



2010-2011 Annual Report

Saskatchewan
Information and
Privacy Commissioner

**Saskatchewan
Information and Privacy
Commissioner**



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June 30, 2011

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 2010-2011 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 be 'R. Gary Dickson', with a long horizontal stroke extending to the right.

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

*T*here are laws that protect information: *The Freedom of Information and Protection of Privacy Act* and *The Health Information Protection Act*. Together, they provide privacy rules and establish a right of access to records in government.

However, I am mindful of the fact that the real strength lies not in the laws themselves but in the people in government who work with this information each day to deliver our programs and services. Privacy is in our hands. Accountability is ours.

I applaud everyone who continues to work hard to ensure our compliance with these important laws and I would like to take this time to encourage everyone in government to continue efforts to ensure we protect the privacy of our citizens while supporting the legislated right of access to government records.

Excerpt from September 1, 2010 memorandum from Premier Brad Wall to “All Government of Saskatchewan Employees” regarding Privacy and Security Awareness Month

*C*ommunicating with the public used to be a straightforward operation for governments, parliaments and local authorities. The communicative relationship was largely one-way, with the dissemination of minutes, official records, reports and memoranda being placed regularly within the public domain, usually to be read by a small audience of interested experts. . . . During the last decade these old communicative arrangements have come under pressure to change. As citizens begin to experience two-way relationships with other institutions – shops, travel agencies, banks, broadcasters, colleges and universities – there is an increasing expectation that those elected to represent and govern them will be both accessible and interactively accountable online.

Stephen Coleman and Jay G. Blumler, *The Internet and Democratic Citizenship: Theory, Practice and Policy* (Cambridge University Press, 2009), p. 90

*O*pen, accessible and reusable information. This means that information should be disseminated free or at minimal cost, and supported by data structures to assist in the discovery, understanding and interpretation of the information. It should be provided in open standard formats that are adaptable and reusable. Governments should also collaborate with and encourage citizens, businesses and non-government organizations to participate in the development and maximize the use of technology to enrich their information resources.

Excerpt from *Open Government: Resolution of Canada’s Access to Information and Privacy Commissioners*, September 1, 2010 – Whitehorse, Yukon

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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.

Colin J. Bennet, “The Privacy Commissioner of Canada: Multiple Roles, Diverse Expectations and Structural Dilemmas,” *Canadian Public Administration* 46, 2 (2003)

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

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

FOIP applies to all “government institutions”. 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 (LA FOIP)* was proclaimed. This law is very similar to FOIP, but applies to “local authorities” such as schools, universities, regional health authorities, municipalities, and library boards.

In 2003, *The Health Information Protection Act (HIPA)* was proclaimed. This applies to organizations and individuals designated as a health information “trustee”, defines what is “personal health information” and sets the rules for 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.

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Mandate of the Commissioner

There are four major elements in the Saskatchewan Information and Privacy Commissioner's mandate defined by FOIP, LA FOIP and HIPA:

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

Mission Statement

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

Vision

Saskatchewan government institutions and local authorities operating in a fashion that is as transparent as possible and with the greatest sensitivity to the privacy of the people of Saskatchewan, all in accordance with the provisions of the applicable legislation.

Saskatchewan health information trustees operating in a fashion that fully respects the privacy rights of the people of Saskatchewan guaranteed by *The Health Information Protection Act* and the *Canadian Charter of Rights and Freedom*.

Commissioner's Message



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

A Golden Opportunity for Saskatchewan to Lead

“There will be a renewed focus on citizen-centred services, with people getting what they need from their government, in a way that is useful to them.” (Throne Speech for opening of the Fourth Session of the Twenty-Sixth Legislature, October 27, 2010, p. 5672 Hansard)

Heartened by the discussion of a renewed focus on citizen-centred service and a culture of customer service at the highest levels of our Saskatchewan Government, I wish to offer a suggestion of one powerful way this province could advance that focus and make our province a national leader.

Increasingly, Saskatchewan's dated approach to access to information is at odds with the changing expectations of Saskatchewan residents. The notion that a citizen interested in general information about a government service or program or in obtaining a copy of their own personal information must rely on our 19 year old FOIP Act is becoming less and less acceptable. To require a citizen to download and print a copy of a prescribed access form and send it to the appropriate public body by 'snail mail' and have to wait thirty days or longer, if an extension of time is warranted, to receive the information again by mail in the form of a hard copy of the desired record seems somewhat anachronistic. I might suggest that in our age of technology, citizens increasingly expect prompt access to information that is important to them from their government in a more timely way and in a format that is convenient for them.

I suspect that Saskatchewan residents would much prefer the feature of the Mexican federal access to information regime whereby anyone can submit a request for access electronically to the public body. The public body will respond electronically, within 10 days. In Mexico you can also readily learn what other kinds of information have already been released to other applicants. Similar features exist in the access regime in the United Kingdom.

Our federal government has now launched an Open Data Pilot Project. Information on this project can be viewed at www.data.gc.ca. This is part of the federal government's commitment to open government and is being pursued through open data, open information and open dialogue. The stated purpose is to facilitate the ability of the public to search, download and use Government of Canada data. This will make 260,000 data sets available to the public from 10 participating government departments. The plan is to expand this to publish data sets from all federal government institutions. The federal government has started to make publicly available details of all access requests that have resulted in the disclosure of information. This is a very useful tool and ought to reduce the cost and time to process multiple successive requests from citizens for the same records.

The open government concept has already been implemented in the United Kingdom and in the United States at the federal level to make it easier through technology to make more information available to the citizen. This involves the creation of dedicated websites populated with vast amounts of government information including statistical information, reports, studies and surveys. All of this material is free and readily available to anyone interested.

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In Canada, it has been modeled by our largest cities such as Toronto, Vancouver and Edmonton. These Canadian cities have joined forces to collaborate on an “Open Data Framework.” The project aims to enhance current open data initiatives in the areas of data standards, terms of use agreements and open data website design. Since the largest cohort of access requesters is businesses and individuals, open government would be a boon to both groups.

It does not appear that there has been corresponding progress at the provincial or territorial level although the British Columbia Government has now committed to publishing responses to all access to information requests.

This will not eliminate the need for access to information legislation and the supporting infrastructure. There are compelling reasons why certain information, including personal information, should not be released in all cases. Nonetheless, it could potentially reduce the reliance on FOIP as a primary means for citizens, businesses and media to obtain a good deal of government records and information. Processing access requests by citizens under FOIP or LA FOIP can be a cumbersome, expensive and time intensive process for public bodies. Integrating open government principles in our province could pay big dividends from many perspectives.

The Office of the Saskatchewan Information and Privacy Commissioner (OIPC) was a supporter of the unanimous resolution from all of Canada’s Information and Privacy Commissioners (Commissioners) in 2010 that called for increased efforts to bolster open government. I suggest that not only must our 19 year old law be substantially revised, but we could reexamine how to better utilize current technology to achieve greater transparency and enhanced service to our residents.

The Resolution adopted by the Commissioners on September 1, 2010, available on our website at www.oipc.sk.ca, is as follows:

1. The Commissioners endorse and promote open government as a means to enhance transparency and accountability which are essential features of good governance and critical elements of an effective and robust democracy.
2. The Commissioners call on the federal and all provincial and territorial governments to declare the importance of open government, including specific commitments for stronger standards for transparency and participation by the public.

3. Governments should build access mechanisms into the design and implementation stages of all new programs and services to facilitate and enhance proactive disclosure of information.
4. Through ongoing consultations with the public, governments should routinely identify data sources and proactively disclose information in open, accessible and reusable formats. Public access to information should be provided free or at minimal cost.
5. In implementing open government policies, the federal and all provincial and territorial governments should give due consideration to privacy, confidentiality, security, Crown copyright and all relevant laws.

We encourage the Government of Saskatchewan to consider how this province can become a leader in the emerging open government movement.

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Notable Achievements

In the 2010-2011 fiscal year we witnessed a number of highlights in terms of Saskatchewan's access and privacy regime.

Before addressing those highlights it is necessary to define what we mean by 'the access and privacy regime.' The access and privacy regime consists of not only the legislation but also the following elements: role of FOIP Coordinators in each public body; training of staff in public bodies and trustee organizations; education and support provided by the Ministry of Justice and Attorney General Access and Privacy Branch (Access and Privacy Branch); materials, guides, checklists, sample forms and other compliance tools created by the Access and Privacy Branch for FOIP and LA FOIP and equivalent material created by the Ministry of Health (Health) for trustee organizations; leadership at each level from the Premier's Office through Ministers, Deputy Ministers, Assistant Deputy Ministers and Managers; and the work of the OIPC.

Some of those notable achievements were:

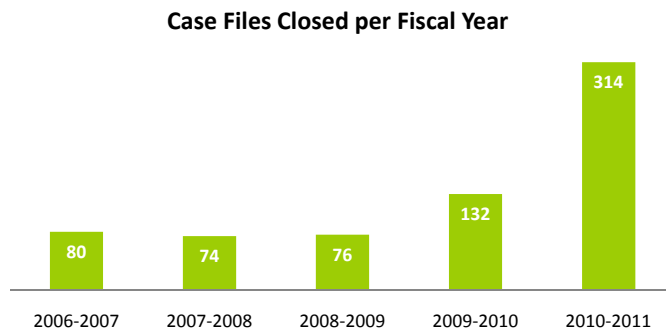
- The September 1, 2010 memorandum from Premier Wall to all employees of the Saskatchewan Government stressing the importance of FOIP and HIPA.
- September 2010 was declared Privacy and Security Awareness Month by the Government of Saskatchewan. During this month a variety of activities were held by many Ministries and Crown corporations to raise awareness of FOIP and HIPA.
- *Saskatchewan Access, Privacy, Security and Records Management Forum: Making Connections* in September 2010 included presentations from the Privacy Commissioner of Canada, Jennifer Stoddart, the Alberta Information and Privacy Commissioner, Frank Work and Irene Hamilton, the Ombudsman of Manitoba.

