



2013-2014 Annual Report

Saskatchewan
Information and
Privacy Commissioner

*G*overnment should continually demonstrate its commitment to transparency, accountability and open government by creating accurate records as it carries out its duties. I believe the duty to document should be a legal requirement in the legislative framework of government.

Elizabeth Denham, British Columbia Information and Privacy Commissioner
March 4, 2013 News Release

*O*nce privacy is understood as a strategic variable for organizations, the need to factor privacy analysis into the management of organizational risk becomes increasingly compelling for program managers.

Chantal Bernier, Interim Privacy Commissioner of Canada
www.priv.gc.ca/resource/topic-sujet/ips-if/index_e.asp

**Saskatchewan
Information and Privacy
Commissioner**



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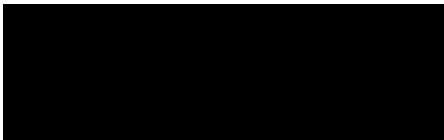
June 27, 2014

Hon. D. D'Autremont
Speaker of the Legislative Assembly
129 Legislative Building
Regina, Saskatchewan
S4S 0B3

Dear Mr. Speaker:

I have the honour to present to the Legislative Assembly my 2013-2014 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,



Diane Aldridge
Acting Saskatchewan Information and Privacy Commissioner

About Us

Our Mandate

There are four major elements in the Saskatchewan Information and Privacy Commissioner's mandate defined by *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):

- The Commissioner responds to requests for review of decisions made by government institutions, local authorities or trustees in response to access requests, and makes recommendation to those bodies.
- The Commissioner responds to complaints from individuals who believe their privacy has not been respected by government institutions, local authorities or trustees, and makes recommendations to those bodies.
- The Commissioner provides advice to government institutions, local authorities or trustees on legislation, policies or practices that may impact citizens' access or privacy rights.
- The Commissioner provides education with respect to information rights including both access to information and protection of privacy.

Our Vision

That Saskatchewan government institutions and local authorities operate 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.

That Saskatchewan health information trustees operate in a fashion that fully respects the privacy rights of the people of Saskatchewan guaranteed by HIPA and the *Canadian Charter of Rights and Freedom*.

Our Mission Statement

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

Our Values

- Integrity
- Responsibility & Accountability
- Excellence
- Respectful Workplace
- Promote Knowledge

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Commissioner's Message

After reflecting on the last year, I concluded that 'the more things change, the more they stay the same'. This is in no small part due to the fact that our office yet again received numerous complaints, as with previous years, regarding employee snooping, misdirected faxes and mail (email and snail), and lost or stolen mobile devices or records. This is notwithstanding the efforts of many different players including regulatory bodies, ministries (Health and Justice, Access and Privacy Branch), and this office to raise awareness as to what it takes to be compliant with access and privacy legislation.

No greater advocate for this cause was former Saskatchewan Information and Privacy Commissioner, Gary Dickson, Q.C. (Commissioner Dickson) who resigned January 31, 2014. Commissioner Dickson was the first full-time Commissioner who served two five year consecutive terms. I was temporarily appointed Acting Commissioner effective February 1, 2014. This past March, I too reached the ten year milestone with the OIPC.

Years ago it was abandoned patient records, but in this past year, yet another bout of misdirected facsimiles (faxes) caught our attention. With a couple of exceptions, these breaches involved not a stand-alone fax machine but rather faxing features with electronic medical records and electronic health records. For more on this topic see Investigation Report H-2014-001 on our website, www.oipc.sk.ca, under the *Reports* tab.

The digital age with its ever evolving technological advances has reshaped many of our practices as in the above case, yet too many organizations have not fully addressed the access and privacy fundamentals. In access, what is becoming more evident is the need to formalize a 'duty to document'. This duty involves public bodies being accountable to the public by documenting its decisions and actions. In privacy, comprehensive privacy management programs are still lacking, faxes need cover sheets, contracts and agreements need to address access and privacy considerations, and electronic systems need audit functionality.

Safeguards or controls can be identified and risk mitigated if Privacy Impact Assessments (PIAs) are undertaken *before* an organization moves forward with a new project, program or initiative. Retrofitting is predictably more expensive, time consuming and difficult than incorporating those safeguards in at the start.

The above is evident in the following two cases from this past fiscal:

- Investigation Report F-2013-001 involving the Public Service Commission (PSC); and
- Investigation Report F-2013-003 involving the Ministry of Highways and Infrastructure (MHI).

In Investigation Report F-2013-001, we learned that no PIA was undertaken prior to it entering into a contract with an information services provider, but PSC indicated it planned on undertaking one after the fact.

In Investigation Report F-2013-003, though an employee accessed the Saskatchewan Government Insurance (SGI) database for personal reasons, MHI had no audit capabilities of its own to proactively monitor its employees' actions. Language was included in the agreement between the two government institutions to address this concern, but in practice was of limited assistance.

Solutions do exist and the good news is that we do not have to 'reinvent the wheel'. I encourage public bodies and trustees to learn from the experience of others and make the necessary improvements to ensure better compliance with our access and privacy laws. This office remains committed to providing guidance, advice and support to those striving to meet this particular challenge.

Respectfully,

Diane Aldridge
Acting Saskatchewan Information
and Privacy Commissioner

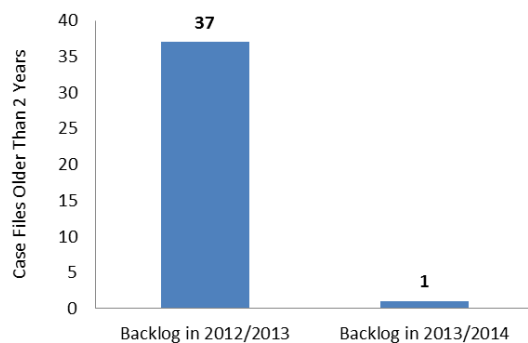


Diane Aldridge
Acting Saskatchewan
Information and Privacy
Commissioner

Highlights

Reduction of Backlog

Of primary importance to the Office of the Saskatchewan Information and Privacy Commissioner (OIPC) this past fiscal was to further reduce our backlog. Specifically, by the end of April 2014, our goal was to have no case file older than two years. I want to highlight that by March 31, 2014, this goal was achieved, shy one file. This achievement is reflected in the chart below:

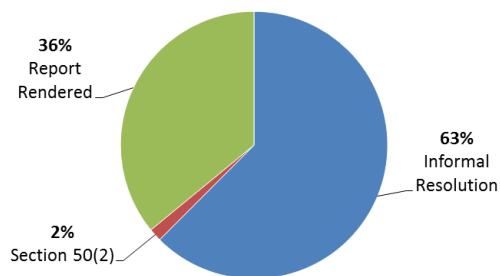


Year in Numbers

In the 2013-2014 fiscal year, our office undertook 75 education presentations and responded to 2,766 telephone, email and written inquiries.

