needs to be evaluated against a new question: **Will this legislation, regulation or program bolster public confidence in the developing EHR or will it undermine public confidence?** The result would likely be the establishment of a higher threshold before secondary uses or disclosures are enabled by statute or regulation.

Bill 20 -- *The Gunshot and Stab Wounds Mandatory Reporting Act*

Our office provided advice and commentary with respect to Bill 20 when it was being considered by the Assembly. Once the Bill received Royal Assent, we focused on the regulations and ensuring that RHA staff had a comfortable understanding of the new requirements. We provided feedback to the Ministry of Health and RHAs on the policies they were developing for the new Act, its corresponding regulation and the new 'disclosure to police' regulation under HIPA.²⁷

The Electronic Health Record (EHR)

CANADA HEALTH INFOWAY

The development of the EHR involves a great deal of work undertaken by Canada Health Infoway (CHI) with federal funding and a board composed of the Deputy Ministers of Health from Canadian provinces and territories. With funding provided by CHI and using the architecture designed by CHI, Saskatchewan has undertaken a number of projects that constitute building blocks of the EHR in this province. Since there are a multiple laws impacting health information across Canada, the architecture permits an array of choices for each jurisdiction when it comes to what degree of control patients will have over

what happens to their personal health information. A good deal of information, both conceptual and technical, is available on the CHI website, www.infoway-inforoute.ca. This includes a *White Paper on Information Governance of the Interoperable Electronic Health Record*. This helpful document identifies a number of key privacy issues that have not yet been resolved although many architectural and design decisions already appear to have been made.

Partly to deal with those outstanding privacy issues, CHI created the Privacy Forum in 2007. This unique body includes a representative from each health ministry and from each privacy oversight office in Canada including Health Canada and the Privacy Commissioner of Canada. There have been two meetings over the last year. Saskatchewan is represented by our office and the Ministry of Health. Working groups have been created to focus on four areas identified as priorities by the Forum members:

1. Accountability,
2. Consent,
3. Secondary uses and disclosures, and
4. Cross-border data sharing.

Although oversight offices must be vigilant about their independence in their mandated roles, there is much to be gained by the kind of focused dialogue enabled by the Forum.

CHI, the Privacy Commissioner of Canada and Health Canada have undertaken for two consecutive years an opinion survey of Canadians. This continues to chart public opinions about the developing EHR project. These surveys are also useful as they plumb privacy related concerns. To quote from the August 2007 survey report, *“[a]ccess to patient information and improved efficiency remain the most compelling reasons to support EHRs, whereas concerns about security lead reasons for opposing.”* Also, the ability to find out who accessed your health record and when was most often cited as the way to increase comfort levels with the EHR. Another way to increase comfort levels would be to allow Canadians to access their health record at any time in order to make any necessary corrections. A majority of respondents would also like to be able to hide or mask sensitive information.

In this province, the Ministry of Health has published information on the Ministry website information about the six CHI projects now underway or in development. The opinion surveys noted above have found that awareness about the EHR is increasing but still 51% of Canadians have not heard of it. While I support the awareness initiatives undertaken by both CHI and our Health Ministry, a good deal more work obviously has to be done to increase awareness. Saskatchewan residents deserve more information about what the EHR will mean for their notion of privacy and the impact on patient control over their most sensitive and prejudicial personal information.

Greater transparency should relate to the privacy risks as well as the anticipated benefits of the EHR. An excellent way to do so would be for both the Ministry and CHI to publish their Privacy Impact Assessments (PIA).

EARLY DEVELOPMENTS

Given our statutory mandate under section 52 of HIPA, we attempt to monitor developments in our province with respect to the EHR in order to comment on these developments and their impact on the privacy interests of Saskatchewan residents. In past Annual Reports, I have highlighted the importance of this initiative and started to identify key questions raised by these developments.

HISC within the Ministry of Health is leading this ambitious project. Officials within HISC have been very cooperative in sharing with this office their plans for the two major projects already in operation: (1) Pharmaceutical Information Program (PIP); and (2) Picture Archiving and Communications System/Radiology Information System (RIS-PACS Archive) (Diagnostic Imaging). I am encouraged that some public information about these projects is available through the Ministry's website at <http://www.health.gov.sk.ca> on the HISC pages. I commend HISC for some very good work done in producing explanatory brochures for Saskatchewan residents that outline privacy considerations with these two projects.

I want to acknowledge the increased capacity with HISC to address privacy and confidentiality issues. I am also very encouraged by the decision of the Ministry of Health to move to a kind of “implied consent” with a right to mask an individual’s information. This is a higher privacy standard that was originally contemplated by the Ministry of Health. This is also a move that appears to be an attempt to align Saskatchewan more closely with other Canadian jurisdictions that utilize an implied consent model.

WHO WILL BE ACCOUNTABLE TO THE INDIVIDUAL?

The EHR poses interesting challenges in terms of meeting key privacy principles. The first privacy principle in the *Model Code for the Protection of Personal Information* is that of **accountability**. In the preamble to HIPA, it is stated: “*That trustees shall be accountable to individuals with respect to the collection, use, disclosure and exercise of custody and control of personal health information.*”[emphasis added]

When HIPA was developed in the late 1990’s it contemplated a single large centralized database in which the personal health information for all residents would be maintained. In fact, the EHR now being rolled out reflects a different system. What we will have is not a centralized database but a distributed system with a number of different domain repositories. The current model is more closely aligned with developments in other provinces but it is different than the model upon which HIPA was based. HIPA does

not address what happens when you have personal health information being shared by numerous trustees and combined with information from different domain registries. Who will be responsible to the individual when something goes wrong and information is improperly used or disclosed? Is it reasonable that the individual must try and identify any of many trustees that may have been involved with an improper, unauthorized transaction with his or her personal health information? How do we avoid the unacceptable prospect of different trustees deflecting responsibility to each other? Given the complexity of the EHR, we need to find a way in Saskatchewan to create a simple and accessible means for any individual to hold responsible a single trustee. This may involve ensuring there is a responsible trustee for each domain registry.

IS MASKING A TRUE OPT-OUT?

With the two initial EHR programs in Saskatchewan, individuals will be automatically enrolled in the EHR program and their personal health information will be entered in the EHR system on a compulsory basis.

Individuals will be given the opportunity to mask²⁸ their personal health information in a given domain repository. The masking is done not at the point of service, i.e. at the level of their family physician or primary care provider but rather at the domain repository level (global masking). The masking will apply to all of an individual's information and not just a particular service or a particular segment of one's health history. Individuals have the opportunity to remove the mask permanently or when meeting with a particular provider for a particular service.

The storing of masking instructions and management of these 'consent directives' is done by a central office operated by HISC. With these two programs, the individual is able to request a record of persons who have accessed his or her personal health information. This goes further than the HIPA requirement which would only require that such an access log be kept of disclosures made for a purpose other than diagnosis, treatment or care.

With the two initial EHR programs, the mask can be lifted without consent of the patient. This can occur, in the case of the RIS-PACS program, when an authorized radiologist requires access to report on a procedure or when an authorized

technologist requires access in order to complete a procedure. This provision appears wider than what will be permitted in some other jurisdictions that restrict this kind of non-consented access to emergency situations only.

"Opt-out consent" has been considered and defined by the Office of the Privacy Commissioner of Canada in the course of interpreting the *Personal Information Protection and Electronic Documents Act* (PIPEDA). That statute applies to Saskatchewan physicians and other health care providers, who collect, use or disclose personal health information in the course of commercial activity such as the business of a medical clinic.

Opt-out consent is an integral part of implied consent. If a trustee relies on implied consent which can be inferred from the patient presenting for diagnosis, treatment and care, that trustee must be transparent about subsequent use and disclosure of the personal health information. This is typically done through posters, websites and brochures in the physician's clinic. The trustee must provide a convenient procedure for easily, inexpensively and immediately opting out of, or withdrawing consent, to the purpose for which consent was implied.

If the patient seeks help for a mental health problem, the trustee would be entitled to find implied consent for the collection, use and disclosure of that patient's personal health information for the purpose of diagnosis, treatment and care. The physician may be inclined to share his clinical notes with a colleague or a specialist for the patient's benefit. Implied consent would justify the physician disclosing the personal health information with the colleague or specialist. With paper records now, the patient may instruct the physician that she is anxious that the visit and treatment be closely held and not disclosed outside of the physician's office. By doing so, the patient in this example has opted out of any implied consent for further sharing of the patient's personal health information. At the very least, I expect there would be a discussion between physician and patient about the risks and benefits of the sharing the physician believes is in the best interests of the patient. The physician may persuade the patient that the disclosure he proposes should proceed. The patient will learn of the adverse consequences that may flow from her instruction not to disclose.

From what we know at this point, it appears that what is being offered by HISC, namely a masking option, is something less than an opt-out. It would still require personal health information being uploaded by the family physician or primary provider to the EHR. Although a masking feature once applied may well limit the access by trustees and others to the masked information, the patient at that point will only have limited control over the information which is no longer in the

exclusive control of the patient and the family physician. The patient must then rely on the central privacy service, with which there will be no personal trust relationship, to protect his or her personal health information. In any event, masking is by no means an iron-tight control. Health care providers will still be able to access the masked information. In addition to those who are actually treating the individual, there is always the risk that other persons who work in healthcare facilities will have the opportunity to access the personal health information of a patient for a variety of purposes completely unrelated to diagnosis, treatment or care and possibly contrary to the wishes of the patient.²⁹

In addition, other reasons for unmasking for wholly secondary purposes could easily be allowed by a future policy change on the part of the Ministry of Health or perhaps even a change in regulations. As noted elsewhere in this Annual Report, we have seen in Saskatchewan a number of different secondary uses or disclosures permitted by changes to legislation and regulation.

A Saskatchewan resident who is concerned about information concerning say a mental health treatment or an abortion will still be at risk that, as a result of some later change to regulations, her sensitive personal health information may well be shared with others for new secondary purposes without her consent.

It may well be that the two repositories in question, diagnostic imaging and pharmaceuticals, are so central to the delivery of health care that consent needs to be viewed differently than is perhaps the case with other repositories. My understanding however is that the intention is that the treatment of consent in these two programs will be the model that will be replicated in all other facets of this very large project. I suggest that it is important that the fundamental questions related to patient control and consent be addressed by the Assembly before the work on the EHR is fully completed.