OIPC Achievements

This past year the OIPC's number one goal was reducing the backlog of active case files, concentrating on the oldest files. I have noted in past annual reports that our most serious problem is the backlog of case files and the unacceptable delays experienced by citizens who wish their appeal or review heard and disposed of in a timely way.

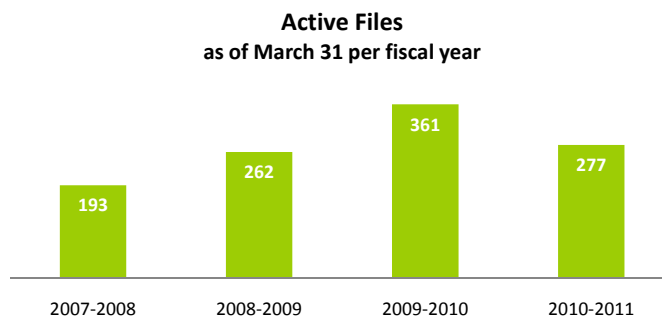
As our goal was to reduce the number of case files, we set out to find ways in which we could increase the amount of time that our three Portfolio Officers spend on active case files. First, we purposefully reduced the number of presentations made to organizations and institutions. Second, we restructured the positions in the office, moving the intake function to the Director of Operations and the Intake Officer/ Database Manager.

By making these changes, we were able to close a record number of case files. These included both breach of privacy investigations as well as reviews of decisions to deny an applicant access to records. In 2010-2011 we succeeded in closing 314 files, up from the 132 files closed in 2009-2010.

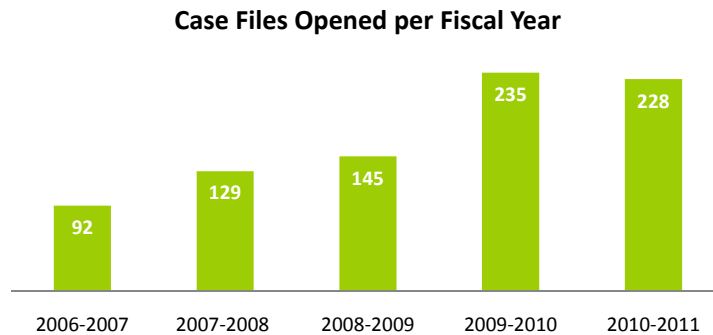


Another factor for the record number of closed case files can be found in Review Report F-2010-002. We discontinued a large number of reviews on the basis that they were vexatious and 'not made in good faith'. This decision can be found on our website at www.oipc.sk.ca under the *Reports* tab.

As you can see by the chart below, our active case files have decreased by 23%. This is a significant accomplishment for our dedicated team of 8 including the Commissioner.



Overall, from January 1, 2003 to March 31, 2011 we have opened 1,164 case files and closed 887. The chart below is reflective of the number of case files opened in the last five fiscal years only.



In our *2009-2010 Annual Report* I noted the creation of the document *Electronic Disclosure of Personal Information in the Decisions of Administrative Tribunals: What should administrative tribunals consider when contemplating Internet publication of their decisions?* I can report that as a result of discussions with a number of Saskatchewan's administrative tribunals, efforts are being made by almost all of them to consider what changes can be effected in their procedures and practices to reflect the advice in that resource.

We understand that a number of the resources available on our website are being well utilized by public bodies and trustees. These include the *Helpful Tips: Privacy Breach Guidelines*, *Privacy Considerations: Faxing Personal Information and Personal Health Information* and *Best Practices: Mobile Device Security*. These documents have been updated during 2010-2011 as has the *Annotated Section Index* for each of the three statutes we oversee.

And Now the Bad News...

A particular disappointment this last year is that although we have created a considerable number of resources to assist public bodies and trustees in their compliance efforts, we continue to find too many public bodies and trustees are completely unaware of those resources and unfamiliar with the contents. This was certainly evident in our earlier *Report on Management of Access Requests from Patients to Saskatchewan Regional Health Authorities* and this past year in the *Report on Systemic Issues with Faxing Personal Health Information*.

As we progress on case files, the delays on the part of public bodies and trustees in responding to inquiries from our office seem to be more common. There are at least a half dozen government institutions that have been very slow in assisting us on review of access denial decisions.

This shall be notice to those organizations that in our next Annual Report we will be identifying those public bodies and describing their role in delays to complete access review files. If it appears that certain government institutions have not made adequate arrangements to allow their Ministry(ies) to meet its FOIP obligations, we will highlight that in our Annual Report for 2011-2012.

Also, we continue to be bedeviled by the high number of privacy breaches that involve local authorities, government institutions and trustees. We believe that this pattern will continue for the foreseeable future unless and until there are serious consequences for those that breach HIPA. Serious consequences would need to be more than our findings and recommendations in a public report.

Looking Forward

Changing technology creates many new kinds of privacy challenges for Saskatchewan, its public bodies and its citizens. The proliferation of smart phones, increasingly powerful portable computer devices with much increased capacity, cloud computing, adoption of iPads and tablets, social networking and increasingly sophisticated biometric identification are just some examples of the technology that impacts privacy in this province. Our oversight office is challenged to adapt our processes to address these changes that were not foreseeable 19 years ago when FOIP came into force. We also work with trustee organizations and public bodies to assist them in reconciling new technological applications with FOIP, LA FOIP and HIPA.

As in past years, I wish to acknowledge the assistance provided to me and to our office by the Legislative Assembly Service including its Human Resource and Payroll Services, Financial and Administrative Services and Communication and Technology Services branches.

I cannot say enough about the wonderful support provided over the last year by our OIPC team. I continue to be inspired by the professionalism, creativity and industry of our staff. They deserve every credit for what has been accomplished in 2010-2011.

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

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Promoting Accountability

Our office is mindful that an agency that is mandated to promote accountability of government to citizens must itself address how it can be more accountable to the Legislative Assembly of Saskatchewan and to the people of this province. As noted by Malcolm Crompton, former Privacy Commissioner for Australia:

...the focus is often on the nature of the legal structures and the economic incentives they create as opposed to whether, within the bounds of the law and surrounding environment, the regulator itself has performed well or badly.

Malcolm Crompton, "Are comparisons possible? A Framework for assessing the performance of data protection supervisors," *Jusletter* 3 (October 2005)

I note that this issue was also considered by Professors Charles Raab and Colin Bennett in *The Governance of Privacy: Policy Instruments in Global Perspective*. More recently, an evaluation was undertaken of the federal Privacy Commissioner office by France Houle and Lorne Sossin. The 2010 research report is *Powers and Functions of the Ombudsman in the Personal Information Protection and Electronic Documents Act: An Effectiveness Study*.

We strive to be accountable in the following ways:

- Our Annual Report is one measure of reporting on the actions of our office over the previous fiscal year by means of both a narrative form and by means of statistics and audited financial statements.
- We produce a monthly e-newsletter (the Saskatchewan FOIP FOLIO) that highlights the work of our office and our work product whether it is educational or resource materials, formal reports documenting breach of privacy investigations or decisions by public bodies and trustees to deny access to records. There are now 76 past issues of the FOIP FOLIO archived on our website.
- We receive a large volume of telephone calls and email inquiries from citizens, public bodies and trustees requesting advice on access or privacy or health information issues (more than 3100 in each of the last three fiscal years). We track our performance in returning calls and responding to emails in a timely way.
- We make an annual presentation to the Board of Internal Economy in or about February of each year on our mandated work and our plans for the forthcoming fiscal year. There is a Hansard record of that presentation including questions from Board members and our responses.

- We make an annual presentation in or about April of each year to the Standing Committee on House Services that considers our Estimates and Annual Report for the past year. There is a Hansard record of that presentation and the question and answer exchange that ensues.
- We post on our website under the *Proactive Disclosure* tab, a detailed accounting of travel costs incurred by the Commissioner and staff of the OIPC.
- We publish full text Reports on reviews of access denial decisions and breach of privacy investigations, all of which are archived on our website and are accompanied by an *Annotated Section Index* to facilitate research by the public or public bodies/trustees.
- Starting in 2005 the Saskatchewan OIPC developed a detailed rolling three year business plan (5 core areas, 10 goals and 45 performance measures). This plan detailed the staffing required to meet all of those performance measures and goals. This has proven somewhat less helpful than originally contemplated because the OIPC does not have a critical mass in terms of investigative capacity and the number of new investigations and reviews far exceed the capacity of three Portfolio Officers to keep pace. We are now working on a business plan that will take the office to the spring of 2014.

Communication and Education

We continue to receive positive feedback from citizens, public bodies and trustees about our monthly e-newsletter, the Saskatchewan FOIP FOLIO. We have readers not only throughout Saskatchewan but also other parts of Canada, the U.S., Australia and New Zealand, Europe and Africa.

There are now 76 past issues of the Saskatchewan FOIP FOLIO. This apparently has been useful for FOIP Coordinators and Privacy Officers who wish to stay current with access and privacy developments within and outside of Saskatchewan.

There are now 76 past issues archived on our website under the *Newsletters* tab. This apparently has been useful for FOIP Coordinators and Privacy Officers who wish to stay current with access and privacy developments within and outside of Saskatchewan. We continue to invite suggestions from readers for items that would be useful to include in future issues. Such suggestions should be addressed to webmaster@oipc.sk.ca.