In addition, our office opened 138 case files, a 41% increase from the same period one year ago.

In terms of file closures, our office closed 128 case files this past fiscal. The chart below reflects the three ways in which each was resolved:



Case Files Resolution in 2013-2014

Reports Issued

More reports were issued in the last year of Commissioner Dickson's tenure than ever before: 23 in total were issued involving 35 case files. Details of those cases are discussed in the *Case Summaries* portion of this Annual Report.

Ronald J. Kruzeniski, Q.C. has been appointed Saskatchewan's Information and Privacy Commissioner and takes office July 1, 2014. Once this occurs, we will be revisiting our goals and objectives. In the short-term, our team will look for more opportunities to resolve matters informally short of issuing formal, public Reports wherever possible.

FOIP FOLIO

This past January saw the publication of the 100th edition of our e-newsletter, the Saskatchewan FOIP FOLIO (FOIP FOLIO). This and all past editions are available on our website under the *Newsletters* tab.

Proactive Disclosure

Our office is not bound by FOIP. Nonetheless, we adopted a 'best practice' that was modelled after other Commissioners' offices in Canada. To that end, our office voluntarily publishes on its website, under the *Proactive Disclosure* tab, travel expense information regarding investigations, presentations and conferences incurred by the Commissioner and staff of the OIPC. It is updated on an annual basis.

National Investigators' Workshop

On May 29 and 30, 2013, our office participated in a National Investigators' Workshop. We give special thanks to the Office of the Privacy Commissioner of Canada for making the event possible. Both our Director of Operations and Director of Compliance participated on the Agenda Committee. It was a great opportunity for our intake and investigative teams to network and learn from colleagues that do similar work across Canada.

FOIP and LA FOIP

Prosecution Recommended

This past fiscal, Commissioner Dickson recommended that the Minister of Justice and Attorney General consider prosecution pursuant to section 56(3) of LA FOIP in two cases involving two separate local authorities: Northern Village of Pinehouse (Review Report LA-2013-004) and Village of Killaly (Review Report LA-2014-001). These Reports are discussed further in the *Case Summaries* section of this Annual Report.

Training Needed

The above examples reinforce the need for training and awareness building in the province for both government institutions and local authorities. In this regard, the Ministry of Justice (Justice), Access and Privacy Branch, responsible for the administration of FOIP and LA FOIP, undertook the following:

- Successful *Saskatchewan Access, Privacy, Security and Records Management Forum – Discovering New Connections* conference June 11 and 12, 2013.
- Privacy and Security Awareness Month (PSAM) in government in June 2013.
- Memorandum dated May 17, 2013 from the Deputy Minister to the Premier to all government employees raising awareness of PSAM and obligations under the law.
- Maintained three on-line training courses and a suite of products to help government and local authorities.
- Worked with a private sector partner to deliver a series of workshops to government and local authorities on FOIP/LA FOIP basics, as well as advanced workshops on 1) establishing and managing a FOIP program; and 2) managing access requests under FOIP/LA FOIP.
- Delivered training sessions throughout government including training for new Senior Executives, managers, supervisors and other staff.
- Late in the year the Access and Privacy Branch was re-oriented to be solely focused on

providing leadership, advice, training, etc. for government and local authorities.

The OIPC participated in the above noted Saskatchewan conference.

Saskatchewan Queen's Bench Decision

Details of a Saskatchewan Queen's Bench Decision that addressed the law enforcement exemption in FOIP was highlighted in our July/August 2013 edition of the FOIP FOLIO. This decision is of interest as it involved an appeal by an applicant from the decision of Justice not to accept a number of recommendations in Commissioner Dickson's Review Report F-2012-006. This FOIP FOLIO article and Review Report are available on our website under the *Newsletters* and *Reports* tabs respectively.

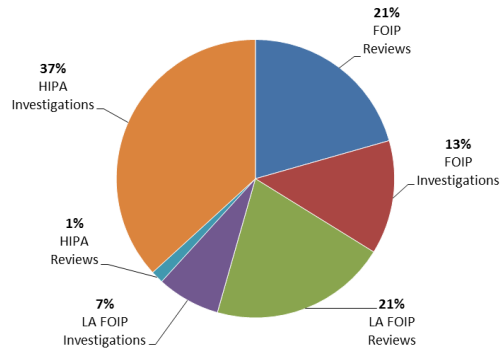
Right to Know

Right to Know Week in Saskatchewan, September 23 to September 27, 2013, was proclaimed by the Government of Saskatchewan and the cities of Regina and Saskatoon. Highlights during that week included a keynote lecture in Regina, newspaper articles and a film series at the Regina Public Library Film Theatre.

The keynote for the University of Regina on September 23 was "The View from the Front Lines of Journalism" by Charles Rusnell, Investigative Reporter for the CBC in Alberta. During the September 23 event, a special Right to Know award was presented to Kylie Head, President of the Canadian Bar Association, Saskatchewan Branch (CBA Saskatchewan).

As noted in our office's FOIP FOLIO for September/October 2013, the work of the Saskatchewan Right to Know 2013 Committee was done by a group of volunteers. The Committee was chaired by Mark Anderson and included Jeff Barber, Commissioner Dickson, Kaylea Dunn, Greg Fingas, Karen Jaster, Erin Kleisinger, Neil Robertson, Q.C., and Shannon Whyley.

HIPA Investigations on the Rise



Breakdown of Files Opened in 2013-2014

The above chart shows that we opened more investigation files under HIPA than under FOIP and LA FOIP combined this past year. We are also seeing more proactively reported privacy breaches to our office than in previous years. This is a very positive trend as there is currently no legal obligation in Saskatchewan for public bodies or trustees to proactively report privacy breaches to our office.

Employee Snooping

Some of the above noted case files included incidents of employee snooping. In our 2012-2013 Annual Report, Commissioner Dickson observed the following:

When employees responsible for health records in regional health authorities have abused their access to health records by snooping for their personal reasons and have been terminated by their regional health authority employer, terminations in at least some cases have been overturned on arbitration. In each case, a modest penalty of a number of days without pay was substituted.