ARGUMENTS AGAINST A RIGHT TO OPT-OUT

I recognize that a number of concerns have been raised about providing patients with a full opt-out. One is that if the patient presents at a hospital in an unconscious state or at least when she is not competent to provide information to treatment staff, care will be compromised. I have been told however by physicians and nurses that generally in that kind of emergency situation, their focus is to resuscitate the patient or to stop the bleeding, or restore breathing. Once that is achieved, health care providers typically seek additional information in terms of

health history from the patient or at least contact information for their family physician who can provide the health history. At that point, the patient may disclose the information withheld from the EHR and authorize the hospital staff to gather additional information from his or her family physician. It is not a case that there will be no record of the personal health information as there will still presumably be a paper or digital record in his or her family physician's office.

I recognize that not all Saskatchewan residents have a family physician. A recent survey indicates that approximately 15% of Saskatchewan residents do not have a regular medical doctor. Likely in those cases, residents are relying on a walk-in clinic or perhaps even a hospital emergency ward for primary health care. In any event, it would be very important that any patient choosing to opt-out of the EHR would need to be provided accurate and detailed information about the risks that such opt-out action would entail for future care.

I understand that a genuine opt-out of the EHR that I have outlined above is not ideal from a provider perspective. I also understand that it may prejudice the care and treatment of an individual. Nonetheless, if the EHR is to be truly patient-centered and if we are committed to recognizing that sovereign individuals should have the right to assert control over their own health information, is it not necessary that we ensure the EHR can accommodate those who choose to opt-out?

Our notion of privacy and the primacy of the sovereign individual and her ability to make choices cannot be easily reconciled with only a global masking option.

One of the reasons why I am recommending that the Assembly consider the 2008 iteration of the EHR plan is that our province appears to be poised to significantly redefine the right of privacy of its citizens. If we proceed to construct the EHR on the basis that the privacy of citizens requires only a limited form of masking, then arguably we have allowed the developing EHR technology to redefine our fundamental notion of privacy. The right of privacy that currently would allow the trusted physician to keep a record of the abortion or mental health intervention securely in her clinic would be replaced by a kind of universal conscription whereby this prejudicial information is no longer under the control of the patient and physician. I would suggest that a better course would be to require the technology to accommodate the needs and expectations of citizens than the other way around.

It has also been suggested that since few individuals are likely to insist on keeping their personal health information separate from the EHR it would be inefficient and wasteful to build in a meaningful opt-out for them. On the other hand, if privacy is, as the Supreme Court of Canada has described, a fundamental right protected by the *Charter of Rights and Freedoms*, is it not incumbent on the Ministry of Health to accommodate those residents who wish to have that portion of their personal health information that is particularly sensitive and prejudicial closely held not

uploaded to the EHR? In the evolution of human rights protection in Saskatchewan, we have moved beyond arguing that it is too expensive to build wheel chair ramps for our public buildings or making washrooms accessible to the disabled since only a small minority of citizens utilize them. Should we require less from the architects of our EHR system than we require from the architects of Saskatchewan public facilities?

HIPA SIMPLY DOESN'T PROVIDE ALL OF THE ANSWERS

When the Assembly debated Bill 29 in the spring of 1999 the EHR was little more than a concept. In 2008, the EHR or at least components of the EHR is now a reality. We now have a good deal more information about what the EHR will mean for patients and their family physicians.

Section 8 of HIPA provides that an individual has the right to prevent access to a comprehensive health record of that person's personal health information. The definition of the "comprehensive health record" however, in section 18.1 of HIPA is very narrow and no longer appears to be comprehensible in the context of the new distributed database model underlying the EHR in our province. At the very least, these provisions ought to be revisited by the Assembly in light of the current reality.

I respectfully suggest that such a review is necessary given the inadequacies identified above in HIPA and the major change in structure of the EHR from what was initially contemplated when HIPA was debated.

In the result, there are important questions that need to be answered before we make irrevocable decisions about the architecture for the Saskatchewan EHR. These include:

- What will be the role of the patient in deciding who will and will not have the opportunity to view and use his or her personal health information?
- At what level should this decision be implemented, i.e. at point of service or at the domain registry level or some other intermediate point?
- Can patients selectively control use of their personal health information by certain providers or individuals or is this an all or nothing proposition?
- Should patients have the option of keeping their personal health information held strictly in the primary care provider's clinic or must it be uploaded to the EHR?

I recognize that the Ministry of Health may have resolved a number of these questions internally. My concern is that the questions are fundamentally important to Saskatchewan residents and there has been very little opportunity for them to gather clear and accurate information about the privacy implications of the EHR initiative.

SPECIFIC EHR RECOMMENDATIONS

In the event that the Assembly chooses not to provide a genuine right to fully opt-out of the EHR, then I encourage the Assembly to consider:

- There is a need for a great deal more transparency for the residents of Saskatchewan about the developing EHR and what the implications are for patients and patient control over their personal health information. The Ministry of Health should ensure that PIAs as well as detailed information on the privacy question are available through the Ministry website.
- In the event that the Assembly supports masking instead of a full opt-out, I would encourage the Assembly to consider a requirement that masking be allowed at the point of service or at least closer to the point of service instead of masking at the domain level.
- In the event that the Assembly supports masking instead of a full opt-out, I would encourage the Assembly to ensure that masking can be selective to protect part of one's health history without a requirement that masking be global since that leaves an all or nothing choice for patients.

- I encourage the Assembly to consider whether Saskatchewan should incorporate into HIPA a provision similar to section 58(2) in Alberta's *Health Information Act* that before any disclosure of personal health information a trustee must consider the expressed wishes of the patient. This was recently considered in the Investigation Report 2008-IR- 001 issued by the Alberta Information and Privacy Commissioner – available at www.oipc.ab.ca.

PATIENT PORTALS

A good deal of the literature discussing health care delivery in 2008 appears to revolve around the concept patient-centered care. In fact, the role of the patient in the developing EHR appears to be more marginal than significant.

A very interesting and relatively new development in EHR relates to patient portals. A patient portal allows patients to communicate directly with providers and to access their own health records via the Internet. The patient portal allows patients to gain access to information through a secure web connection. It may allow patients to make appointments, to check lab or diagnostic imaging results, to request a prescription refill and to update the physician with information from the patient.

This may be a combination of information from an electronic medical record under the control of a physician, from an EHR or personal health records managed by the patient. This is currently being used by

the University Health Network in Toronto for patients who present with chronic disease such as diabetes.

Patient portals appear to address the desire of patients for care they need and timely, accurate, information for them and their providers to make informed decisions. I encourage HISC to consider how patient portals can be facilitated for Saskatchewan residents as an integral element of the move to electronic medical records and EHRs.

Registration Information IS Personal Health Information

Our office is concerned that some trustees seem to view the health services number (HSN) and “registration information”³⁰ as somehow different from personal health information. We understand that some trustee organizations have taken the position that registration information does not need to be treated in the same way as diagnostic, treatment and care information about a patient. In fact, registration information that includes name, address, contact information and HSN is treated by HIPA no differently than diagnostic, treatment and care information [section 2(m) and (q) of HIPA]. The only exception is limited use of registration information by the Minister of Health in accordance with section 28 of HIPA.

There are serious limits in HIPA on who can require production of anyone's HSN and when that is permitted [section 11 of HIPA]. As a best practice, we encourage trustees to be very selective and cautious in requiring the production of the HSN. They also need to be careful in the use and disclosure of that registration information.

For purposes of the developing EHR, CHI has declared in its architecture plan that, "[f]or the purpose of classifying PHI [personal health information] in terms of its confidentiality, this document advocates a uniform classification for PHI (i.e. all PHI will be classified as uniformly confidential.)"³¹ [Emphasis added]

Capacity Building

In April of 2007, we were pleased to collaborate with the Information and Privacy Commissioner of Alberta and the Manitoba Ombudsman to produce a one day conference – the Prairie Health Information Privacy Day 2007. This provided the opportunity to share experiences of the first three provinces that enacted a stand-alone health information law and to discuss best practices for privacy protection. Presentations at that conference are available at <http://veryney.ca/phipd2007/>.