We have produced to this point a number of tools and resources for the public, public bodies and trustees including the following:

- Report on the Overarching Personal Information Privacy Framework for Executive Government
- Video Surveillance Guidelines
- Report on *The Health Information Protection Act* (HIPA) Draft Regulations
- Report on *The Youth Drug Detoxification and Stabilization Act*
- Submission to Workers' Compensation Act Committee of Review
- Privacy Impact Assessment: Background Information
- Privacy Impact Assessment: Short Form
- Privacy Impact Assessment for FOIP, LA FOIP and HIPA
- Privacy Impact Assessment Worksheet for FOIP, LA FOIP and HIPA
- A Compendium of Health Information Laws for Saskatchewan, Alberta and Manitoba
- Privacy for Saskatchewan Public Libraries
- Administrative Tribunals, Privacy and the Net
- Best Practices: Mobile Device Security
- Privacy Considerations: Faxing Personal Information and Personal Health Information
- Report on Management of Access Requests from Patients to Saskatchewan Regional Health Authorities
- FAQs: Administrative Tribunals and Internet Publication of Decisions
- Advisory for Saskatchewan Physicians and Patients Regarding Out-Sourcing Storage of Patient Records

- Glossary of Common Terms: *The Health Information Protection Act* (HIPA)
- Report on *The Health Information Protection Amendment Regulations, 2010*
- Brown Bag Lunches:
 - The Public Body, the Applicant and the Third Party (FOIP Part V)
 - Duty to Search and Assist
 - Fees, Estimates and Waivers
 - Severing Made Easy
 - How to Survive as a FOIP/HIPA Coordinator
- Map: Federal Access and Privacy Legislation
- Map: Provincial Access and Privacy Legislation
- Map: Information and Privacy Commissioners in Canada
- FOIP Quick Tips Card
- Helpful Tips: OIPC Guidelines for Public Bodies/Trustees in Preparing for a Review
- Helpful Tips: Best Practices for Public Bodies/Trustees for the Processing of Access Requests
- Helpful Tips: Privacy Breach Guidelines
- Saskatchewan MLA Constituency Office Access and Privacy Guide
- How to Make an Access Request
- Report on Systemic Issues with Faxing Personal Health Information
- Advisory for Saskatchewan Health Trustees for Record Disposition
- Brochure: Your Privacy and Access to Information Rights in Saskatchewan
- Brochure: Your Right of Privacy
- Brochure: A Contractor's Guide to Access and Privacy in Saskatchewan

Our website, www.oipc.sk.ca, has also become a very well used resource with more than 1.2 million hits in the 2010 calendar year.

We have significantly reduced the number of education sessions that our office provides. This is consistent with our priority on making more progress in reducing our backlog of case files (both reviews of access denial and privacy complaints). We recognize that there continues to be a big appetite for more information that is accurate and practical. We have given more than 890 presentations in some 33 different communities. Now that FOIP and LA FOIP are more than 19 and 18 years old respectively, and HIPA has been in force for more than seven years, it is time to focus more on the enforcement aspect of our mandate.

The Freedom of Information and Protection of Privacy Act

Review Report F-2010-002 provided our office's first analysis and disposition of a claim that an individual was making frivolous and vexatious requests for review of decisions by government institutions. The issue is an important one. The right of any applicant to make a formal request for access is a fundamental right and must not be denied in the absence of clear and compelling evidence that it is an abuse of the FOIP process. On the other hand, public bodies deserve assurance that our office will intervene when appropriate to prevent an abuse. Review Report F-2010-002 sets out the test we will use when assessing an argument that certain reviews that are vexatious and 'not made in good faith' should be discontinued.

In that particular case, an applicant had made a series of requests for similar records. We determined that it was appropriate to discontinue reviews once we determined they were vexatious and not made in good faith. We did find also that there was no justification for the government institutions in that case to refuse to provide a response to the access request given the plainreading of the relevant provisions. Regrettably, our FOIP Act does not allow our office to determine that an access request is frivolous or vexatious or an abuse of the process and excuse the public body from processing the request or future similar requests. This is a common feature in more modern access laws in Canada.

For more information on this decision please see the case summary section of this Report found at www.oipc.sk.ca under the *Reports* tab.

Right to Know Week

On September 28, 2010 there was an event hosted by the Saskatchewan Right to Know Committee and Deloitte for attendees at the Privacy and Security Conference held in Regina. Again, proclamations were issued by the cities of Regina and Saskatoon and our Provincial Government. There were a number of events hosted in most Canadian provinces and territories during that same week. More information about Right to Know Week is available at our website, www.oipc.sk.ca, under the *Right to Know* tab and at the national website, www.righttoknow.ca.

Canadian Bar Association

Our office has collaborated with the Canadian Bar Association National Privacy and Access Law Section and with the Sections in Regina (South) and Saskatoon (North) to promote awareness of FOIP, LA FOIP and HIPA among members of the Saskatchewan bar.

Making Sure Privacy is Taken Seriously

Given the number of privacy breaches that we have seen in the last year, both in our province but also in other parts of Canada, there needs to be reconsideration of whether additional remedies or revised remedies are warranted. In Saskatchewan's FOIP Act the maximum fine for a breach of certain provisions in that law is only \$1,000. The same applies to LA FOIP. This is in sharp contrast to the fines available by reason of section 64 of HIPA (\$50,000 maximum fine for an individual and \$500,000 for an organization).

In terms of considering strengthening Saskatchewan's privacy laws, we may be guided by developments outside our province:

- An Alberta court imposed a \$10,000 fine on an employee of a medical clinic that violated the privacy of a patient.
- A county council in the UK was penalized for breaching the United Kingdom's *Data Protection Act*. It was ordered to pay 100,000 pounds (roughly \$157,000 Canadian) for two serious incidents where council employees faxed highly sensitive personal information to the wrong recipients.
- The CNIL, the French data protection agency, has issued a record-setting fine of 100,000 Euros (over \$140,000 Canadian) against Google after the WiFi breach.

Given the number of privacy breaches that we have seen in the last year, both in our province but also in other parts of Canada, there needs to be reconsideration of whether additional remedies or revised remedies are warranted.

The Local Authority Freedom of Information and Protection of Privacy Act

We have seen significant improvement in the capacity of school divisions, municipalities, universities and colleges to deal with access requests and privacy matters under LA FOIP.

We continue to witness progress in local authorities as they become more familiar with LA FOIP and how to efficiently manage access to information requests from their citizens. We have seen significant improvement in the capacity of school divisions, municipalities, universities and colleges to deal with access requests and privacy matters under LA FOIP. This may be in part attributable to the education initiatives of the Access and Privacy Branch. These initiatives include training sessions in different communities and the adaptation for local authorities of the FOIP online training course developed by the Access and Privacy Branch.

Despite good progress being made in many local authorities in terms of compliance with LA FOIP, of particular concern was the extraordinary action taken by the City of Saskatoon (the City) that is documented in our Review Report LA-2010-002. An employee of the Saskatoon Police Service (the SPS) had made a complaint that resulted in a harassment investigation. The SPS requested that the City undertake the harassment investigation. The employee submitted a formal access request under LA FOIP to the City. The City asserted that it had neither possession nor control of the record. The City had no contract with the SPS that addressed the responsibilities of the City under LA FOIP. This was surprising since the City has been subject to LA FOIP since 1993 and yet was undertaking work for third party organizations without considering its transparency obligations in this quasi-constitutional law.

We found that the City created the record in question. This was done by employees of the City presumably paid and supervised by the City. The City permitted certain employees to access or use the record in the course of their work investigating the harassment complaint. The record was stored for eight years in a locked file cabinet under the operational control of the Employment Services Branch of the City. When the SPS chose to take possession of the record they required the City to retrieve the record from storage and transfer the record to them.

The City had three problems to overcome in meeting the burden of proof in section 51 of LA FOIP:

1. There was no record for our office to review and consider.
2. There was no written contract between the SPS and the City governing work to be done by the Employment Services Branch of the City for bodies not covered by LA FOIP such as the SPS.
3. There was significant uncertainty as to the terms of the alleged verbal contract. This included precisely what contributions were made by the City and the SPS respectively in the actual preparation of the harassment investigation report and in the retention of the report for a period of eight years.

We found that the preponderance of evidence indicated that the City had not only physical possession but a measure of control over the document it created and stored for some eight years. The City had immediate charge and control of the record and some legal responsibility for the safekeeping, care, protection and preservation of the record. For those reasons we concluded that the City had possession of the record.

It was clear from the City's submissions, it had not, at the material times, clearly understood whether it was doing the work as a local authority or whether the employees of the City were somehow independently contracting with the SPS. We found that possession for purposes of LA FOIP requires possession coupled with some degree of control of the record albeit not exclusive control. We concluded that the City had possession of the record sufficient to allow LA FOIP to apply to the record.

Interestingly, the City refused to provide us with a copy of the record throughout the investigation. After our office provided them with a preliminary assessment suggesting that we believed that the record was properly subject to LA FOIP, the City relayed that information to the SPS which then formally requested that the record be transferred to the SPS. The City immediately transferred the record to the SPS and then advised our office that it no longer had the record that was the subject of the review. In the resulting Review Report LA-2010-002, we discussed the offence provision in section 56(3) and indicated that "the refusal of a local authority to provide our office with the record and then disposing of the record is an extremely serious matter that goes to the core of our statutory mandate under LA FOIP." We cautioned that now that our office has clarified the test for "possession" for purposes of LA FOIP we will, in similar circumstances, consider recommending prosecution.