At least in one recent case, dated February 5, 2014, the termination of an employee that snooped was upheld at arbitration. In this particular case, a physical therapist with 25 years of service and no disciplinary record was

terminated after an audit of the Picture Archiving & Communication System (PACS) for the period January 2012 to October 2012. The audit revealed that she accessed the personal health information of 99 persons that were not her patients without authorization.

The audit showed that the physical therapist improperly accessed electronic health records including ultrasounds, X-Rays and CT scans along with the radiologists' clinical notes. Of further concern was that approximately "438 confidentiality breaches" occurred during this time and that even after being told it was wrong, she continued her improper access of PACS for personal reasons.

In our 2012-2013 Annual Report, Commissioner Dickson commented on what is needed to deter such action:

In Saskatchewan we have had a number of cases where it appears that the 'soft' safeguards have been insufficient. They have not been effective in deterring trustee employees from snooping in the personal health information of a patient(s). Yet neither of the two 'hard' safeguards appear to be available to trustee organizations. When employees responsible for health records in regional health authorities have abused their access to health records by snooping for their personal reasons and have been terminated by their regional health authority employer, terminations in at least some cases have been overturned on arbitration. In each case, a modest penalty of a number of days without pay was substituted.

Yet on the other hand, the threat of prosecution seems also ineffectual. There is an offence provision in section 64 of HIPA with major penalties of up to \$50,000 for an individual and \$500,000 for an organization. In my Investigation Report H-2011-001, I recommended that the Minister of Justice, whose permission is a condition precedent to

any prosecution, consider a prosecution for a breach that resulted in some 180,000 pieces of personal health information of patients being discovered in a large recycling bin in south Regina. Approximately one year after my report and recommendations were issued, the Minister announced that there would be no prosecution. **He did indicate that there would be a high level consultation involving the Ministries of Health, Justice and other organizations that would consider alternatives including amendment of HIPA or perhaps some form of administrative penalties.** Our office has not been invited to participate in this consultation and we are not aware of any report resulting from this study group.

[emphasis added]

Since then, our office has been consulted by the Health Records Protection Working Group (Working Group) established by the Ministry of Health (Health). It offered its draft recommendations for comment on November 5, 2013. Commissioner Dickson indicated support for most of the recommendations offered at that time. The final version of this draft report had yet to be released by the Working Group at the end of March 2014.

Jointly Issued Resource

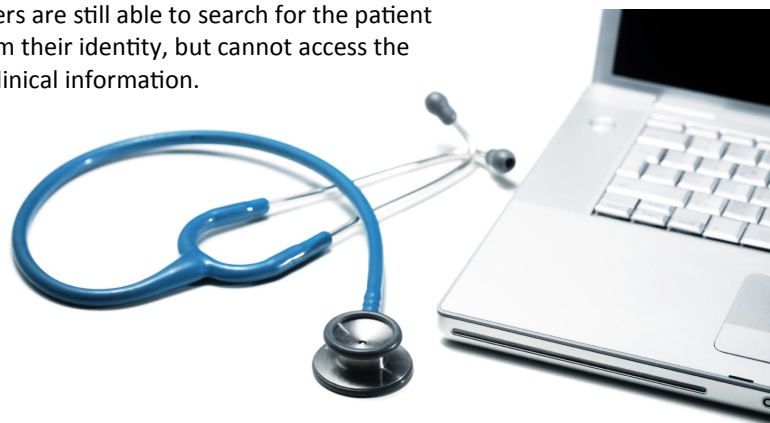
On October 18, 2013, our office and Health announced a jointly issued new resource – *Checklists for Trustees: Misdirected Faxes*. This resource offers advice to trustees in the event they receive a misdirected fax or send out a misdirected fax that contains the personal health information of patients. The advice was also provided to all of the health regulatory colleges and all regional health authorities with the request that it be shared with all health professionals and employees of those healthcare providers. A copy of this document is available on our website under the *Resources* tab.

Electronic Health Record (EHR)

Commissioner Dickson expressed the need for individuals to have the ability to completely opt out of the EHR or to at least achieve a kind of selective masking at the point of service that cannot be lifted without the permission of the individual. In terms of masking, eHealth Saskatchewan (eHealth) reported that there are 255 profiles masked in the Electronic Health Record Viewer (eHR Viewer), 37 profiles masked in PACS but no masking statistics were available for the Pharmaceutical Information Program. The eHR Viewer is a secure website developed for Saskatchewan health care providers that provides access to patient profiles regardless of where they present for care or where they live in the province.

eHealth is responsible for developing and implementing the EHR for Saskatchewan. eHealth's Privacy and Access Unit reports significant growth this year. The main highlights include the addition of a new analyst, implementation of the full block option in the eHR Viewer for patients and the implementation of the FairWarning audit and monitoring software solution. In terms of the full block, eHealth indicated that though it received a few inquiries, no profiles were blocked in the eHR Viewer.

The full block means there is no user override or 'breaking of the glass' as exists with the masking feature. The full block allows an individual to prevent access to their record in the eHR Viewer. System users are still able to search for the patient and confirm their identity, but cannot access the patient's clinical information.



Canada Health Infoway Privacy Forum

Our office continues to attend Canada Health Infoway Privacy Forum (Privacy Forum) meetings to stay abreast of trends and developments in all things EHR related but also to provide input into upcoming initiatives. Established in 2007 and sponsored by Canada Health Infoway, the Privacy Forum includes representatives from each federal/provincial/territorial Ministry of Health and Privacy oversight body. Representatives from both Health and eHealth share a seat at the Privacy Forum.

At the latest Privacy Forum meeting I attended on March 19, 2014, a full range of topics were covered including updates on public health related initiatives and others from the Emerging Technologies and Consumer Health Solutions groups.

Health's Role

Health is responsible for the administration of HIPA. In this regard, the Ministry's Health Information Policy Unit works to ensure internal and stakeholder compliance with HIPA while also managing requests from the public under FOIP. Its key areas of responsibility include:

1. *Policy:* Draft overarching provincial policies and complementary procedures, represent Health's privacy perspective in eHealth initiatives, provide advice and support from a privacy perspective within Health and to regional health authorities, other ministries and stakeholders.
2. *Breach Investigations:* Investigate privacy breach incidents within Health or related to information within their custody or control; provide advice and support for investigations and develop solutions to mitigate privacy issues.
3. *Data:* Oversee personal health information data including data sharing agreements, contracts, schedules and PIAs. The Chief Privacy Officer also chairs the Data Access Review Committee (DARC).

4. *Access to Information:* Coordinate Health's response to access to information requests pursuant to HIPA and FOIP. In the 2013-2014 fiscal, it reported receiving 81 access to information requests and was working to close four OIPC reviews.