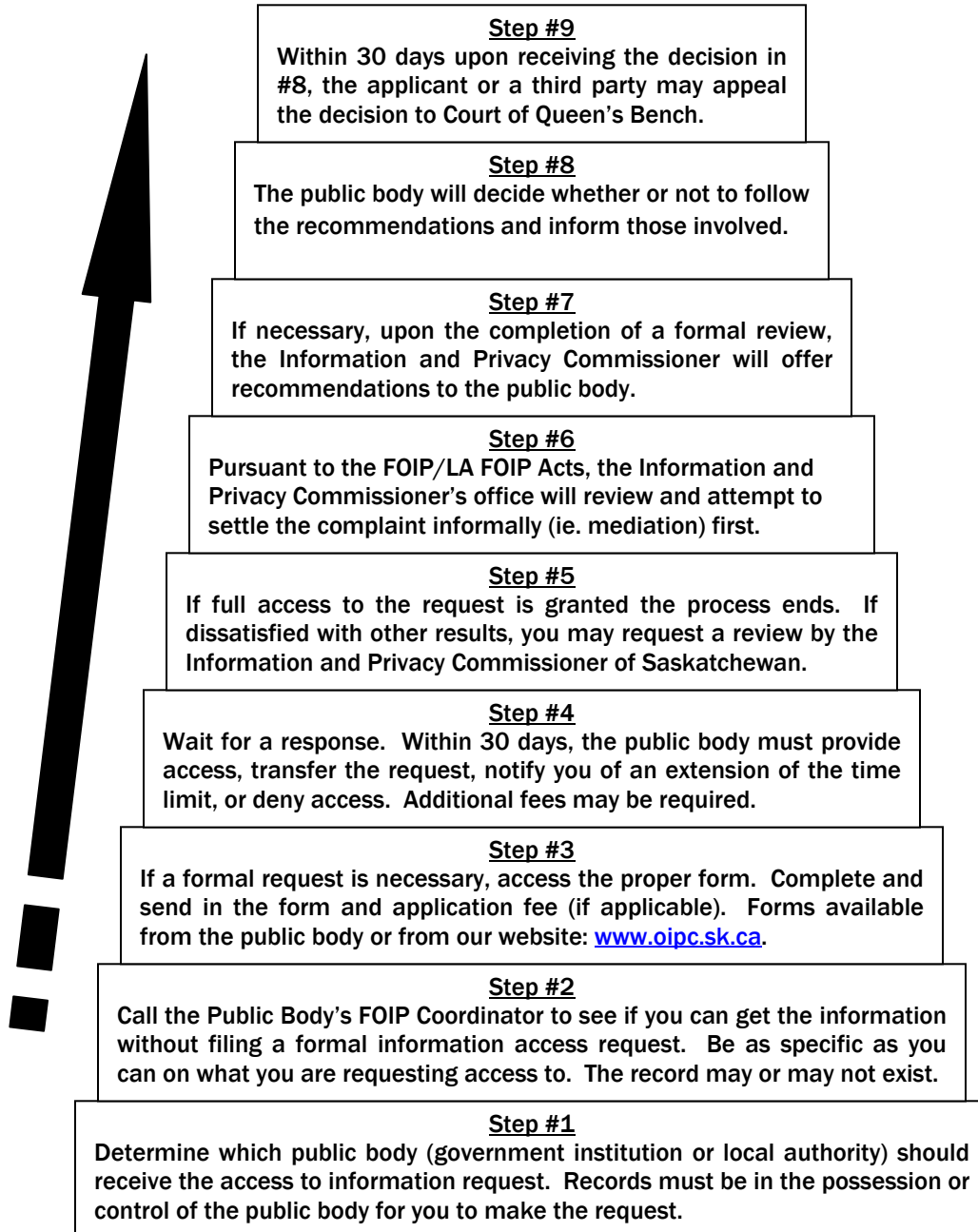
Abandoned Health Records and Security

Security issues received a lot of attention by this office in the last quarter of this fiscal year. Notwithstanding an explicit requirement that all trustees must have policies and procedures to maintain administrative, technical and physical safeguards to protect personal health information, a number of apparent breaches of this requirement have come to our attention. This included a tip that led our investigator to vacant office space where he found five large boxes of physician records on several hundred patients in the Yorkton region. Media coverage of that incident resulted in many more tips from a number of different Saskatchewan communities about abandoned health records.

In March 2008, we received a roll of thermal film from a fax machine that was sold as surplus equipment at a public auction. This film contained personal health information of approximately 101 different patients. We will continue to work with the regulatory colleges and regional health authorities to reduce the incidence of these serious breaches of privacy. RHAs and other trustee organizations need to recognize that public confidence in the developing EHR will be affected by how well privacy is achieved in the context of existing paper records.

More work needs to be done to ensure that all Saskatchewan trustees meet their statutory obligations to protect personal health information.

HOW TO MAKE AN ACCESS REQUEST



HOW TO MAKE A PRIVACY COMPLAINT

1. The complainant should first contact the Privacy Officer or FOIP Coordinator for the government institution, local authority or trustee (the public body) to attempt to resolve the complaint.

2. If no satisfactory resolution of the concern is reached by dealing directly with the public body, the complainant may choose to file a written complaint with the Information and Privacy Commissioner.

Generally, the Office of the Information and Privacy Commissioner (OIPC) will not deal with a complaint that is two years old or older.

The complaint should be in writing and should provide the following:

- Complainant's name, address and phone number;
- Date;
- Specific government institution, local authority or trustee against whom the complaint is made;
- Copies of any correspondence with the public body relevant to the complaint;
- Description of the events giving rise to the complaint; and

- Clarify whether the complainant wishes to be treated as anonymous when the OIPC communicates with the public body.

Once we review the complaint the following will occur:

3. Once it is determined that the OIPC has jurisdiction to investigate, a Portfolio Officer will be assigned to the file.
4. The Portfolio Officer will advise the public body of the complaint and that the OIPC will be investigating under the authority of FOIP, LA FOIP or HIPA. At the same time we will advise the complainant that an investigation is underway.
5. The Portfolio Officer will gather information from the public body to determine the relevant facts.
6. The Portfolio Officer will define the issues for purposes of the investigation and invite submissions from the public body and the complainant.
7. The Portfolio Officer will attempt to mediate, or otherwise informally resolve the complaint, with complainant and public body.

8. If no mediated settlement is possible, the Commissioner will proceed to issue a formal Investigation Report. The identity of the complainant will not be disclosed.
9. There may be a limited right of appeal to the Court of Queen’s Bench by an aggrieved complainant if the complaint was handled under HIPA pursuant to section 46. No right of appeal from a report dealing with a breach of privacy under FOIP or LA FOIP.

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CASE SUMMARIES

INVESTIGATION REPORT H-2007-001 / SASKATCHEWAN HEALTH – JUNE 6, 2007

In Investigation Report H-2007-001, I concluded that three individuals each received mail from branches of Saskatchewan Health in unsealed or improperly sealed envelopes. Each individual was concerned as those envelopes contained birth certificates, health services numbers and other information including details of his/her coverage under a certain drug plan.

This information constituted either the data subject's personal information or personal health information. Even though Saskatchewan Health relied on Saskatchewan Property Management (SPM), now the Ministry of Government Services, to process some of its bulk mailings, I found that this does not relieve Saskatchewan Health of its obligation under section 16 of HIPA to protect personal health information. I found, although there was no evidence of improper access to the personal information/personal health information contained within the improperly or unsealed envelopes, Health did not have adequate safeguards in place to protect personal information/personal health information externally processed for mailing by SPM.

I made six recommendations to Saskatchewan Health to improve its mail handling processes in order to meet the standard required by section 16 of HIPA.

In a letter dated July 5, 2007, Saskatchewan Health detailed what actions it was taking to fully comply with the recommendations I made in the above referenced Report. This included: offering complainants a written apology; committing to auditing its mail processing systems and procedures; and notifying us of its intentions to enter into a formal written agreement with SPM with respect to mail handling procedures.

REPORT LA-2007-001 / UNIVERSITY OF SASKATCHEWAN – OCTOBER 1, 2007

This Report dealt with the decision of the University of Saskatchewan (University) to refuse access to the letters of resignation from 3 outgoing members of the University's Bio-medical Research Ethics Board.

The University refused access on the basis of a number of exemptions, namely sections 14(1)(d); 16(1)(a) and (b); 17(1)(d) and (f); 18(1)(c) and 23(1)(h) of LA FOIP.

In this Report, I discussed the implications of the decision of Geatros J. in *Weidlich v. Saskatchewan Power Corporation*³² in the context of applying section 16(1)(a) of LA FOIP or section 17(1)(a) of FOIP. I discussed the scope of this exemption in both LA FOIP and FOIP and concluded that, to successfully invoke this exemption, the public body must show that the information relates to a suggested course of action which will ultimately be accepted or rejected by its recipient during the deliberative process. The exemption also applies when the information in question permits the drawing of accurate inferences as to the nature of the actual proposals, recommendations, analyses, or policy options. I determined that section 16(1)(a) of LA FOIP and section 17(1)(a) of FOIP do not apply to all kinds of “information or intelligence”.

This Report also considers what is and is not personal information in an employment context. It signals that letters of resignation containing employment history, including the reasons for resigning, should be treated as the personal information of the authors and would therefore normally be exempt from release to an applicant other than the data subject.

I upheld the severing of two paragraphs in one letter on the basis of section 16(1)(a) of LA FOIP and recommended the severing of personal information of third parties pursuant to section 28 of LA FOIP. I recommended that the redacted record be provided to the Applicant.

On October 31, 2007, the University informed us that it would not accept my

recommendations and therefore would not comply by releasing those portions of the record marked by our office for release.

REPORT H-2007-001 / SASKATCHEWAN CANCER AGENCY – NOVEMBER 21, 2007

Report H-2007-001 involves a patient that made application to the Saskatchewan Cancer Agency (SCA) for a copy of his complete patient file. SCA withheld 12 pages citing section 38(1) of HIPA as justification to deny access.

I found that SCA did not have a proper basis to withhold the information from the patient, the Applicant. Consequently, I recommended the release of the withheld documents.

In its letter of response dated December 21, 2007, SCA provided notice that it would not comply with my recommendations.

REPORT LA-2007-002 / RURAL MUNICIPALITY OF EDENWOLD #158 – DECEMBER 18, 2007

This Report addressed a decision made by the Rural Municipality of Edenwold #158 (R.M.) to deny an applicant access to information on property taxes and identification of the registered owners for all property in the R.M.

The Applicant sought information from the R.M. consisting of the names of registered owners of property in the R.M. together with the street address and the balance of the tax account owing on each property. The R.M. denied access on the basis that the information sought would be personal information of the property owners and could not be disclosed under LA FOIP. I found that LA FOIP did not apply to certain information that was material available for purchase by the public in accordance with section 3(1)(a) of LA FOIP. This information consisted of the legal description of the land, the name of the registered owner, the published mailing address of that registered owner, the value of the current tax assessment, whether that tax assessment has been paid in full, and if not, the sum of arrears. All of this information is available by means of municipal tax certificates or title searches through Information Services Corporation of Saskatchewan (ISC). I recommended that the other information on the assessment roll, when it identifies an individual, should be viewed as personal information and not released without the consent of the individual, all as provided by section 28 of LA FOIP. I

further recommended that the Minister of Municipal Affairs should provide clear direction to all municipalities to ensure a clear and consistent understanding of what qualifies as personal information under LA FOIP. That direction should address the bulk sale of data and Internet publication of such data.

The R.M. informed the Commissioner of its decision to following his recommendations in full by way of letter dated January 11, 2008.

REPORT F-2008-001 / SASKATCHEWAN CORRECTIONS AND PUBLIC SAFETY – FEBRUARY 29, 2008

I released Report F-2008-001 detailing my review of the decisions of the Department of Corrections and Public Safety (CPS), now known as the Ministry of Corrections, Public Safety and Policing, to refuse access to two applicants of certain personal information and personal health information held by CPS.

Two applicants made separate applications, the first to records of the Regina Provincial Correctional Centre (RPCC) and the second, to the Saskatoon Provincial Correctional Centre (SPCC). In both cases, the government institution responsible for those facilities, CPS, was unable to produce some of the records requested. In the case of the first applicant, the missing documentation was eventually accounted for and provided to the applicant along with other responsive records released in full or in part.

Some of these records or portions of records, CPS withheld citing sections 13(1)(a), 21, and 29(1) of FOIP and section 38(1)(a) of HIPA. In the case of the second applicant, CPS provided sufficient evidence to substantiate its claims that no responsive records existed. I found that in its dealings with both applicants, CPS did not meet the duty to assist as deadlines were missed and the initial searches conducted were inadequate. I also found deficiencies in the department's section 7 responses to both applicants. Though I found that in the case of the first applicant, CPS provided proper notice to the Applicant of its decision to extend the response deadline, I found that CPS did not have a proper basis to extend the response time. Though I did not find that section 21 of FOIP or section 38(1)(a) of HIPA applied to any of the information to which severance was applied, I agreed that CPS had properly applied section 13(1)(a) of FOIP to the nine records it withheld from the first applicant. Other third party personal information was also properly withheld from that applicant.