For more information on this decision please see the case summary section of this Report found at www.oipc.sk.ca under the *Reports* tab.

The Health Information Protection Act

In late March 2011 the OIPC was alerted to a large volume of patient files that were discovered in a recycling bin in south Regina. The Commissioner, together with two Portfolio Officers, attended at the scene and seized all of the patient files and loose papers containing personal health information that were in the recycling bin. Our office immediately undertook an investigation under the provisions of HIPA. On or about March 28, 2011 we issued formal notices of the investigation we would undertake to two different trustee organizations. Although our investigation will continue beyond March 31, 2011, it was clear that, given our past experience in Saskatchewan with abandoned medical records, there is an immediate need for more work to be done by many trustees.

We have provided Health with a list of changes to HIPA that we suggest could be implemented quite quickly. This list is not exhaustive but reflects issues and problems we have identified in the course of our HIPA oversight work.

We have provided Health with a list of changes to HIPA that we suggest could be implemented quite quickly. This list is not exhaustive but reflects issues and problems we have identified in the course of our HIPA oversight work. The list includes the following possible amendments:

1. There is a serious problem with organizations that collect, use and disclose personal health information but do not qualify as “trustees”.

The definition of “trustee” in section 2(t) of HIPA is lengthy but does not accommodate the situation where personal health information is in the custody or control of an organization that does not qualify as a trustee. I understand a number of communities have set up clinics for doctors and have contracts with those doctors that purport to make the municipality the “owner” of the patient records and which do not address ‘custody or control.’ We have had experiences where the records are effectively outside of the scope of HIPA because they are in the custody or control of a non-trustee organization. This would also be the case with a large corporation that may employ health professionals to provide care for employees. I might note that this is not a problem for pharmacies since section 2(t)(ix) addresses a proprietor as defined in *The Pharmacy Act, 1996*. There are a couple of approaches to remedy this problem. This could include capturing organizations that employ health care professionals and collect, use, disclose personal health information in the course of diagnosis, treatment and care.

2. Expand powers of OIPC to share information with an extra-provincial oversight agency along the lines of Alberta’s Bill 52 *Health Information Amendment Act, 2009* (Bill 52) to permit the Commissioner to exchange information with an extra-provincial commissioner and enter into information sharing and other agreements with extra provincial commissioners for the purpose of coordinating activities and handling complaints involving two or more jurisdictions. This would clearly allow us to resolve jurisdictional questions that may arise from the proposal to allow Lloydminster physicians to be registered users of both Netcare in Alberta and the Electronic Health Record

infrastructure (EHRI) being constructed by the Health Information Solutions Centre (HISC) and the Saskatchewan Health Information Network (SHIN) in our province. We also find that we have encountered a number of cases where Saskatchewan residents are getting health services in Manitoba or vice versa. Several privacy investigations have involved data sharing with Manitoba trustees by Saskatchewan trustees. We will need to have the authority to work with our Alberta and Manitoba counterparts to ensure that patients' rights according to the law of the jurisdiction in which they reside are fully respected and protected by bodies subject to oversight of their own Information and Privacy Commissioner. Such a change would also allow Saskatchewan to 'field-test' a model that will ultimately be required in all Canadian jurisdictions as part of the national EHRI.

3. Define extra-provincial commissioner as a person who, in respect of Canada or in respect of another province or territory of Canada, has duties, powers and functions similar to those of the Commissioner. See the following excerpt from section 23(b) and (c) of Bill 52:

(b) in subsection (1) by striking out "and" at the end of clause (h), adding "and" at the end of clause (i) and adding the following after clause (i):

(j) exchange information with an extra-provincial commissioner and enter into information sharing and other agreements with extra-provincial commissioners for the purpose of co-ordinating activities and handling complaints involving 2 or more jurisdictions.

(c) by adding the following after subsection (1):

(2) For the purposes of subsection (1)(j), "extra-provincial commissioner" means a person who, in respect of Canada or in respect of another province or territory of Canada, has duties, powers and functions similar to those of the Commissioner.

The oversight agency in Manitoba is the Ombudsman but would be captured by the suggested definition above.

4. HIPA is focused on trustees but we have nothing equivalent to "agents" in Ontario's *Personal Health Information Protection Act* (PHIPA) or "affiliates" in Alberta's *Health Information Act* (HIA). This captures volunteers, contractors, physicians with hospital privileges, etc. and ensures that the duties of trustees and trustee organizations are paralleled by provisions for the individuals. I recognize that a different term would be required for HIPA since "affiliates" are defined differently for a different purpose in *The Regional Health Services Act*. The point is that providing for doctors or other health care providers who have 'hospital privileges', volunteers, etc., clarifies responsibilities for staff as well as for organizations and simplifies accountability. Our suggestion is that whatever you call this group of individual employees, contractors and volunteers, they are clearly subject to HIPA even if they engage in rogue

behavior. This may require more extensive consequential changes than could be accommodated quickly by a simple amending bill but it will need to be addressed.

5. Section 26(3) should change “without the individual’s consent” to “without the individual’s express consent” to better reflect what I think was the legislative intent. It would make little sense to allow use of such employee information with only deemed consent or implied consent. We have encountered cases where trustees are too casual about compliance with section 26(3). How can we expect employees of trustee organizations to do an excellent job of protecting the information of patients if their employers do not appropriately protect the personal health information of their employees?

We have identified a longer list of amendments for consideration but the foregoing are a number of issues that warrant earlier remedial action. Abandoned records have not been included in the foregoing list since Health has an ongoing consultation on that matter already.

The program organized by the Saskatchewan Medical Association (SMA) and Health to assist physicians to create Electronic Medical Records (EMR) provides an excellent opportunity to also raise more awareness among physicians of their HIPA obligations. We have provided advice to the SMA EMR team about the most common problems we observe in medical practices with respect to personal health information of patients. We understand that this information is integrated into the orientation program now being rolled out across the province. We have also provided input in the specifications to ensure HIPA compliance with any EMR and understand this is also reflected in the specifications for contractors who wish to be approved as a supplier of EMR software.

We continue to be an active participant in the Pan-Canadian Privacy Forum (Privacy Forum) created by Canada Health Infoway. The Privacy Forum is a useful vehicle to work through interoperable Electronic Health Record (EHR) implementation issues with health ministries and oversight offices. We are also monitoring the creation of e-Health Saskatchewan (announced December 21, 2010) and endeavoring to understand the relationship to SHIN and HISC and the impact of these organizations on HIPA and HIPA compliance.

Also, in connection with the EHR, we have provided feedback and advice with respect to early versions of the Privacy Impact Assessment (PIA) for the Saskatchewan Laboratory Results Repository. We continue to encourage Health to make this extensive planning work more transparent to the persons most directly affected by the EHR – the patients.

The adoption by the Saskatchewan Government of the recommendations in the October 2009 Report, *For Patients’ Sake: Patient First Review Commissioner’s Report to the Saskatchewan Minister of Health (For Patients’ Sake)*, should have significant implications for the protection of the personal health information of Saskatchewan residents.

The adoption by the Saskatchewan Government of the recommendations in the October 2009 Report, *For Patients’ Sake*, should have significant implications for the protection of the personal health information of Saskatchewan residents.

Commissioner Tony Dagnone stated as his first of three key themes in *For Patients' Sake* that:

Patient First must be embedded as a core value in health care and ingrained in the “DNA” of all health care organizations. The health system has lost its focus on the patient and lost sight of the fact that health care is a service industry. The best interests of the patients and families must be the primary driver of policy decisions, collective agreements, priority setting and resource allocation decisions, and the operation of workplaces. Keeping the patient voice alive after this review has been concluded will assist in maintaining focus and ensuring that other factors do not override patient and family needs. [p.6]

Commissioner Dagnone also observed as follows:

As is typical of a provider-centred health system, patients' health information has been considered the providers' property. Patients wanting to access their medical records often face numerous hurdles in doing so. I strongly suggest that the Information and Privacy Commissioner be involved in formulating policy regarding appropriate access to health records. When almost every other industry in the developed world is utilizing technology to make information more readily accessible to its customers, we can expect that patients will soon demand easy and immediate access to their own health care records. Patients expect to be better informed about their health conditions and treatments. [p. 44]

This theme of more focus on the needs of patients is also reflected in the *Saskatchewan Health Quality Council 2011-14 Strategic Plan*:

There is now a growing recognition among those working in the health system and the public (as expressed through the Patient First Review) that our system must do a better job meeting the needs of patients. There is an unprecedented groundswell of commitment among leaders and providers to do the work necessary to overhaul the system. The culture in Saskatchewan's health care system is shifting to one that puts patients first and embraces collaboration, partnerships and teamwork to improve health care. [p. 4]

To further the convergence of thinking, the Canadian Medical Association has produced in this last year a new plan, *Health Care Transformation in Canada*. This document proposes a Charter for Patient-Centred Care and explains the reason in this way:

The concept of “patient-centred care” is taking hold in other developed countries which are also in the process of reforming their health care systems. The essential principle is that health care services are provided in a manner that works best for patients. Health care providers partner with patients and their families to identify and satisfy the range of needs and preferences. Health providers, governments and patients each have their own specific roles in creating and moving toward a patient-centred system. [p. 8]

I am hopeful that this convergence around the renewed focus of patient first will mean

that Health expedites the development of a patient portal. Such a portal should allow the patient in the new EHRi to be able to check lab and diagnostic test results, clinic information and even book appointments on line. I raised a concern in my *2007-2008 Annual Report* that there was no plan in the foreseeable future to offer a patient portal in the system being built in our province. I will continue to encourage Health to ensure that this is an integral feature at least in the mid-term. I note that the Alberta system will be building in the near future an interactive patient portal as part of its EHR.