Health Information Conferences

On February 11, 2014, the Canadian Health Information Management Association (CHIMA) and the OIPC held a Privacy Summit in Regina. The Summit focused on HIPA and privacy legislation with respect to four main topic headings: Access, Disclosure, Security, and Consent. The one day Summit included educational sessions from various health care agencies in Saskatchewan, eHealth, the OIPC, the Manitoba Ombudsman's office, and the Alberta Office of the Information and Privacy Commissioner. CHIMA reported that the Summit was well attended and the feedback was excellent.

Our office also participated in the Western Canada Health Information Privacy Symposium (WCHIPS) on May 15 and 16, 2014 in Winnipeg. Topics presented included *Stories from the Trenches*, *Employee Health Information and Related Issues* and *Sanctions for Unauthorized Access to the Electronic Health Record*.

Detailed Research and Commentary

In the past fiscal, our office received 22 requests from various public bodies and trustees for detailed research and commentary including legislative guidance. Examples include the following:

Bill 95

On or about April 19, 2013, Commissioner Dickson provided commentary on Bill 95 – *The Operation of Public Registry Statutes Act* to Hon. G. Wyant, Q.C., Minister of Justice and Attorney General on its potential impact on the access to information and privacy rights of Saskatchewan residents.

Commissioner Dickson's comments are available on our website under the *What's New* tab.

HIPA Regulation Change

Health recently completed a Regulation change to HIPA that allows for the Prescription Review Program to audit all prescribing medical professionals instead of just medical doctors. That draft was shared with our office by way of letter dated September 10, 2013. Our response to Health dated September 20, 2013 noted no concerns.

Concerns with *The Workers Compensation Act, 1979*

In the May 2013 edition of the FOIP FOLIO, we noted the following with respect to outstanding concerns previously raised by Commissioner Dickson with *The Workers' Compensation Act, 1979* (WCA):

On April 30, 2013, Minister responsible for WCB, Don Morgan, advised that the Saskatchewan Government accepted the advice of WCB that it should continue to operate, to some extent, outside of FOIP. He did this during Committee review of Bill 58 – *The Workers' Compensation Act, 2012*.

In the result, the Minister was not prepared to consider amending *The Workers' Compensation Act, 1979* (WCA) to address what is a kind of stalemate between the OIPC and the WCB based on conflicting interpretation of section 171.1 and 171.2 of the WCA and Parts II and III of FOIP.

Since that time, the Saskatchewan Government proclaimed *The Worker's Compensation Act, 2013* (WCA 2013), effective January 1, 2014. Our office has yet to consider any impact of changes made in an active review or investigation since it was proclaimed.

The Mental Health Services Amendment Act, 2013

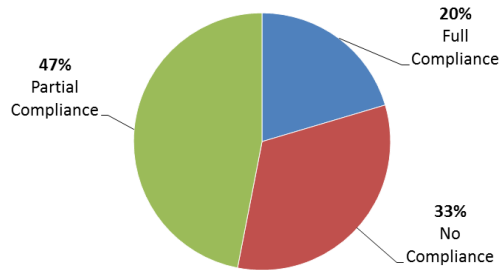
On March 12, 2014, *The Mental Health Services Amendment Act, 2013* (Amendment Act) was referred to the Standing Committee on Human Services, after Second Reading. Among other changes, the original section 38 from *The Mental Health Services Act* (MHSA) was repealed as well as section 4(4)(e) of HIPA.

Commissioner Dickson discussed the challenges with the existing MHSA in Review Report H-2008-001, available on our website under the *Reports* tab. We are monitoring the *Amendment Act's* progress. If passed, it could result in changes in practice.



Case Summaries

In terms of compliance with the recommendations from the 23 reports issued in this past fiscal year, I note the following:



Compliance of Recommendations in 2013-2014

The case summaries and responses received from public bodies and trustees highlighted in this section often reference paragraph numbers from those particular reports where recommendations may be found. Recommendations are found at the end of each full report available on our website under the *Reports* tab.

1. Investigation Report LA-2013-001

Providence Place for Holistic Health Incorporated

The Complainant, an employee of Providence Place for Holistic Health Incorporated (Providence), discovered that her employer had disclosed her personal information and personal health information to an external party. Commissioner Dickson found that Providence did not have the authority to disclose the information in the circumstances and that it had failed to take adequate steps to ensure the accuracy of the information prior to the disclosure. Further, due to Providence's lack of an appropriate policy and procedure to handle disclosure of personal information and personal health information to external parties, it failed to adequately protect its employees' privacy. The Commissioner recommended that Providence provide an apology letter to the Complainant for the breach of her privacy and that it develop appropriate policies and procedures tailored to its unique and specific needs.

Response Received

Providence replied by way of letter dated May 15, 2013. In its response, though Providence indicated it disagreed that a breach occurred and would not provide an apology to the Complainant, it indicated it agreed "to review its privacy policies in light of current best practices and to amend its policies where required to provide for: a. Specific policy and procedure to direct staff on non-consented disclosure, personal information and personal health information to external parties; and b. Specific policy and procedure to ensure the accuracy of any information that is collected, use [sic] and/or disclosed by Providence."

2. Investigation Report LA-2013-002

Board of Education of the Saskatoon School Division No. 13

A Union representing staff members of the Board of Education of the Saskatoon School Division No. 13 (Division) made a complaint regarding the use of employee photographs in the internal e-mail system. Employees were not advised of the anticipated use of the photographs at the time of collection. Commissioner Dickson found that the Division did not identify the primary purpose for the collection of employee photographs. It, therefore, was not able to rely on section 27(a) of LA FOIP. The use of the photographs was not consistent with the alleged primary purpose for collection. The Division did not identify any other authority for the use of the photographs. The Division failed to clarify whether participation with respect to the use of photographs in the e-mail system was mandatory. Further, it did not demonstrate that this practice respected the 'need-to-know' or 'data minimization' principles or that it had adequate safeguards in place to protect against unauthorized use or disclosure. The Commissioner recommended suspension of the practice until the Division could address these issues through a PIA. He also requested that the Division provide him with a copy of any written delegation from the head pursuant to section 50 of LA FOIP.

Response Received

In the Division's response dated December 6, 2013, it advised that it had addressed the one recommendation regarding designation of a senior individual to provide operational leadership in regards to LA FOIP compliance. Its response, however, did not speak explicitly to its intentions regarding the other two recommendations.