In its response to our office, the Ministry indicated that it accepted my findings as accurate and was fully complying with my recommendations.

REPORT H-2008-001 / SASKATOON REGIONAL HEALTH AUTHORITY – MARCH 24, 2008

Report H-2008-001 details my review of the actions of the Saskatoon Regional Health Authority (SRHA) in responding to access requests from a patient, the Applicant, who sought access to his own personal health information and personal information.

The Applicant requested records (orally and in writing) from the SRHA at different times. When the Applicant made application in the prescribed form, the SRHA did not respond as required by LA FOIP apparently due to the anticipated litigation. The SRHA later denied access by invoking section 20 of LA FOIP, section 38(1)(a) of HIPA and sections 3 and 36 of *The Occupational Health and Safety Act*. Through the mediation process, the SRHA reconsidered and released those withheld documents to the Applicant in full. However, the SRHA did not provide another document later requested by the Applicant's lawyer from its Clinical Health Psychology department at Royal University Hospital as the fees requested were not paid. During mediation, the SRHA waived its fees and provided the record sought by the Applicant without charge. The SRHA also provided the Applicant with a full index of the additional records on his patient file with Clinical Health Psychology.

As the SRHA did not provide timely, adequate responses to the Applicant, and did not adequately search for responsive records, I found that the SRHA did not meet the duty to assist in the circumstances. I also found the SRHA's 'LA FOIP section 7' responses to the Applicant's written requests to be deficient.

By way of letter dated April 29, 2008, the SHRA advised us of the changes it was making to those policies, procedures, and practices highlighted in my recommendations as requiring revision.

BUSINESS PLAN, BUDGET & STATISTICS

Business Plan Implementation

When I started my term, I adopted a practice of developing and publishing business plans for a three year period. Each plan included priority actions and key performance measures. The plans were published on our website after a copy was sent to each Member of the Assembly. In my annual appropriation request and appearance before the Board of Internal Economy (Board), I have provided detail on those key performance measures achieved. In the case of those performance measures not achieved, I provided an explanation to the Board.

We have, to date, achieved many of our performance measures. In some important areas, we did not achieve other performance measures.

The breakdown as of March 31, 2008 is as follows:

Exceeded:	1
Achieved:	13
Partially achieved:	5
Not achieved:	8

In my view, the most serious failing is in moving reviews and investigations to mediation stage or report in a timely way.

We have not achieved our performance measure that in 80% of reviews of access decisions the file should be at the mediation stage or report within five months. We also failed to meet the performance measure that 60% of all

privacy investigations would be to the report stage within five months.

In our 2007-2009 Business Plan, we contemplated an increase in personnel as follows:

- We will create a new “Research/Intake Officer” position that will require considerably less training than a Portfolio Officer but that will assist our Director of Compliance and the three Portfolio Officers to reduce the time to complete investigations and formal reviews. We will hire two Research/Intake Officers in 2008-2009.
- We will hire an additional administrative person in 2008-2009 to cope with the increased workload of the Commissioner, the Director of Compliance, three Portfolio Officers and two Research/Intake Officers.

The Board did not approve our request.

Measuring Up

Our original Business Plan for 2005-2008 was developed in April 2005. It included five Core Businesses as follows:

Core Business 1: Reviews of decisions on access requests

Core Business 2: Reviews of breach of privacy complaints

Core Business 3: Trustee/Government Institution/Local Authority Compliance

Core Business 4: Clarifying the Access and Privacy Regime in Saskatchewan

Core Business 5: Public Education

It also included ten specific goals and more than 40 key performance measures. This original Business Plan was distributed to Members of the Assembly and has constituted the foundation for our appropriation submissions to the Board of Internal Economy and the basis for our Estimates for each fiscal year.

As we achieved a number of our goals and performance measures, we decided to revise and update the Business Plan. The first revision adopted in December 2006 was again distributed to all Members. A second revision was adopted in December 2007 and was distributed to all Members. There has been no change to the Core Businesses of the office. There has been some modification of performance measures. The latest Business Plan for 2007-2009 is available at our website, www.oipc.sk.ca, under the *Annual Reports* tab.

Key features of our 2007-2008 performance measures from the latest iteration of our business plan are as follows:

Performance measures

2007-2008

- **Complete all pending reviews that are more than two years old.**

PARTIALLY ACHIEVED

We have managed to close most of the 2004 reviews. Reviews concluded to date include 'first impression' reports that dealt with the 'advice to officials' exemption, the basis on which an applicant can be denied access to their own personal health information, and public access to municipal assessment and property tax roll information.

- **By January 1, 2008, 80% of all new reviews to mediation or report stage within five months.**

NOT ACHIEVED

Given the substantial backlog and the delays discussed earlier along with the lack of personnel, most of our work will be focused on resolving the backlog and work on newer files will have to wait.

- **Publish at least 10 reports from reviews on the OIPC website.**

PARTIALLY ACHIEVED

Our office has published four reports from reviews.

- **Create a section index of all review reports done by the OIPC.**

NOT ACHIEVED

Our focus has been on the backlog of reviews and investigations. The section index will be deferred until 2008-2009.

- **Host a major conference in Saskatchewan focused on HIPA as well as FOIP and LA FOIP.**

EXCEEDED

We organized, in conjunction with our counterparts in Alberta (Office of the Information and Privacy Commissioner) and Manitoba (Ombudsman), the first ever Prairie Health Information Privacy Day in Regina on April 16, 2007. There were approximately 129 participants. Presentations are archived at www.governmentevents.ca/phipd2007/presentations.php and some are also archived on our website, www.oipc.sk.ca.

The OIPC also organized for April 17, 2007, with the Access and Privacy Branch and CHI, a full day of workshops on the electronic health record and access and privacy topics

in Regina that involved approximately 83 participants.

The OIPC also organized for April 18, 2007 a full day program for the Saskatchewan Access and Privacy Conference for approximately 132 participants in Regina. Presentations from these sessions have been archived and are available at www.governmentevents.ca/sapc2007/presentations.php and some of the presentations are archived on our website, www.oipc.sk.ca.

- **Ensure that 90% of requests for summary advice from government institutions, local authorities and trustees as well as the public receive a response within 72 hours.**

ACHIEVED

We responded to 2802 requests for summary advice. This included both access questions and privacy queries.

- **Host ‘Brown-Bag’ luncheon workshops on aspects of access and privacy compliance for access and privacy coordinators in government institutions, local authorities and trustees.**

ACHIEVED

Topics included:

- Third Party Applications
- Role of Access and Privacy Coordinators
- Severing
- Duty to Assist
- Fees and Fee Estimates

- **Collaborate with appropriate government institutions to develop Frequently Asked Questions for government institutions.**

NOT ACHIEVED

Work on this performance measure has been deferred to accommodate work on the backlog of reviews and investigations.

- **Collaborate with appropriate government institutions to develop Frequently Asked Questions for local authorities.**

NOT ACHIEVED

Work on this performance measure has been deferred to accommodate work on the backlog of reviews and investigations.

- **We will continue to work with Saskatchewan Learning, Saskatchewan Health, Saskatchewan Justice and Saskatchewan Government Relations to provide support to their constituent organizations such as schools, municipalities, health regions and health professions, departments, Crown corporations, provincial boards, commissions and agencies.**

ACHIEVED

- **Complete all pending privacy investigations that are more than 1 year old.**

PARTIALLY ACHIEVED

Most of our older investigation files have been closed. We could not close all of them because of an insufficient number of Portfolio Officers.

- **By January 1, 2008, 60% of all investigations to report stage within five months.**

NOT ACHIEVED

In accordance with the OIPC Business Plan, our focus has been on our oldest files not on more recent investigations.

- **Publish a report on at least one office-initiated investigation.**

ACHIEVED

Review Report No. LA-2007-002 addressed disclosure of personal information by municipalities. In addition, our office has published a full investigation report in response to a specific breach of privacy complaint.

- **Host a major conference in Saskatchewan focused on HIPA as well as FOIP and LA FOIP.**³³

EXCEEDED

We organized, in conjunction with our counterparts in Alberta (Office of the Information and Privacy Commissioner) and Manitoba (Ombudsman), the first ever Prairie Health Information Privacy Day in Regina on April 16, 2007. There were approximately 129 participants. Presentations are archived at www.governmentevents.ca/phipd2007/presentations.php and some are also archived on our website, www.oipc.sk.ca.

The OIPC also organized for April 17, 2007, with the Access and Privacy Branch and Canada Health Infoway, a full day of workshops on the electronic health record, and access and privacy topics in Regina that involved approximately 83 participants. The OIPC also organized for April 18, 2007 a full day program for the Saskatchewan Access and Privacy Conference for approximately 132 participants in Regina. Presentations

from these sessions have been archived and are available at www.governmentevents.ca/sapc2007/presentations.php and some of the presentations are archived on our website, www.oipc.sk.ca.

- **Ensure that 90% of requests for summary advice from government institutions, local authorities and trustees as well as the public receive a response within 72 hours.**³⁴

ACHIEVED

We responded to 2802 requests for summary advice. This included both access questions and privacy queries.

- **Host 'Brown-Bag' luncheon workshops on aspects of access and privacy compliance for access and privacy coordinators in government institutions, local authorities and trustees.**³⁵

ACHIEVED

Topics included:

- Third Party Applications
- Role of Access and Privacy Coordinators
- Severing
- Duty to Assist
- Fees and Fee Estimates

- **We will continue to work with Saskatchewan Learning, Saskatchewan Health, Saskatchewan Justice and Saskatchewan Government Relations to provide support to their constituent organizations such as schools, municipalities, health regions and health professions, departments, Crown corporations, provincial boards, commissions and agencies.**³⁶

ACHIEVED

- **Collaborate with appropriate government institutions to develop Frequently Asked Questions for government institutions.**³⁷

NOT ACHIEVED

- **Collaborate with appropriate government institutions to develop Frequently Asked Questions for local authorities.**³⁸

NOT ACHIEVED

- **We will produce annual ‘report cards’ on government institutions that serve to highlight their response to access requests.**

PARTIALLY ACHIEVED

In Reports published on our website to date in 2007-2008, we have specifically commented on deficiencies in the section 7 response of government institutions to access requests. We have also detailed in the 2006-2007 Annual Report the

responses and actions of the named government institutions, local authorities and trustees involved in those reviews.