In the Postscript to our Investigation Report H-2010-001 (L & M Pharmacy Inc., Sunrise Regional Health Authority and Health) we expressed concern that the facts of that case suggested too much focus on the convenience of health care providers in our new EHR and perhaps not sufficient focus on the rights and expectations of the patient.

In our office's experience too many members of the 27 colleges and regulatory bodies in Saskatchewan do not have a comfortable understanding of HIPA. Our impression, reinforced by a large number of encounters and discussions with health professionals, is that many of these health professionals simply do not understand the changes effected by the enactment of HIPA. Many of those professionals apparently believe that nothing has changed in their obligations to protect the confidentiality of their patients' information. Many do not recognize that their ethical codes and generalized understanding of 'confidentiality' is inadequate and has been since September 1, 2003. We often hear from health professionals that there are few clear rules and that as a health professional they consider that they have broad discretion in their collection, use and disclosure of their patients' personal health information.

This was evident in our discussions with pharmacists in the course of our Investigation Report H-2010-001. The College of Physicians and Surgeons of Saskatchewan and the College of Pharmacists of Saskatchewan have published a number of tools on their respective websites. In our experience to date, many professionals have taken no note of these tools and are totally unfamiliar with them.

We continue to encourage these trustees to develop more comprehensive training programs that are mandatory for all health professionals.

A troubling trend is that health professionals are being routinely accredited as Users of the new EHR without any screening beyond their professional status. Approvers who are responsible for accrediting users apparently are not requiring any evidence that the user has taken any HIPA training, has achieved compliance with section 16 requirements of HIPA for physical, technical and administrative safeguards in his or her own clinic or office, or has an adequate understanding of the components of HIPA. This gap in the EHR is compounded by a kind of 'user creep'. This refers to the increasing practice of health professionals who are delegating their administrative staff to be accredited as EHR users or are allowing them to view EHR data by using the passwords of the professionals they work for. All of this appears to be contrary to the data minimization rule embedded in section 23(1) of HIPA. All of this points to a major

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area of risk that warrants immediate attention and corrective action.

There are some good lessons Health, regional health authorities, health regulatory bodies and our office can learn from very successful education campaigns undertaken by the health departments in Ontario, Alberta and Newfoundland.

Misdirected Faxes

Our *Report on Systemic Issues with Faxing Personal Health Information* was issued in November, 2010. This resulted from notice to our office that a private business in the province had started to receive faxes that contained the personal health information of patients. We undertook a systemic investigation when we learned that some 60 faxes were sent to this private business by 31 trustee organizations. This included 8 regional health authorities, 11 physician offices and 9 pharmacies. We learned that a medical clinic of specialists had had the fax number in question until they dissolved their group practice in June of 2007. That fax number was out of service until January 30, 2009 when it was assigned to the business.

We undertook an investigation that examined two questions: (1) Did the 31 trustees respond appropriately to the breach and (2) Did the trustees have the appropriate policies and procedures in place pursuant to section 16 of HIPA? To evaluate the trustees' response to the breach we asked each trustee to meet three requirements:

1. To prepare an investigation report;
2. To notify the affected individuals; and
3. Detail and provide copies of written fax policies and procedures.

We encouraged the subject trustees to become familiar with two resources that our office created: *Privacy Considerations: Faxing Personal Information and Personal Health Information (Privacy Considerations)* and *Helpful Tips: Privacy Breach Guidelines (Privacy Breach Guidelines)*. Given the trustee responses received by our office, we assigned a score to each out of a possible total of 38. The score was based on the elements in the *Privacy Considerations* document. The average score of the 31 trustees was only 13.7 out of 38. Since the trustees involved in this investigation reflected fair sampling of different trustee organizations, I concluded that there was a good deal of work yet to be done by trustees in Saskatchewan.

All of the eight regional health authorities scored higher than 15, but 10 physician offices and 5 pharmacies were lower than 15. Only 3 of the 9 pharmacies provided notification to their affected patients. Only 14 out of the 31 trustees had written policies and procedures for safe faxing of personal health information.

I concluded that the three principal causes of the breaches were: a change of fax

number, use of outdated pre-programmed fax numbers and the carelessness of employees due to lack of training. In my conclusion I stated as follows:

Overall, I am underwhelmed by the response of the trustees to these privacy breaches. Most trustees have not adequately investigated the breach. More importantly, their current fax policies and procedures do not address the issues that caused these breaches, and therefore, are not likely to prevent a reoccurrence in the future.

Clarity Required for Good HIPA Understanding

We have revised and updated the *Glossary of Common Terms: HIPA*. Health and a number of other trustee organizations persist in utilizing ‘circle of care’ in their literature and education efforts. This is often done without acknowledging that ‘circle of care’ focuses on the provider and not the patient and is entirely variable given each individual patient and the presenting needs of each individual patient. We have found this concept has contributed to professionals misunderstanding the requirements of HIPA, particularly the ‘need to know principle’ in section 23(1) of HIPA. The argument, as we understand it, is that health professions are familiar with the term and have used it for a very long time. Yet, that reliance on old concepts and assumptions has proven, in our experience, to perpetuate an over-confidence that translates into no incentive to learn what HIPA requires. We continue to urge those organizations to instead focus on the ‘need to know’ which is explicitly provided for in HIPA and which squarely puts the focus on the patient.

Disclosure of Personal Health Information for Fundraising Purposes

The Saskatchewan Government created a new ‘fundraising regulation’ as part of the HIPA regulations. This became section 7.1 of *The Health Information Protection Regulations*. This allows regional health authorities to disclose to certain fundraising organizations limited personal health information of persons who had received a health service at a hospital without the prior consent of the patient. The reason that patients provide their information to a regional health authority when they enter a hospital is for the purpose of their diagnosis, treatment and care. Using that information for purposes of fundraising by an associated foundation is clearly a secondary disclosure unrelated to diagnosis, treatment and care of the individual.

As a general rule, the use or disclosure of personal health information for any secondary purpose should require prior express consent of the patient. This becomes particularly important given the development of the EHR.

As a general rule, the use or disclosure of personal health information for any secondary purpose should require prior express consent of the patient. This becomes particularly important given the development of the EHR. Since this will expose the personal health information of any Saskatchewan resident to many thousands of registered Users of the EHR, it becomes particularly important to assure those residents that privacy rules will be followed. A requirement that prior express consent

is obtained before any personal health information is disclosed to any foundation would best align with the Patient First initiative that has been adopted by the Saskatchewan Government.

We shared our concerns about the new regulation with the Legislative Assembly. We also shared our analysis of this issue with all regional health authorities. As a result of canvassing all regional health authorities, we now believe that Regina Qu'Appelle Health Region, and almost all of the other regions will not use the new option created by section 7.1 of the Regulations. They advised that they will require prior express consent before disclosing any personal health information to foundations. We understand that Saskatoon Regional Health Authority has not yet decided whether it will stay with opt-in consent.

It was troubling that in the course of public discussion of the new fundraising regulation, some proponents of the new regulation asserted that this was somehow not personal health information since it was only the name, contact information and the fact that the individual had recently received a health service in a hospital. Such an assertion does not conform to the definition of "personal health information" in section 2(m) of HIPA that provides:

(m) "personal health information" means, with respect to an individual, whether living or deceased:

- (i) information with respect to the physical or mental health of the individual;
- (ii) information with respect to any health service provided to the individual;
- (iii) information with respect to the donation by the individual of any body part or any bodily substance of the individual or information derived from the testing or examination of a body part or bodily substance of the individual;

(iv) information that is collected:

(A) in the course of providing health services to the individual; or

(B) incidentally to the provision of health services to the individual;

or

(v) registration information;

[emphasis added]

Registration information is defined in section 2(q) as follows:

(q) registration information means information about an individual that is collected for the purpose of registering the individual for the provision of health services, and includes the individual's health services number and any other number assigned to the individual as part of a system of unique identifying numbers that is prescribed in the regulations;

[emphasis added]

In the result, the disclosure contemplated by the new section 7.1 clearly involves the

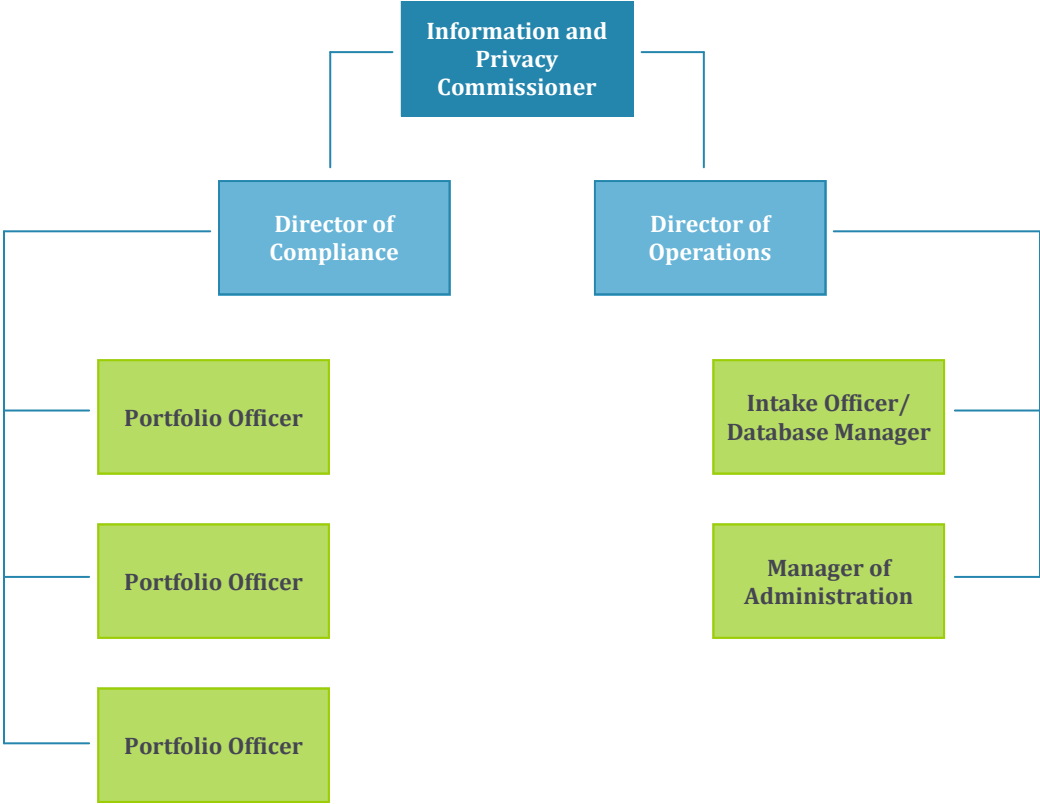
disclosure of personal health information, albeit limited, to an entity that is not a trustee and that is not engaged in diagnosis, treatment or care of the individual.