3. Investigation Report LA-2013-003

Board of Education of Horizon School Division #205

Commissioner Dickson investigated two incidents of alleged unauthorized use and disclosure of personal information of two students by the Board of Education of Horizon School Division #205 (Horizon). He found that the data elements involved in both incidents constituted personal information pursuant to section 23(1) of LA FOIP. He found that both disclosures by Horizon were not authorized by section 28 of LA FOIP. The Commissioner did find, however, that in one case an internal use of the personal information was authorized by section 27(a) of LA FOIP and that disclosure of one of the student's cumulative files to another school division was authorized by section 28(2)(p) of LA FOIP. Finally, the Commissioner found that a lack of training for staff and written policies and procedures addressing physical and administrative safeguards were the root causes of the breaches. Horizon made no attempt to prevent future occurrences.

Response Received

Horizon's response was received December 23, 2013, indicating that it had "considered the recommendations set out in the Commissioner's report and intends to act on all of them except the one set out in paragraph 118" as "the board believes that this would be an unreasonable invasion of the privacy of the student."

4. Review Report LA-2013-003

Saskatoon Regional Health Authority

The Applicant submitted an access to information request to Saskatoon Regional Health Authority (SRHA). The request was for the submissions by members of the public presented to the Site Validation Panel. The Site Validation Panel was made up of members from various organizations, including SRHA, and the public. It was set up to put forth a recommendation about the location of the Children's Hospital of Saskatchewan. SRHA withheld the majority of the information in the responsive records under sections 13(2), 16(1)(a), 16(1)(b), and 28(1) of LA FOIP. Commissioner Dickson undertook a review on the request of the Applicant. He found that some of the records contained personal information as defined by section 23(1) of LA FOIP. Further, he found that some of the records contained personal health information as defined by section 2(m) of HIPA. He recommended that such records, once sufficiently de-identified, should be disclosed and not withheld under section 28(1) of LA FOIP. However, he found that other information was provided by those employed by SRHA in the course of their employment duties. He found that such information should be released and not withheld under sections 16(1)(a), 16(1)(b), and/or 28(1) of LA FOIP. Further, he found that section 13(2) of LA FOIP did not apply to a letter from the University of Saskatchewan to the Site Validation Panel. Finally, he found that SRHA did not exercise its discretion properly when applying sections 13(2), 16(1)(a) and 16(1)(b) of LA FOIP.

Response Received

SRHA indicated in its response dated September 26, 2013 that it had decided to maintain its position "that the individual responses were provided to SHR in confidence by the submitters... . The recommendations will certainly be taken into consideration, should we utilize a similar approach for community input into future endeavors."

5. Review Report LA-2013-004

Northern Village of Pinehouse

This Review Report relates to two reviews commenced by the OIPC on or about June 24, 2013. The Northern Village of Pinehouse (Pinehouse) received two formal access to information requests from the Applicant dated April 2, 2013 and April 16, 2013 respectively. The requests were detailed, clear and conformed to the prescribed form for making an access to information request. By a letter dated June 6, 2013, the Village responded to those access requests. Pinehouse referred the Applicant to the website of a third party and represented that certain other records sought by the Applicant were on the Village's website. However, the representations by Pinehouse to the Applicant were apparently inaccurate. On June 24, 2013, the OIPC wrote to the Mayor as "head" of Pinehouse for purposes of LA FOIP advising that the response of Pinehouse was inadequate. When no adequate response was forthcoming, the matter was then escalated to Commissioner Dickson, consistent with this office's procedure for an expedited review; no remedial action was taken. On September 9, 2013, the Commissioner wrote to the Mayor advising that he would be issuing a Review Report addressing the procedural defect.

Response Received

The only recommendation in the above noted Review Report that was directed solely at Pinehouse was to issue a compliant section 7 response to the Applicant and our office within 15 days of issuance of this Review Report. Pinehouse provided a response to our office on December 4, 2013. Its response addressed the issue of delegation of powers but did not constitute a proper section 7 response. Pinehouse provided further responses to our office dated December 18, 2013, December 20, 2013, January 27, 2014, February 28, 2014 and March 3, 2014, but as with the above, none constituted proper section 7 responses.

6. Review Report LA-2014-001

Village of Killaly

The Applicant made a request to the Village of Killaly (the Village) for records relating to a non-compliant septic tank. The Village did not respond to the request within the 30 day timeframe specified by section 7 of LA FOIP. The Applicant was not satisfied with the response he finally did receive from the Village and requested a review by the OIPC. The Village was requested to provide a new compliant section 7 response to the Applicant and failed to do so. The matter was treated as an expedited review, as per the OIPC's procedure, and the matter was escalated to Commissioner Dickson's attention. He again requested that the Village provide the Applicant with a compliant section 7 response. Again, the Village failed to do so. The Commissioner recommended that the Village issue a compliant section 7 response to the Applicant within 30 days of issuance of the Review Report. He also recommended that the Minister of Justice and Attorney-General consider prosecution pursuant to section 56(3) of LA FOIP in respect to the refusal of the Village to comply with a lawful requirement of the Commissioner.

Response Received

We received a response from the Village on January 28, 2014 dated January 22, 2014. With the recommendation regarding the need for clarification around delegation, the Mayor indicated that a particular individual had been delegated responsibility for LA FOIP. On the job description and training recommendation, the Mayor indicated "[a]ll of us are trying to get through the training." On the recommendation to "issue a compliant section 7 response to the Applicant and my office within 30 days of issuance of this Review Report", the Mayor indicated that one would be provided shortly. There was no response to the recommendation regarding the need to implement appropriate policies and procedures to ensure compliance with LA FOIP.

7. Investigation Report F-2013-001

Public Service Commission

In 2009, a skills survey was distributed to Government of Saskatchewan employees. The OIPC received a letter from staff of a government institution outlining concerns over how the personal information collected from the skills survey would be stored in the United States of America (USA) and therefore subject to the *United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001* (USA PATRIOT Act). The letter also indicated that the Public Service Commission (PSC) Careers website, that lists job postings for the Government of Saskatchewan, is also hosted in the USA. Commissioner Dickson undertook an investigation pursuant to section 33 of FOIP. He found that PSC had insufficient safeguards to protect personal information it collected through the skills survey and PSC's Careers website. The Commissioner recommended that: (1) PSC clearly determine and document its own security standards and practices; (2) that PSC make amendments to its contract between it and its service provider; and (3) that PSC undertake a PIA to ensure it is in full compliance with FOIP and HIPA. He also recommended that PSC provide clear notification to all employees and job applicants that, without an explicit duty to protect provision in FOIP, there is inadequate protection of personal information and personal health information when it is released to a private contractor.