- **Undertake 10 site visits to trustee facilities.**

PARTIALLY ACHIEVED

A site visit to Mamawetan Churchill River Regional Health Authority took place in October 2007 over three days.

This included a tour of the facilities, meetings with the board, senior managers, privacy committee and staff. In addition to meetings with trustees, we met with Board and senior administrators of Northern Lights School Division, senior administrators of the municipality of La Ronge and representatives of Northlands Regional College.

A site visit had been scheduled for Cypress Regional Health Authority in the spring of 2007 but had to be postponed several times for a variety of reasons.

- **Undertake 10 site visits to government institutions and local authorities.**

NOT ACHIEVED

- **Publish advisory material to reflect areas of concern and confusion among government institutions, local authorities and trustees.**

ACHIEVED

The *Helpful Tips* sheet available on our website has been significantly updated and revised. The *Saskatchewan MLA Constituency Office Access and Privacy Guide* has been updated. *Privacy for Saskatchewan Public Libraries* was published to respond to questions from library staff and patrons. *The Freedom of Information and Protection of Privacy Act and Law Enforcement* was published on April 18, 2007. *OIPC Reviews and Investigations*, a PowerPoint slide deck presented at a December 2007 meeting of FOIP Coordinators, is available at our website. In addition, since April 2007, we have published 13 more issues of our e-newsletter, the *Saskatchewan FOIP FOLIO*. There are now 48 past issues accessible at www.oipc.sk.ca

- **To provide commentary [concerning updating access and privacy legislation] in the 2006-2007 Annual Report.**

ACHIEVED

In the 2006-2007 Annual Report, I observed that “*As noted in my past Annual Reports, I have consistently urged the Government of Saskatchewan to eliminate the two-statute approach to FOIP by integrating local authorities fully into FOIP. This would simplify and improve the accessibility of FOIP for local authorities and citizens alike.*” (Page 10)

- **Encourage government institutions, local authorities and trustees to make stronger commitments, through leadership initiatives, to achieve full statutory compliance.**

ACHIEVED

This has been a focus in our Annual Report for 2006-2007, in correspondence and meetings with Ministers, Deputy Ministers, and the Access and Privacy Branch. This has been a theme in educational workshops, and in issues of our FOIP FOLIO e-newsletter. This has also been a major focus of our meetings with the Board of Directors and senior staff of the Mamawetan Churchill River Regional Health Authority.

- **Ensure that education presentations have been completed in every Ministry, every Crown corporation, every provincial board and agency, every school division, all urban and rural municipalities, every health region, and every university and college campus that have requested a presentation including at least 60 presentations to a wide variety of audiences in a number of different Saskatchewan communities.**

ACHIEVED

We have given 82 presentations to a wide variety of audiences in a number of different Saskatchewan communities.

- **Ensure that 90% of citizen requests for summary advice receive a response within 72 hours.**

ACHIEVED

We responded to 2802 requests for summary advice.

- **Produce brochures on access and privacy issues for citizens.**

ACHIEVED

In 2007-2008 we produced the brochure, *Privacy for Saskatchewan Public Libraries*. We have also provided advice to the Saskatchewan Public Legal Education Association on HIPA content for its excellent booklet, *Patients' Rights*. We have also

provided advice to Saskatchewan Health, regional health authorities and health profession regulatory bodies on content in brochures published by those trustees and intended for the public.

- **Participate in the planning of future 'Right to Know' Week events and to assist the Saskatchewan Right to Know Committee in organizing 'Right to Know' Week in 2007.**

ACHIEVED

In 2007, the Saskatchewan 'Right to Know' Committee included representatives of the Saskatchewan Institute of Public Policy, the Saskatchewan Law Foundation, the Canadian Bar Association, the Regina Public Library, the City of Regina and McKercher, McKercher Whitmore LLP, Saskatoon Star-Phoenix, Regina Leader-Post and McPherson Leslie Tyerman LLP.

The Saskatchewan Health Quality Council (HQC) was presented with the *Chief Justice E.M. Culliton 'Right to Know' Award* in recognition of excellent work done by the HQC in promoting transparency, active release and routine disclosure of public information. A Saskatoon Grade XII student received a \$300 scholarship for his essay on *Why Access to Information is Important in a Modern Democracy*.

John Reid, former Information Commissioner of Canada, delivered a keynote address on the *Increasing Importance of Access to Information* in Regina and in Saskatoon on October 2 and 3 respectively.

There was also a presentation by David Fewer, Staff Counsel for the Canadian Internet Policy and Public Interest Clinic, on October 4, 2007. Mr. Fewer's presentation was entitled *Privacy and the Right to Know: Rights, Complications and Limitations*.

The Regina Public Library also offered a number of access to information/privacy themed movies during the week.

Statistical Review of 2007-2008 Activities

We received:

- **77** (28% increase over previous year) requests for review of access decisions by public bodies
- **52** (63% increase over previous year) requests for a breach of privacy investigation
- **66** (33% decrease over previous year) requests for detailed advice and commentary
- **2802** (29% increase over previous year) inquiries for summary advice

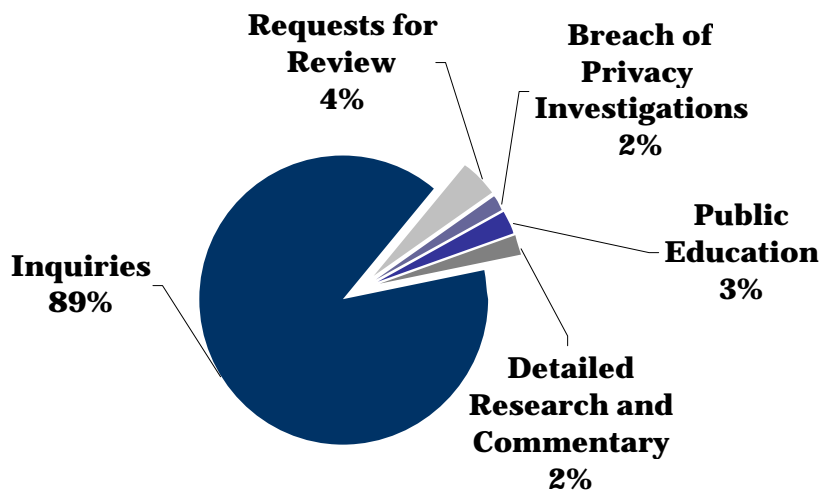
We provided **82** public education presentations.

Over the last four fiscal years, the cumulative totals for those areas are as follows:

- **302** requests for review of access decisions by public bodies
- **137** requests for a breach of privacy investigation
- **467** requests for detailed advice and commentary
- **7,499** inquiries for summary advice

Our website has proven to be a valuable tool in making information about our laws and processes readily available to citizens. In 2007-2008 our website attracted 270,319 hits and 77,131 visits to the site or an average of 210 visitors per day. This was an increase of 19% over hits in the previous year and an increase of 20% in the number of visits in the previous year.

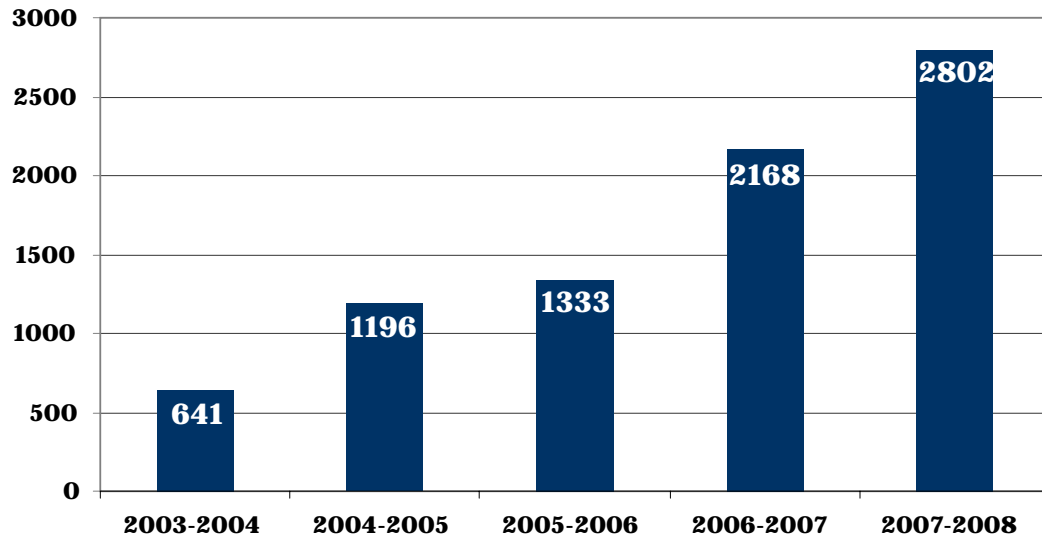
Distribution of Requests for Service 2007-2008



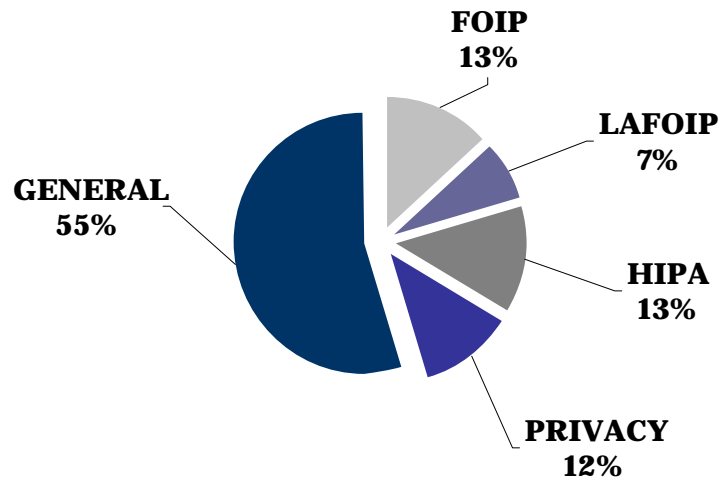
Description	2006 – 2007	2007 – 2008
Active Requests for Review Files	148*	127*
Active Breach of Privacy Investigation Files	70*	66*
Public Education	156	82
Detailed Research and Commentary to Government, Local Authorities and Trustees	99	66
Inquiries (e.g. Summary Advice)	2168	2802
Total	2641	3143

* Number is representative of open files carried over from previous years, not just those opened the fiscal year indicated.