Fundraising foundations in Saskatchewan are not subject to any privacy law, either federal or provincial. The effect is that patients have no recourse against a foundation that does something improper with their personal health information.

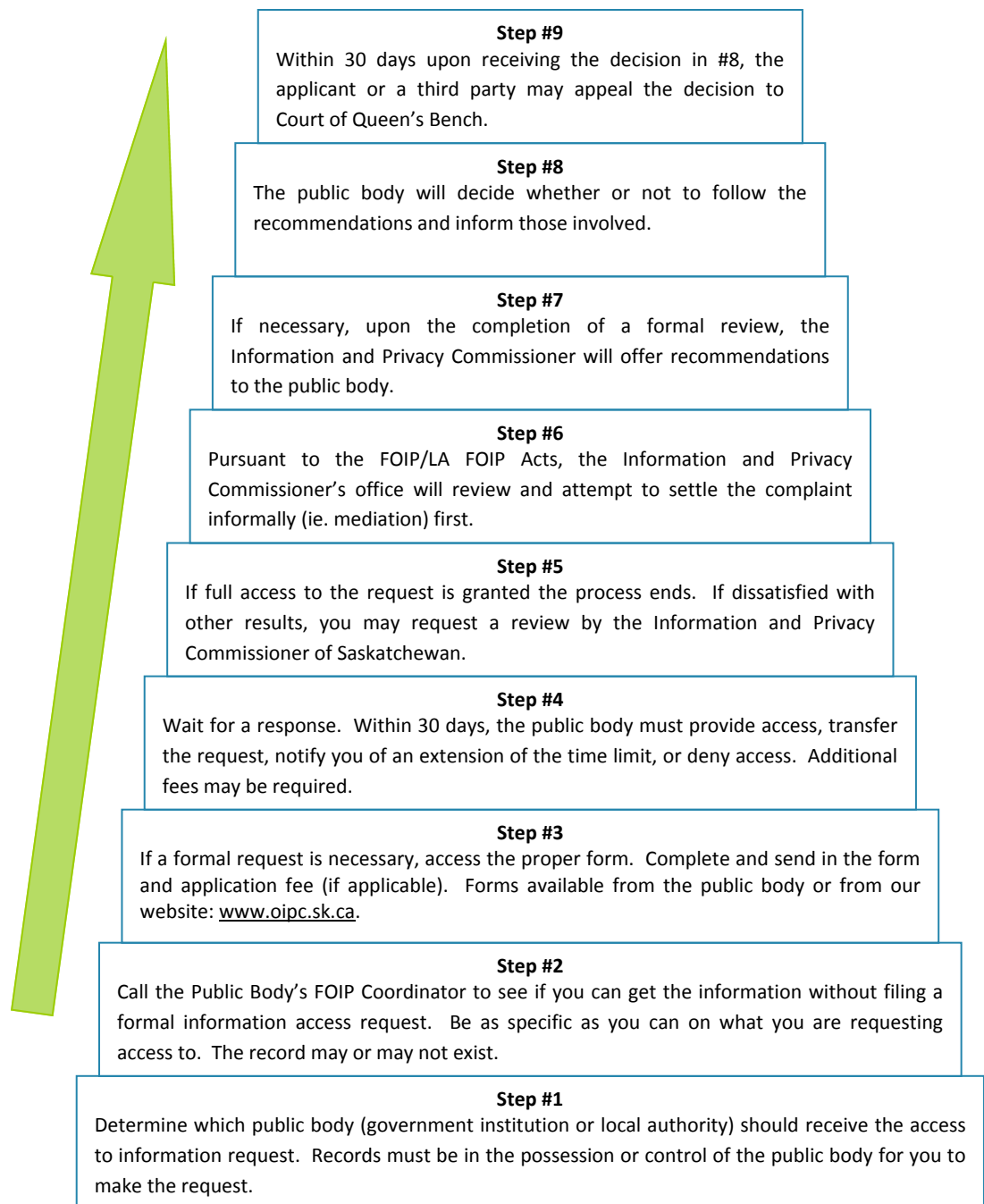
A further concern is that fundraising foundations in Saskatchewan are not subject to any privacy law, either federal or provincial. The effect is that patients have no recourse against a foundation that does something improper with their personal health information. Their only recourse is to complain to the regional health authority that disclosed their information without the prior consent of the patient.

A review of the websites of those foundations revealed that, at least with a number of foundations, there is confusion over privacy and privacy regulation and whether they are compliant even with their own privacy policies. In any event, the apparent willingness of any foundation to accept personal health information of patients without first requiring prior express consent of the patients appears to violate a number of the privacy policies as they were described on their websites in July 2010.

OIPC Organization Chart



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 to attempt to resolve the complaint.

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 OIPC will not deal with a complaint that is two years old or older.

2. 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.
3. Once we review the complaint the following will occur:
 - Once it is determined that the OIPC has jurisdiction to investigate, a Portfolio Officer will be assigned to the file.
 - 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.
 - The Portfolio Officer will gather information from the public body to determine the relevant facts.
 - The Portfolio Officer will define the issues for purposes of the investigation and invite submissions from the public body and the complainant.
 - The Portfolio Officer will attempt to mediate, or otherwise informally resolve the complaint, with complainant and public body.
 - 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.
 - 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 42(1)(c). No right of appeal from a report dealing with a breach of privacy under FOIP or LA FOIP.

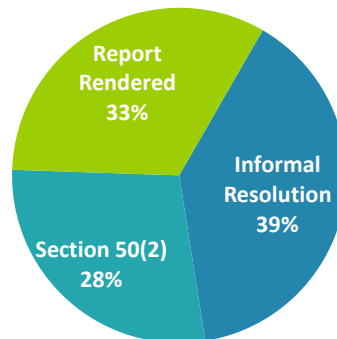
Case Summaries

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

The chart below details the percentage of files closed via the following means:

- Dismissed or discontinued pursuant to section 50(2) of FOIP. No files were dismissed or discontinued this fiscal year pursuant to sections 39(2) of LA FOIP or 43(2) of HIPA;
- Resolved through informal resolution; or
- Resolved through issuance of a formal Report pursuant to section 55 of FOIP or 44 of LA FOIP. No Reports were issued this fiscal year pursuant to section 48 of HIPA.

Case Resolution for 2010-2011



We have historically resolved the majority of case files (reviews and investigations) through informal resolution as evident in previous Annual Reports. The above graph, however, depicts a different outcome this year mainly attributable to the fact that one Report involved a number of vexatious requests for review.

Case files that resulted in publicly issued Review Reports (access to information) and Investigative Reports (breaches of privacy) are listed below.

Investigation Report LA-2010-001 (City of Saskatoon)

On May 19, 2010, the Commissioner issued his Investigation Report involving the City of Saskatoon (the City). The Complainant, an employee of the City, discovered that the City had disclosed her personal information to the Canada Revenue Agency (the CRA). The Complainant asked the City what authority it had to disclose her personal information to the CRA. When she did not receive a satisfactory answer, she raised her concerns with the Saskatchewan Information and Privacy Commissioner (the Commissioner).

The Commissioner found that the City did not meet the burden of proof in showing that it had authority to disclose the Complainant's personal information pursuant to section 28(2)(h) of LA FOIP. Furthermore, it did not show how utility information was required by the CRA for the purpose of administering or enforcing a tax law. The Commissioner also found that the City failed to exercise its discretion and disclosed more of the Complainant's personal information than necessary. In addition, the Commissioner found that the City did not respond adequately to the formal complaint. Finally, the Commissioner made several recommendations to the City for dealing with future requests for personal information from the CRA.

By way of letter dated June 21, 2010, the City indicated that it would comply with all of the Commissioner's recommendations. This included, among other things, providing a written apology to the complainant and posting a statement on the privacy page of its website advising citizens of the provisions of section 28 of LA FOIP under which their personal information may be disclosed.

Review Report F-2010-002 (Ministries of Advanced Education, Employment and Labour, Executive Council, Justice and Attorney General, the Saskatchewan Labour Relations Board and the Saskatchewan Workers' Compensation Board)

The above noted Review Report was issued May 17, 2010. A series of requests for similar records were repeatedly submitted by the Applicant to the Ministry of Advanced Education, Employment and Labour, Executive Council, Justice, the Saskatchewan Labour Relations Board and the Saskatchewan Workers' Compensation Board. Requests for Review were submitted on the grounds that these government institutions failed to meet their obligations under section 7 of FOIP. Through the course of the Reviews the government institutions raised the issue that the requests were frivolous, vexatious and not in good faith pursuant to section 50(2) of FOIP. The issues under review were the lack of a response by the government institutions

pursuant to section 7 and whether the Reviews should be discontinued pursuant to section 50(2) of FOIP.