Response Received

On September 27, 2013, PSC provided the following response:

Paragraph 145 – [Company X]'s security documents were reviewed by PSC's Legal Counsel and an ITO Contract Expert. Its security standards were compared against the non-master services contract template, which is the standard government uses as a basis for negotiating all information technology contracts. The documents and contract were

also compared to Justice's Personal Information Contract Checklist to ensure they were appropriate.

Paragraphs 146 through 148 – The contract states that ownership and control of personal data remains with the customer and the customer will, at all times, remain the data controller. ...That being the case, it is our opinion the contract does not need to further address retention or destruction of records or data.

Paragraph 149 – [indicates that an amendment was made to ensure that] our data is not relocated outside of the US by subcontractors... .

Paragraph 150 – ...We commit to having the PIA completed prior to signing the next contract in 2015.

Paragraph 151 – ...a notification of inadequate protection is not necessary or informative.

8. Report F-2013-002

Saskatchewan Government Insurance

The OIPC received a formal breach of privacy complaint that related to the collection of personal information and personal health information of a claimant (hereinafter referred to as the Complainant) by Saskatchewan Government Insurance (SGI) under *The Automobile Accident Insurance Act* (AAIA). The Complainant alleged this collection was excessive. SGI took the position that the OIPC had no authority to investigate these matters since neither HIPA Parts II, IV and V, nor FOIP applied to the Complainant's personal information and personal health information as it related to Part VIII of AAIA. Commissioner Dickson considered representations from SGI and, consistent with past Reports issued by the Commissioner, concluded that there is no evidence that the



Legislative Assembly of Saskatchewan 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 Commissioner, however, recommended that the Legislative Assembly of Saskatchewan 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 AAIA and the role of the OIPC in overseeing SGI's statutory responsibilities under FOIP and HIPA. He also recommended that SGI provide an update on the recommendations he made in his Investigation Report F-2010-001, as those recommendations would be similar to the ones made in this case.

Response Received

SGI responded by way of letter dated October 10, 2013. In its letter, SGI advised that it "will be reviewing its collection procedures under Part VIII of *The Automobile Accident Insurance Act* over the next few months. As your office will appreciate, any change to this process will have a significant business impact on the Claims Division and must be undertaken after a careful review of our business processes. Accordingly, SGI is not in a position to advise your office on how it will change to address your concerns at this time. Prior to December 31, 2013, the writer shall inform your office of the changes SGI has made in the Part VIII collection process."

On December 19, 2013, SGI provided a letter to our office dated December 17, 2013 with details of the changes it intended to implement in regards to the Part VIII collection process.

9. Investigation Report F-2013-003 Ministry of Highways and Infrastructure

OIPC received an email from the Chief Privacy Officer at SGI in September 2010 stating that an employee of another government institution, the Ministry of Highways and Infrastructure (MHI), had "incorrectly accessed" SGI's database. According to MHI's internal Privacy Breach Report, an

employee of MHI was travelling to work when an incident occurred between him and another driver. After the incident, the MHI employee used his user privileges to view the other driver's personal information on the SGI database and used the information to contact the other driver. MHI's Privacy Officer was notified of the privacy breach. Instead of MHI providing breach notification, SGI notified and apologized to the affected individual. Commissioner Dickson found that it should have been MHI that took responsibility for the privacy breach. The Commissioner made recommendations to MHI on how to prevent similar privacy breaches from occurring again in the future, including auditing its employees' use of the SGI database.

Response Received

In its response dated January 7, 2014, MHI indicated that it would "implement a more rigorous training regime for those managing privacy matters and staff handling personal information." In terms of the recommendations, MHI noted the following:

[108] It is my understanding that Saskatchewan Government Insurance (SGI) data base has audit capabilities. They have informed the ministry the audit reports generated are incomprehensible to external users, and further they will not share audit reports with external agencies. However, I will again open that dialogue with SGI to pursue all efforts in obtaining audit reports specific to MHI access.

[109] I recognize that audit protocols are important. Having said that, it is difficult or impossible to audit 'intent'; and what I mean by that is when those provided with full access privileges to secure information purposefully and knowingly choose an action that contravenes the law or even a confidentiality agreement, we are then placed in a reactionary role regardless of audit protocols in place.

Having said that, I am prepared to explore the possibility of either a manual log system or the potential for additional "log-in" protocol (IT) this side of the SGI interface. Further, I will fully



explore the principle of least privilege with the ministry's Access Officer. As with other databases utilized by the ministry ... we use extreme caution when granting powerful privileges to new database users or even privileged users. Senior administrative functions are only granted on an as needed basis.

[110] ... It is my intention to explore a technical solution with SGI, preferably one that restricts MHI access to commercial vehicles only, when SGI is again undertaking IT upgrades to their data base.

10. Investigation Report F-2014-001

Saskatchewan Workers' Compensation Board

Our office received a formal complaint alleging that Saskatchewan Workers' Compensation Board (WCB) disclosed too much of the Complainant's personal information in its "Decision of the Appeals Department" letter to her employer. The letter contained personal information regarding medical symptoms and diagnoses unrelated to the Complainant's WCB claim such as pneumonia and alcohol dependence syndrome. Commissioner Dickson found that FOIP and not HIPA applied in this case. He found that WCB did not rely on any section of FOIP when making the disclosure which also violated the 'data minimization' and 'need-to-know' principles. He also found that WCB did not follow its own procedures in this case. WCB refused to acknowledge the unauthorized disclosure and refused to take steps to prevent further similar disclosures.

Response Received

By way of letter dated February 25, 2014, WCB provided its response to the above noted Report recommendations. WCB complied in part with the recommendations. In one case, WCB indicated it would provide an apology consistent with the recommendation but did "not agree that the information was improperly disclosed...". Commissioner Dickson's last recommendation read as follows: "Saskatchewan Workers' Compensation Board investigate why its procedure [PRO 04/2008] was not adhered to in

this case and create a strategy to avoid future similar disclosures." WCB's response states, "PRO 04/2008 was adhered to as it provided the direction and authority to send Appeals Department decisions to employers. The WCB will review the procedure to ensure that, when a worker appeals, the employer receives only the information necessary to dispute the decision. This would apply whether or not the appeal was successful."