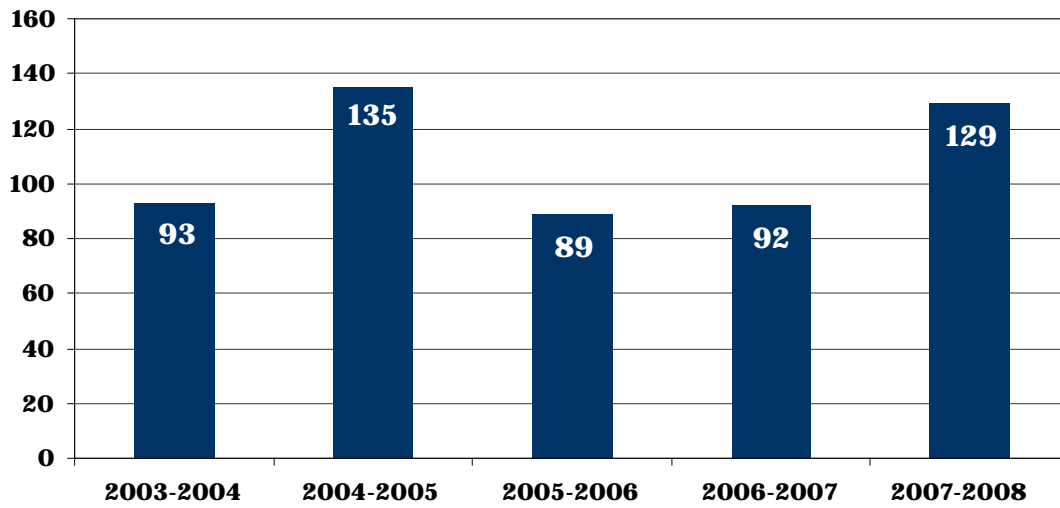
Inquiries by Fiscal Year



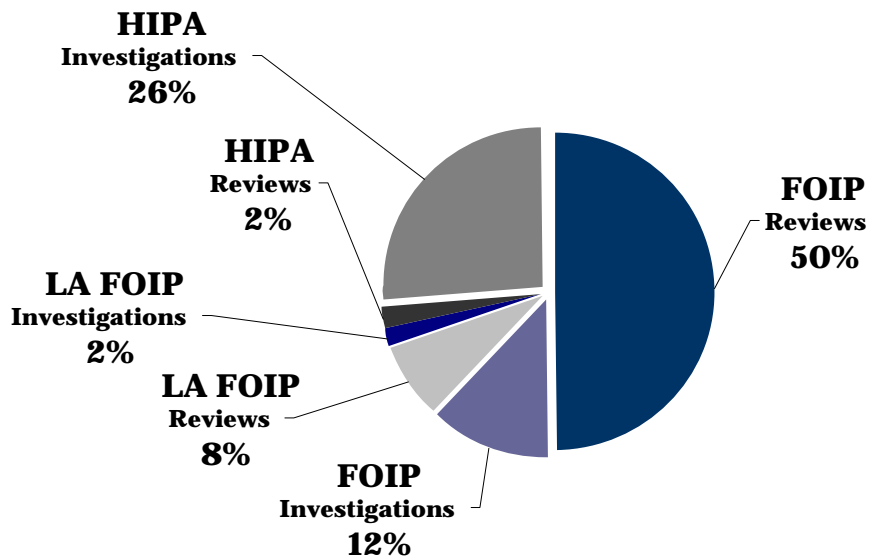
Breakdown of Inquiries 2007-2008



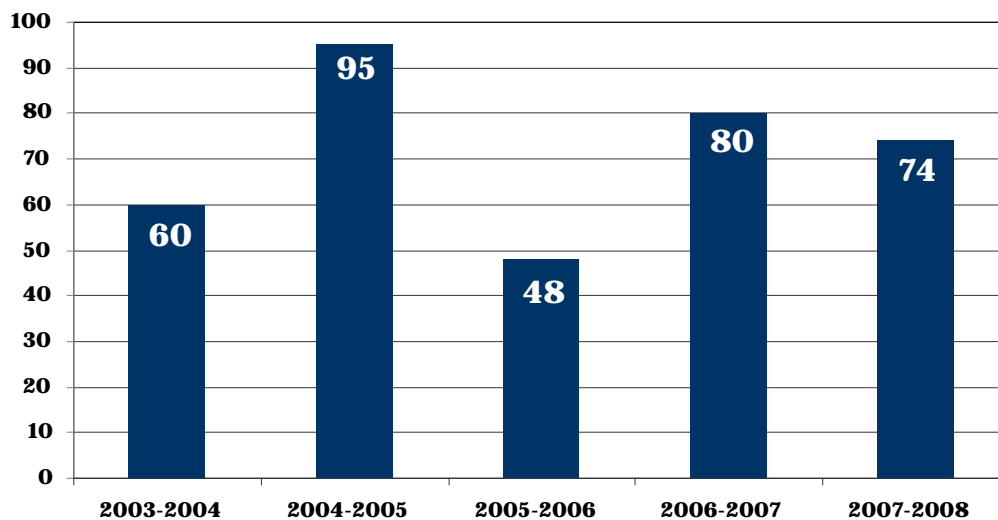
Case Files Opened per Fiscal Year



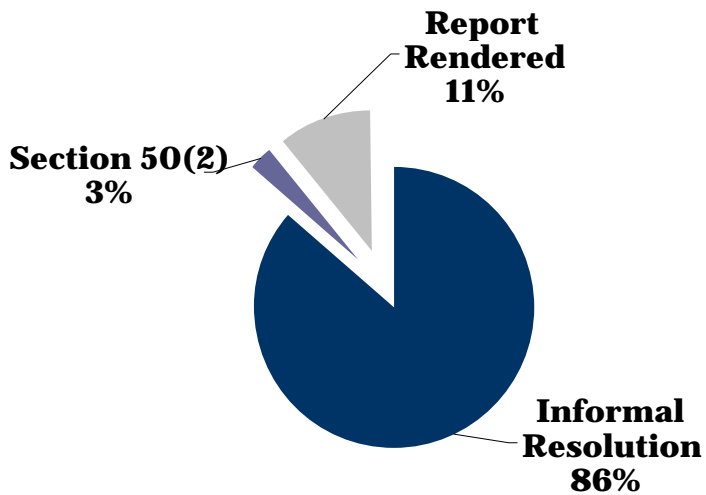
Breakdown of Files Opened 2007-2008



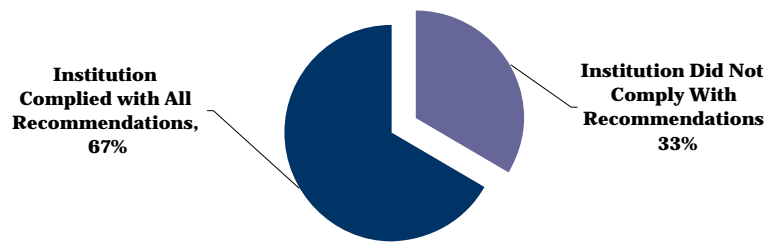
Case Files Closed per Fiscal Year



Case Resolution 2007-2008



Responses to Reports Rendered 2007-2008



FINANCIAL STATEMENTS

For the Year Ended March 31, 2008



SASKATCHEWAN

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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, 2008 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, 2008 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
June 19, 2008



Fred Wendel, CMA, CA
Provincial Auditor

Statement 1

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

	<u>2008</u>	<u>2007</u>
Financial assets		
Due from the General Revenue Fund	\$ 35,252	\$ 25,792
Liabilities		
Accounts payable	27,520	7,661
Accrued employee costs (Note 2d)	<u>7,732</u>	<u>18,131</u>
	<u>35,252</u>	<u>25,792</u>
Net Debt	<u>---</u>	<u>---</u>
Non-financial assets		
Tangible capital assets (Note 3)	64,339	67,608
Prepaid expenses	<u>5,253</u>	<u>6,075</u>
	<u>69,592</u>	<u>73,683</u>
Accumulated surplus	<u>\$ 69,592</u>	<u>\$ 73,683</u>

(See accompanying notes to the financial statements)

Statement 2

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

	2008		2007
	Budget (Note 4)	Actual	Actual
Revenue			
General Revenue Fund - Appropriation	\$ 675,000	\$ 673,793	\$ 598,974
Total Revenue	<u>675,000</u>	<u>673,793</u>	<u>598,974</u>
Expense			
Salaries and other employment expenses	\$ 487,000	\$ 457,835	\$ 429,800
Administration and operating expenses	51,050	52,805	37,593
Rental of space and equipment	87,250	80,820	68,928
Travel	31,500	26,713	26,404
Advertising and Promotion	16,000	17,048	24,773
Amortization	---	41,257	32,209
Contractual and legal services	2,200	1,406	2,601
Total Expense	<u>675,000</u>	<u>677,884</u>	<u>622,308</u>
Annual deficit	<u>\$ ---</u>	<u>(4,091)</u>	<u>(23,334)</u>
Accumulated surplus, beginning of year		<u>73,683</u>	<u>97,017</u>
Accumulated surplus, end of year		<u>\$ 69,592</u>	<u>\$ 73,683</u>

(See accompanying notes to the financial statements)

Statement 3

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

	<u>2008</u>	<u>2007</u>
Annual deficit	\$ (4,091)	\$ (23,334)
Acquisition of tangible capital assets	\$ (37,989)	\$ (8,111)
Amortization of tangible capital assets	<u>41,257</u>	<u>32,209</u>
	3,268	24,098
Decrease (Increase) in prepaid expense	<u>823</u>	<u>(764)</u>
	<u>4,091</u>	<u>23,334</u>
Decrease (Increase) in net debt	---	---
Net debt, beginning of year	<u>---</u>	<u>---</u>
Net debt, end of year	<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>2008</u>	<u>2007</u>
Operating transactions		
Cash received from:		
General Revenue Fund – Appropriation	\$ 664,333	\$ 582,788
	<u>664,333</u>	<u>582,788</u>
Cash used for:		
Salaries	468,234	411,828
Supplies and other	158,110	162,849
	<u>626,344</u>	<u>574,677</u>
Cash provided from operating transactions	<u>37,989</u>	<u>8,111</u>
Capital transactions		
Cash used to acquire tangible capital assets	<u>(37,989)</u>	<u>(8,111)</u>
Cash applied to capital transactions	<u>(37,989)</u>	<u>(8,111)</u>
Increase (decrease) in cash and cash equivalents	---	---
Cash and cash equivalents, beginning of year	<u>---</u>	<u>---</u>
Cash and cash equivalents, end of year	<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, 2008**

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, used 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 as recommended by the Public Sector Accounting Board of the Canadian Institute of Chartered Accountants 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 a straight-line basis over a life of three to five years.

d) Accrued employee costs

Accrued employee costs include the value of vacation entitlements earned to the end of the year but not taken and salary payable amounts, which are recorded as a liability.