The Commissioner found that some of the government institutions failed to meet their obligations pursuant to section 7 of FOIP. The Commissioner found that the reviews were vexatious and not made in good faith so discontinued those pursuant to section 50(2)(a) and (b) of FOIP.

All five government institutions agreed to comply with the Commissioner's recommendation that "if a government institution receives an access request that is proper on its face then it is required to provide a response pursuant to section 7 of FOIP."

Review Report LA-2010-001 (City of Saskatoon)

This Review Report involving the City was issued by the Commissioner on September 22, 2010. The applicant made two applications to the City for records involving certain of its development projects. The City withheld the responsive material citing sections 16(1)(a), 16(1)(b), 16(1)(c), 16(1)(e), 21(a), 21(b) and 21(c) of LA FOIP.

The Commissioner found that the City did not meet the burden of proof with respect to the application of sections 16(1)(c) or 16(1)(e) of LA FOIP to any record or portion therein. The Commissioner found that section 21 applied to the records in respect to which the City claimed solicitor-client privilege (four pages). The City applied sections 16(1)(a) and/or 16(1)(b) of LA FOIP to the remaining portion of the record (143 pages). The Commissioner agreed that these sections applied to much of the responsive record (content) but did not apply to email header information that did not reveal the substance of deliberations. He found that the exemptions did not apply to correspondence involving, or records containing, comments of third parties. During the review, the Commissioner's office recommended release of this particular material.

The City complied by releasing some records in full as well as email header information after severance of other content. The City advised the Commissioner of its disagreement with the recommendations pertaining to nine pages of the original 148, three of which contained personal data elements not previously identified. As the Commissioner agreed that the information in question was third party personal information, he upheld the City's decision to withhold. He found however that sections 16(1)(a) and 16(1)(b) of LA FOIP did not apply to the remaining six pages or portions identified so recommended the City release. The City advised our office via letter dated October 5, 2010 that it would not comply with the Commissioner's recommendation to release certain withheld material.

Review Report LA-2010-002 (City of Saskatoon)

Review Report LA-2010-002 was issued by the Commissioner on November 24, 2010. The applicant requested access under LA FOIP to the report resulting from a harassment investigation carried out by the City in respect to that employee of the Saskatoon Police Service (the SPS). The City asserted that it had neither possession nor control of the record and refused to provide the OIPC with a copy. When the OIPC provided the City with a draft analysis that suggested that the City did have at least possession of the record, the City transferred the report it had been storing for approximately eight years to the SPS.

The Commissioner determined that his office was entitled to require the production of the record in order to make a determination on the issue of possession or control. He found that all that was required was possession by the City and a measure of control and that the control did not have to be exclusive. He found that the SPS also had some control over the record but did not need to quantify that degree of control in light of his finding that “possession” by the City for purposes of LA FOIP had been made. He also found that that the City had failed to meet its duty to assist the applicant.

As well, the Commissioner found that the City had not met the burden of proof in establishing that the record had been placed in the possession of the City by or on behalf of persons or organizations other than the local authority for archival purposes in accordance with section 3(1)(c) of LA FOIP.

In accordance with subsection 45(b) of LA FOIP, the City responded by way of letter dated November 30, 2010. The City indicated that it would not comply with any of the Commissioner’s recommendations.

Investigation Report F-2010-001 (Saskatchewan Government Insurance)

The Commissioner issued Investigation Report F-2010-001 on December 15, 2010. The OIPC received three formal ‘breach of privacy’ complaints that related to the collection, use and disclosure by Saskatchewan Government Insurance (SGI) of personal health information of claimants under *The Automobile Accident Insurance Act* (AAIA). The complaints alleged excessive collection of personal health information and improper use and disclosure of that personal health information.

The OIPC commenced formal investigations in respect to each of the three complaints. SGI took the position that there is a gap in Saskatchewan’s legislative scheme for privacy protection. SGI asserted that the OIPC had no authority to investigate these

matters since neither HIPA Parts II, IV and V, nor FOIP applied to these complaints. The Commissioner considered representations from SGI and concluded that there is no evidence that the Legislative Assembly would have intended to create such a gap in legislated privacy protection and that, in fact, there is no such gap as alleged by SGI. The OIPC explored with SGI an informal means to resolve the impasse but no such resolution appeared possible.

The Commissioner recommended that the Legislative Assembly amend the appropriate legislation to clarify the rules that will apply to the personal information collected, used and disclosed by SGI in its activities under the AAIA and the role of the OIPC in overseeing SGI's statutory responsibilities under FOIP and HIPA. He also recommended that SGI publish on its website clear information about its collection, use and disclosure practices. He further recommended that SGI revise its procedure for collection of personal health information to ensure that it is not over-collecting such information.

On or about January 4, 2011, SGI advised our office that it would comply with some of the Commissioner's recommendations. SGI indicated it was currently reviewing its privacy related materials prepared for the public to ensure that the collection, use and disclosure of its customers' information and personal health information is addressed in a transparent manner and clearly reflects SGI's information handling practices. SGI indicated that it already publishes a privacy statement on its website.

In terms of the Commissioner's recommendation regarding concerns of excessive collection, SGI indicated that it currently engages a procedure that, when at issue, it will remove the information from the SGI record and return the personal health information in question to the customer. Fundamentally though, SGI disagreed with the Commissioner's contention that FOIP applies and that he had jurisdiction to investigate in the circumstances.

Review Report LA-2011-001 (City of Saskatoon)

The above Review Report was issued by the Commissioner on February 2, 2011. In this particular case, the applicant filed two access to information requests with the City pursuant to LA FOIP. The responsive record for the first request is subsumed in the record of the broader, but similar, second request. Over 500 documents were withheld or severed by the City on the basis of sections 15(1)(a), 15(1)(b), 16(1)(a), 16(1)(b), 16(1)(c), 18(1)(a), 18(1)(b), 18(1)(c) and 21. The City provided very little explanation or details to support the application of the exemptions to the responsive documents.

The Commissioner reviewed the record to determine, if on the face of the record, any of the exemptions might apply. Only in the "clearest of circumstances" did the Commissioner find that some documents qualified for the exemption. This was the

case for almost all of the documents on which solicitor-client privilege (section 21) was claimed, and some of the documents relative to advice from officials (section 16). The third party exemptions (section 18) and documents of a local authority exemption (section 15) were not found to apply to any of the documents. The exercise of discretion was also not apparent on the face of the record.

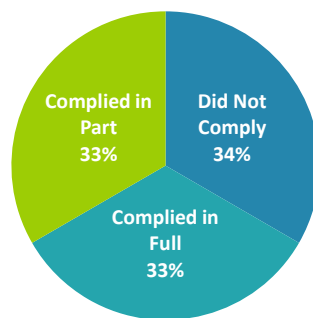
The Commissioner provided guidance for applying each exemption and recommended that the City reconsider their decision to withhold or sever the documents at issue. The Commissioner indicated that his office would provide any assistance the City needed in order to reconsider each exemption and each document.

The City provided its response dated February 17, 2011. The City complied with some of the Commissioner's recommendations as it released some but not all of the records recommended for release to the applicant.

Responses to Reports Rendered

The chart below indicates the percentage of public bodies that complied with the Commissioner's recommendations in full, in part or not at all.

Responses to Reports Rendered for 2010-2011



Financials

**Saskatchewan
Information and Privacy
Commissioner**



503 - 1801 Hamilton Street
Regina, Saskatchewan
S4P 4B4

Tel: (306) 787-8350
Fax: (306) 798-1603
Website: www.oipc.sk.ca

May 26, 2011

2010 - 2011 MANAGEMENT REPORT

The accompanying financial statements are the responsibility of management and have been approved in principle by the Office of the Information and Privacy Commissioner. The financial statements have been prepared in accordance with Canadian public sector accounting standards.

Management maintains appropriate systems of internal control, including policies and procedures which provide reasonable assurance that the Office's assets are safeguarded and that financial records are relevant and reliable.

The Provincial Auditor of Saskatchewan conducts an independent audit of the financial statements. Her examination is conducted in accordance with Canadian generally accepted auditing standards and includes tests and other procedures which allow her to report on the fairness of the financial statements.

Handwritten signature of R. Gary Dickson.

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

Handwritten signature of Pam Scott.

Pam Scott
Director of Operations



Provincial Auditor Saskatchewan

1500 Chateau Tower
1920 Broad Street
Regina, Saskatchewan
S4P 3V2

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Fax: (306) 787-6383
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SASKATCHEWAN

INDEPENDENT AUDITOR'S REPORT

To: The Members of the Legislative Assembly of Saskatchewan

I have audited the accompanying financial statements of the Office of the Information and Privacy Commissioner, which comprise the statement of financial position as at March 31, 2011, and the statements of operations and accumulated surplus, changes in net assets and cash flows for the year then ended, and a summary of significant accounting policies and other explanatory information.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with Canadian public sector accounting standards and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

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 comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Opinion

In my opinion, the financial statements present fairly, in all material respects, the financial position of the Office of the Information and Privacy Commissioner as at March 31, 2011, and the results of its operations and accumulated surplus, changes in its net assets and its cash flows for the year then ended in accordance with Canadian public sector accounting standards.