11. Investigation Report F-2014-002

Financial and Consumer Affairs Authority of Saskatchewan

My office received a breach of privacy complaint that related to the collection and disclosure of the Complainant's personal information and personal health information by the Saskatchewan Financial Services Commission (SFSC). During the course of the investigation, the SFSC was renamed the Financial and Consumer Affairs Authority of Saskatchewan (FCAA). The Complainant alleged that the SFSC inappropriately collected and disclosed her personal information and personal health information during its Securities Division's investigation into her business dealings. I found that the SFSC failed to demonstrate that it had authority to collect and disclose the Complainant's personal information and personal health information under FOIP and HIPA respectively. Further, I found that the SFSC violated the data minimization principle. Finally, I found that the SFSC failed to sufficiently safeguard the Complainant's personal information and personal health information as was lacking appropriate written policies and procedures to help ensure compliance with FOIP and HIPA when undertaking such investigations. I recommended that the SFSC develop appropriate written policies and procedures to achieve compliance with FOIP and HIPA in the course of its investigative activities.

Response Received

FCAA's response dated April 25, 2014 indicated that it accepted "your recommendation."

12. Review Report F-2013-001

Saskatchewan Workers' Compensation Board

The Applicant, an employee of WCB, made a request to WCB for records pertaining to her employment and specifically an incident that occurred at work. WCB responded by providing the Applicant with certain responsive records. The Applicant made a Request for Review claiming there should be more responsive material. In the course of the review, WCB was asked for details of its search efforts and information regarding specific records as clarified by the Applicant. In response, WCB indicated that it would not confirm or deny the existence of such records, pursuant to section 7(2)(f) of FOIP and any records could be withheld pursuant to sections 17(1)(a) and 17(1)(b) of FOIP. Commissioner Dickson informed WCB that it could only rely on section 7(2)(f) of FOIP if it had done so when it issued its section 7 response to the Applicant; it failed to do so. The Commissioner asked that WCB provide copies of any responsive records to this office. WCB then argued that the responsive material was not captured by the Applicant's original request and refused to provide copies of the record to our office. The Commissioner suggested that he could issue a *subpoena duce tecum* pursuant to section 54 of FOIP. WCB then provided further material to the Commissioner. The Commissioner found that WCB did not meet the implied duty to assist when responding to the Applicant. He recommended WCB provide the Applicant with copies of all responsive material.

Response Received

In its November 21, 2013 submission, WCB indicated it was not prepared to follow the recommendation made. It also disagreed with "the findings of the OIPC regarding the application of sections 17(1)(a) and (b) of *The Freedom of Information and Protection of Privacy Act*..."

13. Review Report F-2013-002

Saskatchewan Workers' Compensation Board

Two Applicants, one an employee of WCB, made requests to WCB for information related to their individual workers' compensation claims. WCB indicated, in its responses to the Applicants, that records were being withheld pursuant to various exemptions found in Part III of FOIP. The Applicants requested a review of these decisions and Commissioner Dickson asked WCB for submissions in support of its reliance on the exemptions. In response, WCB indicated that FOIP did not apply to the records pursuant to section 23(3)(k) of FOIP.

Commissioner Dickson's position, taken since 2003, is that section 23 of FOIP is a paramountcy provision and not an exclusion from FOIP. The Commissioner has taken the view that section 23 of FOIP is not applicable since although there may appear to be a conflict between sections 171 to 171.2 of *The Workers' Compensation Act, 1979* (the WCA) and Parts II and III of FOIP, it is possible to read the provisions together so they are complementary and not adverse. Since one can comply with the WCA provisions without violating the FOIP provision for access to information, there is no genuine conflict and FOIP prevails.

The Commissioner also found that section 23(3)(k) of FOIP would not apply to responsive records found in the employee file held by WCB. He found that WCB did not comply with section 7 of FOIP and did not meet the duty to assist by not identifying its position on section 23(3)(k) of FOIP to the Applicants. As WCB did not provide representation on the exemptions identified in the section 7 responses to the Applicants, he found that WCB did not meet the burden of proof in demonstrating their applicability. Finally, the Commissioner found WCB had not demonstrated it undertook an adequate search for records.

Response Received

In its response dated November 21, 2013 received in our office on November 22, 2013, WCB indicated that it did not agree or would not follow the recommendations made in the Report.

14. Review Report F-2013-003

Ministry of Agriculture

The Applicant requested certain records from the Ministry of Agriculture (Agriculture). Agriculture released some responsive records and withheld others pursuant to sections 17(1)(a), 17(1)(b), 18(1)(a), 18(1)(d), 19(1)(a), 19(1)(b), 19(1)(c), 19(1)(e) and 19(1)(f) of FOIP. During the review, Agriculture was persuaded to release records withheld pursuant to sections 17(1)(a), 17(1)(b), 18(1)(a) and 18(1)(d) of FOIP but continued to withhold records based on the third party exemptions. Commissioner Dickson found that Agriculture did not meet the burden of proof to demonstrate sections 19(1)(a), 19(1)(b), 19(1)(c), 19(1)(e) and 19(1)(f) of FOIP applied to the record as it did not identify the relevant third parties or meet other tests required of these exemptions. The Commissioner recommended release of the remaining record.

Response Received

Agriculture's December 5, 2013 response was received on December 10, 2013. Agriculture indicated it agreed with the report's findings with respect to the application of sections 17(1)(a)(b) and 18(1)(a) and (d) and stated it had released those records. However, Agriculture indicated it disagreed with the findings of the report relating to third party information, section 19 of FOIP, and therefore would not release.

15. Review Report F-2013-004

Ministry of Labour Relations and Workplace Safety

An Applicant made an access to information request to the former Ministry of Advanced Education, Employment and Labour (AEEL) wherein AEEL withheld all the records, citing

sections 15(1)(a) and 15(1)(c) of FOIP. The Applicant requested a review by the OIPC. A government reorganization resulted in the Ministry of Labour Relations and Workplace Safety (LRWS) assuming responsibility for the file. LRWS decided it would no longer withhold all the records under sections 15(1)(a) and 15(1)(c) of FOIP because the subject of the responsive records was no longer a matter before the courts. However, it sent a fee estimate letter to the Applicant advising the Applicant that it may rely on sections 16, 17, 18, 19 and 29 of FOIP and sections 5, 27 and 30 of HIPA to withhold some of the information in question. LRWS argued that a fee estimate letter was not issued originally by AEEL because its response was pursuant to section 7(2)(d) whereas section 9(1) of FOIP only allows a fee estimate letter to be issued with a section 7(2)(a) response. Commissioner Dickson found that there is no provision in FOIP that enables a public body to issue a new section 7 response 31 months after it receives an access request. The OIPC recommended that LRWS rescind the fee estimate letter and sever information pursuant to section 29(1) of FOIP and section 27(1) of HIPA. LRWS complied with the recommendations but then also applied yet another discretionary exemption, section 22 of FOIP, to withhold information. The Commissioner recommended that LRWS release the information it withheld pursuant to section 22 of FOIP.