3. Tangible capital assets

	2008			2007	
	Hardware & Software	Furniture	Leasehold Improvement	Total	Total
Opening costs of tangible capital assets	\$ 53,831	\$ 81,439	\$ 21,835	\$157,105	\$ 148,994
Additions during year	590	15,382	22,017	37,989	\$ 8,111
Disposals during year	---	---	---	---	---
Closing costs of tangible capital assets	54,421	96,821	43,852	195,094	157,105
Opening accumulated amortization	34,728	46,036	8,734	89,498	57,288
Annual amortization	10,187	19,364	11,706	41,257	32,209
Disposals	---	---	---	---	---
Closing accumulated amortization	44,915	65,400	20,440	130,755	89,497
Net book value of tangible capital assets	\$ 9,506	\$ 31,421	\$ 23,412	\$ 64,339	\$ 67,608

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, accounts payable and accrued employee payables. 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.

8.

Commitment

The Office rents its office space from the Ministry of Government Services. The rental agreement expires in 2010. The rent paid in the current year was \$78,153 and is subject to revision at the Ministry's discretion for 2009 and 2010.

APPENDIX I – LEGISLATIVE REVIEW ACTIVITY IN OTHER JURISDICTIONS

What follows is a brief summary of relevant legislative review activity in other jurisdictions.

CANADIAN FEDERAL ACCESS TO INFORMATION ACT

The federal *Access to Information Act*¹ was enacted in 1983. In March 1987, the Standing Committee on Justice and Solicitor General released its review of the Act, *Open and Shut: Enhancing the Right to Know and the Right to Privacy*.² Later the same year the government released its response, *Access and Privacy: The Steps Ahead*.³ A federal Task Force reported on June 12, 2002 and made 139 recommendations for legislative change in its report *Access to Information: Making it Work for Canadians*.⁴ The government then released *A Comprehensive Framework for Access to Information Reform: A Discussion Paper*.⁵ On November 15, 2005, the Honourable Gérard V. La Forest, Special Advisor to the Minister of Justice tabled his report - *The Offices of the Information and Privacy Commissioners: The Merger and Related Issues*.⁶ In April 2006, the federal government produced *Strengthening the Access to Information Act: A Discussion of Ideas Intrinsic to the Reform of the Access to Information Act*.⁷ Part of the *Federal Accountability Act*⁸ addressed changes to the *Access to Information Act*.

¹ *Access to Information Act*, [R.S. 1985, c. A-1]

² Government of Canada, *Report of the Standing Committee on Justice and Solicitor General on the Review of the Access to Information Act and the Privacy Act, Open and Shut: Enhancing the Right to Know and the Right to Privacy*, 1987.

³ Government of Canada, *Access and Privacy: The Steps Ahead*, 1988.

⁴ Government of Canada, *Report of the Access to Information Review Task Force, Access to Information: Making it Work for Canadians*, June 2002.

⁵ Justice Canada, *A Comprehensive Framework for Access to Information Reform: A Discussion Paper*, April 2005.

⁶ La Forest, Gérard V., *The Offices of the Information and Privacy Commissioners: The Merger and Related Issues - Report of the Special Advisor to the Minister of Justice*, November 2005.

⁷ Government of Canada, *Strengthening the Access to Information Act: A Discussion of Ideas Intrinsic to the Reform of the Access to Information Act*, April 2006.

⁸ *Federal Accountability Act*, [R.S. 2006, c. 9]

CANADIAN FEDERAL *PRIVACY ACT*

The March 1987 Report from the Standing Committee of Justice and Solicitor General discussed above, also reviewed the *Privacy Act*⁹. That was followed later the same year by the government's response: *Access and Privacy: The Steps Ahead*.¹⁰ In June 2006, the document *Government Accountability for Personal Information - Reforming the Privacy Act*¹¹ was issued by the Privacy Commissioner of Canada, and an Addendum to that document was issued in April 2008. The Standing Committee on Access to Information, Privacy and Ethics is reviewing the *Privacy Act* and is currently taking submissions and interviewing witnesses.

In her April 20, 2008 submission to the Standing Committee on Access to Information, Privacy and Ethics, Privacy Commissioner Jennifer Stoddart observed:

*In summary, the five-year review requirement would serve three ends. It would help synchronize the Canadian data protection framework across jurisdictions; keep the privacy practices of all organizations, both private and public sector, on the minds of Canadian decision-makers and industry; and it would ensure federal law keeps pace with rapidly evolving technologies and international trends.*¹²

⁹ *Privacy Act*, [R.S. 1985, c. P-21]

¹⁰ *Supra* note 3.

¹¹ Office of the Privacy Commissioner of Canada, *Government Accountability for Personal Information Reforming the Privacy Act*

¹² Office of the Privacy Commissioner of Canada, *Proposed Immediate Changes to the Privacy Act: Appearance before the Standing Committee on Access to Information, Privacy and Ethics*, April 29, 2008. Available at: http://www.privcom.gc.ca/parl/2008/parl_080429_02_e.pdf.

ONTARIO

The Ontario FOIP Act came into force in 1988 and included a statutory requirement to “*on or before the 1st day of January, 1991, undertake a comprehensive review of this Act and shall, within one year after beginning that review, make recommendations to the Legislative Assembly regarding amendments to this Act.*”¹³ The initial review resulted in a Report of the Standing Committee on the Legislative Assembly in January 1991 and included 81 different recommendations for amendment.¹⁴ There was a subsequent review of the municipal FOIP Act¹⁵ by the Standing Committee on Legislative Assembly in 1994 that included 84 different recommendations for amendment.¹⁶

NEWFOUNDLAND AND LABRADOR

In Newfoundland and Labrador, the relevant provision in their FOIP Act is as follows:

Review

*74. After the expiration of not more than 5 years after the coming into force of this Act or part of it and every 5 years thereafter, the minister responsible for this Act shall refer it to a committee for the purpose of undertaking a comprehensive review of the provisions and operation of this Act or part of it.*¹⁷

This reflects the need to fine tune these laws that apply to all public bodies and adapt them to changing circumstances, including new threats to privacy and transparency.

¹³ *Freedom of Information and Protection of Privacy Act*, [R.S.O. 1990, c. F.31], s. 68.

¹⁴ Ontario Information and Privacy Commissioner, *Report for the Standing Committee on the Legislative Assembly: Suggested Changes to the Freedom of Information and Protection of Privacy Act*, January 1991.

¹⁵ *Municipal Freedom of Information and Protection of Privacy Act*, [R.S.O. 1990, c. M.56]

¹⁶ Ontario Information and Privacy Commissioner, *Submission to The Standing Committee on the Legislative Assembly: Suggested Changes to the Municipal Freedom of Information and Protection of Privacy Act*, January 1994.

¹⁷ *Access to Information and Protection of Privacy Act*, [S.N.L. 2002, c. A-1.1].

NOVA SCOTIA

In 1977, Nova Scotia became the first province to pass access to information legislation. The legislation was replaced by a new statute in 1994 when the new *Freedom of Information and Protection of Privacy Act*¹⁸ came into effect. In 1996, an advisory committee was set up in accordance with the Act to review the legislation, and issued a report with 64 recommendations. Some of these were addressed by the legislature in 1998 and others in 1999.

QUEBEC

Legislation in Quebec created the Commission d'accès à l'information (CAI) in 1982. Substantial amendments were made by Bill 86 introduced in the National Assembly in 2005.¹⁹

MANITOBA

When *The Freedom of Information and Protection of Privacy Act*²⁰ came into force it included a requirement for a 5 year review by the Legislative Assembly. A similar provision appeared in *The Personal Health Information Act*²¹ when enacted in 1997. There was a public consultation in 2004 and an amending bill is currently before the Manitoba Assembly.

¹⁸ *Freedom of Information and Protection of Privacy Act*, [S.N.S. 1993, c. 5].

¹⁹ See CAI Press Release, September 13, 2005. Available at:
http://www.cai.gouv.qc.ca/05_communique_et_discours/commun_13_09_05-en.html.

²⁰ *The Freedom of Information and Protection of Privacy Act*, [S.M. 1997, c. 50].

²¹ *The Personal Health Information Act*, [S.M. 1997, c. 51].

ALBERTA

There were two major statutorily mandated reviews of the FOIP Act²² by all-party committees of the Legislative Assembly in 1998 and 2001. Both reports from these reviews resulted in an amendment of the FOIP Act in 1999. The *Health Information Act*²³ that came into force in 2001 was reviewed by an all-party committee in 2004 that resulted in a number of amendments. A further review is currently underway.

The Alberta *Select Special FOIP Act Review Committee Final Report* in November 2002 included the following commentary:

Legislative Review of the FOIP Act

To ensure that Alberta's access to information and privacy legislation remains current and relevant, section 97 of the FOIP Act establishes a requirement for timely review of the Act by a special committee of the Legislative Assembly. The current comprehensive review (2001-2002) is the second review of the Act and commenced less than three years after the submission of the report of the last Select Special Committee (1998).

The current review has provided the opportunity for some local public bodies, new to administering the Act since the last review, to comment and propose changes to the FOIP Act. A longer review period between the present and the next review would allow time for some experience with new legislative provisions before the beginning of the next review.²⁴

²² *Freedom of Information and Protection of Privacy Act*, [R.S.A. 2000, c. F-25].

²³ *Health Information Act*, [R.S.A. 2000, c.H-5]

²⁴ Legislative Assembly of Alberta, *Select Special FOIP Act Review Committee Final Report*, November 2002. Available at: http://www.assembly.ab.ca/pro/committees/FOIP_Final_Report.pdf.