Bonnie Lysyk, MBA, CA•CIA
Provincial Auditor

Regina, Saskatchewan
May 26, 2011

Statement 1

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

Statement of Financial Position As at March 31, 2011

| | <u>2011</u> | <u>2010</u> |
|---|------------------|------------------|
| Financial Assets | | |
| Due from the General Revenue Fund | \$ <u>26,224</u> | \$ <u>17,157</u> |
| | | |
| Liabilities | | |
| Accounts payable | 20,723 | 16,720 |
| Accrued employee costs | <u>5,501</u> | <u>437</u> |
| | <u>26,224</u> | <u>17,157</u> |
| | | |
| Net Assets | <u>-</u> | <u>-</u> |
| | | |
| Non-Financial Assets | | |
| Tangible capital assets (<i>Note 3</i>) | 27,689 | 41,757 |
| Prepaid expenses | <u>1,983</u> | <u>8,689</u> |
| | <u>29,672</u> | <u>50,446</u> |
| | | |
| Accumulated Surplus | \$ <u>29,672</u> | \$ <u>50,446</u> |

(See accompanying notes to the financial statements)

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

Statement of Operations and Accumulated Surplus Year Ended March 31, 2011

| | 2011 <u>Budget</u> | 2011 <u>Actual</u> | 2010 <u>Actual</u> |
|--|-------------------------------------|-------------------------------------|-------------------------------------|
| Revenues | | | |
| General Revenue Fund Appropriation | \$ <u>927,000</u> | \$ <u>956,981</u> | \$ <u>874,771</u> |
| Expenses | | | |
| Salaries and other employment expenses | 720,000 | 719,462 | 668,165 |
| Administration and operating expenses | 65,000 | 55,452 | 63,008 |
| Rental of space and equipment | 92,700 | 126,454 | 92,836 |
| Travel | 31,600 | 18,594 | 23,057 |
| Advertising and promotion | 14,600 | 3,974 | 12,078 |
| Amortization | - | 17,903 | 37,741 |
| Contractual and legal services | <u>3,100</u> | <u>35,916</u> | <u>7,908</u> |
| Total Expenses | <u>927,000</u> | <u>977,755</u> | <u>904,793</u> |
| Annual (deficit) surplus | \$ <u>-</u> | (20,774) | (30,022) |
| Accumulated surplus - beginning of year | | <u>50,446</u> | <u>80,468</u> |
| Accumulated surplus - end of year | | \$ <u>29,672</u> | \$ <u>50,446</u> |

(See accompanying notes to the financial statements)

Statement 3

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

Statement of Changes in Net Assets As at March 31, 2011

| | <u>2011</u> | <u>2010</u> |
|--|----------------------|----------------------|
| Annual (deficit) surplus | \$ <u>(20,774)</u> | \$ <u>(30,022)</u> |
| Acquisition of tangible capital assets | (3,835) | (7,359) |
| Amortization of tangible capital assets | <u>17,903</u> | <u>37,741</u> |
| | 14,068 | 30,382 |
| Decrease (increase) in prepaid expenses | <u>6,706</u> | <u>(360)</u> |
| | <u>20,774</u> | <u>30,022</u> |
| Decrease (increase) in net assets | - | - |
| Net assets - beginning of year | - | - |
| Net assets - end of year | \$ <u><u>-</u></u> | \$ <u><u>-</u></u> |

(See accompanying notes to the financial statements)

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

Statement of Cash Flows As at March 31, 2011

| | <u>2011</u> | <u>2010</u> |
|---|------------------------|------------------------|
| Cash flows from (used in) operating activities: | | |
| General Revenue Fund appropriation received | \$ 947,914 | \$ 937,429 |
| Salaries paid | (714,398) | (676,488) |
| Supplies and other expenses paid | <u>(229,681)</u> | <u>(253,582)</u> |
| | <u>(944,079)</u> | <u>(930,070)</u> |
| Cash provided from operating activities | <u>3,835</u> | <u>7,359</u> |
| Cash flows from (used in) investing activities: | | |
| Purchase of intangible assets | <u>(3,835)</u> | <u>(7,359)</u> |
| Cash (used in) investing activities | <u>(3,835)</u> | <u>(7,359)</u> |
| Increase (decrease) in cash and cash equivalents | - | - |
| Cash and cash equivalents - beginning of year | - | - |
| Cash and cash equivalents - end of year | \$ <u> </u> = | \$ <u> </u> = |

(See accompanying notes to the financial statements)

Notes to the Financial Statements

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

Notes to the Financial Statements March 31, 2011

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) 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.

b) 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.

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

Notes to the Financial Statements March 31, 2011

3. TANGIBLE CAPITAL ASSETS

| | <u>Hardware & Software</u> | <u>Furniture</u> | <u>Leasehold Improvements</u> | <u>2011 Total</u> | <u>2010 Total</u> |
|---|------------------------------------|------------------|-----------------------------------|-----------------------|-----------------------|
| Opening costs of tangible capital assets | \$ 77,429 | \$ 129,766 | \$ 43,852 | \$ 251,047 | \$ 243,688 |
| Additions during year | 3,835 | - | - | 3,835 | 7,359 |
| Disposals during year | <u>-</u> | <u>-</u> | <u>-</u> | <u>-</u> | <u>-</u> |
| Closing costs of tangible capital assets | <u>81,264</u> | <u>129,766</u> | <u>43,852</u> | <u>254,882</u> | <u>251,047</u> |
| Opening accumulated amortization | 62,626 | 102,812 | 43,852 | 209,290 | 171,549 |
| Annual amortization | <u>7,674</u> | <u>10,229</u> | <u>-</u> | <u>17,903</u> | <u>37,741</u> |
| Closing accumulated amortization | <u>70,300</u> | <u>113,041</u> | <u>43,852</u> | <u>227,193</u> | <u>209,290</u> |
| Net book value of tangible capital assets | \$ <u>10,964</u> | \$ <u>16,725</u> | \$ <u>-</u> | \$ <u>27,689</u> | \$ <u>41,757</u> |

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

Notes to the Financial Statements March 31, 2011

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. COMMITMENTS

During the year ended March 31, 2011, the Office and its landlord made a new lease whereby the Office agreed to rent the premises for five years commencing June 30, 2010. Annual lease payments are \$90,024 before escalation adjustments.

Appendices

Appendix 1

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 government institution, local authority or trustee including his/or her personal information/ personal health information.

Collection is defined by HIPA as to “gather, obtain access to, acquire, receive or obtain personal health information from any source by any means” (section 2(b) of HIPA).

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 breach of privacy by that public body or trustee 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. This is just one aspect of privacy and is not synonymous with ‘privacy’.

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 (e.g. contracted service).

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

Detailed Research 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 four 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.

Duty to Assist means responding openly, accurately and completely to an individual requesting access to records in the possession or control of a government institution or local authority or to personal health information in the custody or control of a health information trustee.

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 ministry 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. Privacy captures both security and confidentiality of personal information/personal health information.

Privacy Breach happens when there is an unauthorized collection, use or disclosure of personal information/personal health information regardless of whether the information ends up in a third party's possession.

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.

Review is the process by which the OIPC considers either a decision or failure of a trustee to provide an applicant with access to his or her phi.

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.

Severing is the exercise by which portions of a document are blacked out pursuant to section 8 of FOIP, section 8 of LA FOIP or section 38(1) of HIPA before that document is provided to an applicant.

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

Surrogate refers to someone other than the individual but who is exercising rights or powers under section 59 of FOIP, section 49 of LA FOIP or section 56 of HIPA on behalf of the individual.

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 2

Sample List of Presentations

Made From April 1, 2010 to March 31, 2011

- Access and Privacy Conference 2010 (Edmonton)
- Canadian Bar Association - Labour and Employment Section Meeting (Saskatchewan North)
- Canadian Bar Association - Privacy and Access Law Section Meeting (Saskatchewan North)
- Canadian Bar Association - Privacy and Access Law Section Meeting (Saskatchewan South)
- Canadian Bar Association - Public Sector Law Section Meeting (Saskatchewan South)
- Canadian Bar Association Conference 2010 (Ottawa)
- The Institute of Public Administration of Canada - Saskatchewan Regional Group
- Privacy and Security Conference (Victoria)
- Regina Teachers' Convention 2011
- Rural Municipal Administrators' Association of Saskatchewan
- Saskatchewan Access, Privacy, Security and Information/Records Management Forum: Making Connections
- Saskatchewan Association of School Business Officials
- Saskatchewan Government Insurance - Privacy Made Easy
- Saskatchewan Health Information Management Association
- Saskatchewan Legislative Internship Program
- Saskatchewan Legislative Officers
- Saskatchewan North Acquired Brain Injury Services
- Saskatchewan Registered Nurses Association
- Saskatchewan Society of Medical Laboratory Technologists Conference

Appendix 3

List of Bodies Subject to OIPC Oversight

Government Institutions

- Ministries (21)
- Agencies, Boards and Commissions (40)
- Crown Corporations (18)

Local Authorities

- Libraries (500 +)
- Municipalities (786)
 - urban municipalities (466)
 - rural municipalities (296)
 - incorporated municipalities (24)
- Regional Colleges (7)
- Regional Health Authorities (13)
- School Divisions (28)
- SIAST (4 campuses)
- Universities (2)

Health Information Trustees

- Regional Health Authorities (13) and Affiliates
- Regulated Health Professions
 - includes physicians, surgeons and registered nurses
- Self-Regulating Health Professional Associations (27)
- Pharmacies
- Ambulance Operators
- Community Clinics
- Government Institutions
- Personal Care Homes
- Mental Health Facilities
- Laboratories
- Saskatchewan Cancer Agency