BRITISH COLUMBIA

There have been two reports of statutorily mandated reviews of the *Freedom of Information and Protection of Privacy Act*²⁵ (FIPPA) by all-party committees of the Legislative Assembly. The first was in 1999²⁶ and the second in 2004²⁷. The next review must be undertaken starting next year.

Amendments have been made to FIPPA stemming from both reviews, although the latest report's recommendations are in large measure still under consideration.

Since FIPPA came into force in 1993 there have been many other amendments, including the USA Patriot Act changes. From this session, Bill 13 awaits Royal Assent. Its amendments stem from the 2004 review.

²⁵ *Freedom of Information and Protection of Privacy Act*, [R.S.B.C. 1996, c. 165]

²⁶ British Columbia Legislative Assembly, *Report of the Special Committee to Review the Freedom of Information & Protection of Privacy Act*, July 1999. Available at: http://www.leg.bc.ca/CMT/36thParl/foi/1999/review_act.htm.

²⁷ British Columbia Legislative Assembly, *Report of the Special Committee to Review the Freedom of Information and Protection of Privacy Act: Enhancing the Province's Public Sector Access and Privacy Law*, May 2004. Available at: <http://www.leg.bc.ca/CMT/37thparl/session-5/foi/reports/Rpt-FOIPPA37-5.pdf>.

NEW BRUNSWICK

The following excerpt is taken from the New Brunswick Ombudsmen Access and Privacy E-News Bulletin:

On September 15th and October 24th last fall two Task Forces reported to the Graham government outlining broad recommendations to overhaul access and privacy laws in this province. The Savoie Task Force, for its part, recommends a thorough rewrite of both the Right to Information Act and the Protection of Personal Information Act, blending them into a single statute. It also recommends that the new act be extended in scope to apply to municipalities and universities, that it should provide some relief to indemnify victims of a privacy breach, that it impose a duty upon public authorities to assist individuals with their information access requests, that exemptions for cabinet confidences be tightened up, that the 30 day time limit for responding to access requests be maintained and that third parties to whom government services are contracted out be subject to the same guarantees of privacy that apply to public authorities themselves. The Finn-Malone Task Force report, for its part, recommends the adoption of specific legislative provisions to protect personal health information. This Task Force also recommended the creation of a health data institute to manage the sharing of health information through the electronic health record and the creation of a separate information and privacy commissioner's office. The Ombudsman's Office notes that whichever oversight model is retained, both expert reports are agreed that the province must invest significant new resources not only to the oversight body but throughout the branches of government so that the corporate culture of public sector agencies can change from a culture of state secrecy to a culture of transparency and protection of privacy. See the Task Force reports and the Ombudsman's recommendations online:

- *Savoie Task Force and Ombudsman submission:*
<http://www.gnb.ca/Info/indexe.asp>
http://www.gnb.ca/0073/PDF/Info_PRC-e.pdf
- *Finn-Malone Task Force and Ombudsman submission:*
http://www.gnb.ca/0051/personal_health_information/indexe.asp
http://www.gnb.ca/0073/PDF/PHI_TaskForce-e.pdf

APPENDIX II – DEFINITIONS

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.

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.

Access is the right of an individual (or his or her lawfully authorized representative) to view or obtain copies of records in the possession or control of a public body including his/or her personal information/personal health information.

Commissioner refers to the Saskatchewan Information and Privacy Commissioner.

Complainant refers to an aggrieved individual who makes a formal complaint to the 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 written concern that there has been a breach of privacy by a government institution, local authority or trustee.

Confidentiality is the protection of personal information and personal health information once obtained against improper or unauthorized use or disclosure.

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.

Detailed Advice and Commentary refers to requests for evaluative, general, non-binding advice that take in excess of one hour of research, most of these would involve in excess of 4 hours research.

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 pursuant to section 60 of FOIP for managing access and privacy issues in any public body with this title.

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

Government Institution refers to those public bodies prescribed in FOIP and the FOIP 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.

Identity Theft occurs when one person uses another's personal information without his/her knowledge or consent to commit a crime such as fraud or theft.

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 the LA FOIP Regulations.

Mediation is the process of facilitating discussion between the parties involved in a review or 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 Saskatchewan Information and Privacy Commissioner.

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.

Privacy, in terms of 'information privacy,' means the right of the individual to determine when, how and to what extent he/she will share information about him/herself with others.

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

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 access review or breach of privacy complaint.

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

Secondary Purpose refers to the use or disclosure of personal information/personal health information for a purpose other than that for which it was originally collected.

Security refers to steps taken to protect personal information or personal health information from unauthorized disclosure.

Summary advice refers to requests for information received from public bodies or the public that can be responded to with less than one hour of research

Third Party is a person other than the applicant or a 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 and any government institution as defined by FOIP.

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.

APPENDIX IV – LIST OF BODIES SUBJECT TO OIPC OVERSIGHT

Government Institutions (70+)

Local Authorities

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

Health Information Trustees

(Others may be added through regulations)

- Ambulance Operators
- Community Clinics
- Government Institutions
 - 17 Departments
 - 76 Crown Corporations and Agencies

- 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
 - Registered Psychiatric Nurses Association of Saskatchewan
 - Saskatchewan Association of Chiropodists
 - Saskatchewan Association of Licensed Practical Nurses
 - Saskatchewan Association of Medical Radiation Technologists
 - Saskatchewan Association of Optometrists
 - Saskatchewan Association of Social Workers
 - Saskatchewan Association of Speech/Language Pathologists and Audiologists
 - Saskatchewan College of Pharmacists
 - Saskatchewan College of Physical Therapists
 - Saskatchewan College of Psychologists
 - Saskatchewan Dental Assistants Association
 - Saskatchewan Dental Hygienists Association
 - Saskatchewan Dental Therapists Association
 - Saskatchewan Dieticians Association
 - Saskatchewan Ophthalmic Dispensers Association
 - Saskatchewan Registered Nurses' Association
 - Saskatchewan Society for Medical Laboratory Technologists
 - Saskatchewan Society of Occupational Therapists
- Laboratories
- Mental Health Facilities
- Personal Care Homes
- Pharmacies
- Regional Health Authorities and Affiliates
 - 13 health authorities
- Regulated Health Professions
 - 1500 physicians and surgeons
 - 9000 registered nurses
- Saskatchewan Cancer Agency
- Special Care Homes

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ENDNOTES

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- ¹ Bennett and Raab, *The Governance of Privacy*, (London: Ashgate Press, 2003) at 109-114.
- ² *The Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. F-22.01 [hereinafter “FOIP”]
- ³ Section 2(1)(g) and 24 of FOIP
- ⁴ Section 2(1)(d) of FOIP
- ⁵ *The Local Authority Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. L-27 [hereinafter “LA FOIP”]
- ⁶ Section 2(f) of LA FOIP
- ⁷ *The Health Information Protection Act*, S.S. 1999, c. H-0.021 [hereinafter “HIPA”]
- ⁸ Section 2(t) of HIPA
- ⁹ Section 2(m) of HIPA
- ¹⁰ 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; *Canada (Attorney General) v. Canada (Information Commissioner)*, [2002] 3 F.C. 630 at para. 20; *Canada Inc. v. Canada (Minister of Industry)*, [2002] 1 F.C. 421 at para. 102; *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, (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.
- ¹¹ (2003-2004, p. 13, 19, 20-22; 2004-2005, p. 10-26, 33-40; 2005-2006, p. 4-7, 10-21, 25-28; 2006-2007, p. 5-7, 10, 11-13)
- ¹² Section 33(d) of FOIP
- ¹³ *Access to Information Act*, R.S. 1985, c. A-1 [hereinafter “ATIA”]
- ¹⁴ *Privacy Act*, R.S. 1985, c. P-21
- ¹⁵ See, among others: EKOS Research Associates Inc. for the Office of the Privacy Commissioner of Canada, *Canadians and the Privacy Landscape*, March 2007, available at: http://www.privcom.gc.ca/information/survey/2007/ekos_2007_02_e.asp, and EKOS Research Associates Inc. for Canada Health Infoway, Health Canada, and the Office of the Privacy Commissioner of Canada, *Electronic Health Information and Privacy Survey: What Canadians Think – 2007*, August 2007, available at: http://www.hc-sc.gc.ca/ahc-asc/pubs/atip-aiprp/survey-sondage_e.html.
- ¹⁶ Flegel, Stephanie. *The Regina Sun*, SGI offering online help. February 10, 2008.
- ¹⁷ Available online: http://www.sgi.sk.ca/news_releases/2008/feb_05_2008.html
- ¹⁸ Available online: <http://www.oipc.sk.ca/Reports/F-2005-007.pdf>
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¹⁹ 2005-2006 Annual Report at 33 available online: <http://www.oipc.sk.ca/Reports/AnnualReport05-06.pdf>

²⁰ S.S. 1979, c. W-17.1

²¹ Available online: <http://www.labour.gov.sk.ca/CORone/>

²² At 228, available online: <http://www.labour.gov.sk.ca/CORtwo/>

²³ Ibid, at 227 and 228

²⁴ Available online: <http://www.oipc.sk.ca/Resources/Constituency%20Office%20Guide%20-%20November%202007%20Version.pdf>

²⁵ Section 2(1)(i) of FOIP; section 2(j) of LA FOIP

²⁶ The current Director is the fourth individual to hold this title in just four and one-half years. Other individuals have worked on the privacy file as term employees and then left depriving the Ministry of the kind of continuity that the access and privacy file needs.

²⁷ *The Health Information Protection Regulations*, S.S. 2005, c. H-0.021 Reg. 1 as amended, section 5.1.

²⁸ “Masking” is defined by Canada Health Infoway in its Privacy and Security Conceptual Architecture Version 1.1 as “a term used to describe the process of restricting an access to or transfer of PHI. Typically, masking is applied at the data source and may be overridden, as permitted by law, by the accessing custodian (e.g. in emergency health situations).

²⁹ The British Columbia Pharmanet program was improperly accessed by a number of persons with access to that database for improper purposes. There

are recent examples in Ontario [Ont. OIPC Order HO-002] and Alberta [April 2007 FOIP FOLIO, p. 3] where the Commissioners in those provinces found persons working in health care facilities accessed the patient records of an individual for improper purposes.

³⁰ Section 2(q) of HIPA

³¹ Electronic Health Record Infostructure (EHRI) Privacy and Security Conceptual Architecture, Version 1.1, June 2005, page iii.

³² (1998), 164 Sask. R. 204

³³ This is the same item described earlier but through the privacy filter instead of access to information.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.