Response Received

LRWS' December 4, 2013 response indicated that LRWS concurred with the report's first recommendation. It however disagreed with the second recommendation and advised it would continue to withhold the information in question.

16. Review Report F-2013-005

Ministry of Health

In December 2011, an Applicant submitted two access to information requests, one to the Ministry of Finance (Finance) and the other to the Ministry of Health (Health). Finance transferred





its access to information request to Health. Health then transferred both requests to the Ministry of Justice (Justice), stating that Justice held the responsive records for litigation purposes. However, Health admitted that there were responsive records “contained” within its Ministry. Commissioner Dickson found that Health did not demonstrate that Justice had a “greater interest” in the records pursuant to section 11(2) of FOIP. The Commissioner also found that Health improperly transferred Finance’s request to Justice. Further, he found that Health should have processed the responsive records it had in its possession in response to the Applicant’s request. The Commissioner recommended that Health complete a search for additional records it may have in its possession and process those records in response to the Applicant’s request.

Response Received

Health’s February 6, 2014 response received in our office on February 12, 2014 indicated that it had complied with the first recommendation as it had completed its comprehensive search for records. In terms of the second recommendation regarding processing responsive records within 30 days of the issuance of the Report, Health indicated “I am seeking direction from your office as to whether the Ministry of Health should process the additional responsive records.” After clarification from our office was provided, Health appears to have released additional information to the Applicant on or about April 3, 2014.

17. Review Report F-2013-006

Saskatchewan Government Insurance

The Applicant made an access to information request to SGI requesting information pertaining to himself. SGI withheld portions of one page identified by SGI as the responsive record pursuant to section 29(1) of FOIP. During the course of the review, SGI discovered approximately 825 additional pages of responsive records and applied six new discretionary exemptions not previously identified to the

Applicant. Commissioner Dickson found that SGI did not meet its obligations under section 7(2) of FOIP. The Commissioner recommended that SGI release those records withheld under the late raised discretionary exemptions. The Commissioner found that SGI properly applied section 29(1) to some portions of the record that constituted personal information of individuals who were not the Applicant and he recommended that this information continue to be withheld. Finally, the Commissioner found that SGI did not properly apply section 29(1) of FOIP to a portion of the record as it did not constitute personal information pursuant to section 24(1) of FOIP. He recommended this information be released to the Applicant.

Response Received

No response from SGI was received by our office.

18. Review Report F-2013-007

Saskatchewan Government Insurance

The Applicant made an access to information request to SGI requesting all information from his SGI claim file following a motor vehicle accident. SGI withheld, in part, portions of the responsive record pursuant to sections 17(1)(b)(i), 18(1)(f), 22(a) and 29(1) of FOIP. During the course of the review, Commissioner Dickson found significant delay occurred in part due to poor preparation by SGI of the record, Index of Records and submission required by the Commissioner’s office to conduct a proper review. Further, the Commissioner found this contributed to a finding that SGI did not meet the burden of proof pursuant to section 61 of FOIP in most cases. The Commissioner found that SGI could apply section 17(1)(b)(i) of FOIP to some of the records in question but did not appropriately apply this section to others. He further found that SGI appropriately applied sections 22(a) and 29(1) of FOIP to some of the records but did not appropriately apply these sections to other records or portions of records in question. He also found that SGI did not meet the burden of proof in establishing that section 18(1)(f) of FOIP applied

to some of the records. Finally, he found that SGI failed to identify personal health information of a third party subject to HIPA and recommended that SGI withhold the personal health information pursuant to section 27(1) of HIPA. The Commissioner recommended that SGI release those records or portions of records found not to qualify for exemption under sections 17(1)(b)(i), 18(1)(f), 22(a) and 29(1) of FOIP.

Response Received

No response from SGI was received by our office.

19. Review Report F-2014-001

Financial and Consumer Affairs Authority of Saskatchewan

The Applicant made an access to information request to the Saskatchewan Financial Services Commission (SFSC) requesting all information associated with the Applicant held by SFSC. During the course of the review, SFSC was renamed the Financial and Consumer Affairs Authority of Saskatchewan (FCAA). In response to the Applicant's access request, SFSC withheld in part portions of the responsive record citing up to 26 different exemptions under FOIP. As the responsive record involved boxes of records, Commissioner Dickson's review dealt with a representative sample only. During the course of the review, the Commissioner found that SFSC failed to meet the burden of proof in establishing which exemptions applied to a number of records and that it failed to meet its obligations under section 8 of FOIP. He also found that SFSC did not appropriately exercise its discretion by releasing as much of the record as possible, even where a discretionary exemption was found to apply by SFSC. The Commissioner also found SFSC failed to meet its obligations to third parties due to its unreasonable delay in notifying third parties affected by the review. The Commissioner further found that SFSC failed to meet the burden of proof in demonstrating that sections 14(1)(a), 15(1)(b)(i), 15(1)(e), 15(1)(f), 15(1)(i) and 18(1)(f) of FOIP applied to some of the records. In addition, he found that SFSC did not appropriately apply

sections 13(1)(a), 15(1)(c), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c) and 29(1) of FOIP to portions of the record. The Commissioner did find that SFSC appropriately applied sections 15(1)(k), 17(1)(a), 18(1)(f), 22(a), 22(b), 23(3)(h) and 29(1) of FOIP to other portions of the record. The Commissioner recommended SFSC appropriately exercise its discretion and consider releasing as much of the record as possible. Further, he recommended that SFSC release those records or portions of records found not to qualify for any of the exemptions cited by SFSC. In addition, he recommended that SFSC continue to withhold those records or portions of records found to qualify under one of the exemptions cited by SFSC. Finally, the Commissioner recommended that SFSC apply the analysis, findings and recommendations in this Review Report to the larger responsive record.

Response Received

In its response dated and received February 28, 2014, the FCAA indicated the following:

I have decided to:

- (i) exercise discretion to release two of the Law Enforcement Records;
- (ii) follow the recommendation of the Commissioner and withhold in their entirety the remaining Law Enforcement Records;
- (iii) follow the recommendation of the Commissioner and release in their entirety the Redacted Investigation Reports; and
- (iv) follow the recommendation of the Commissioner and withhold the portions of the Administrative Records specified by the Commissioner in his report and release the remainder of the records.



20. Review Report F-2014-002

Saskatchewan Crop Insurance Corporation

In March 2011, an Applicant submitted an access to information request to Saskatchewan Crop Insurance Corporation (SCIC) for records about the number of cultivated and seeded acres claimed by a third party. SCIC withheld all the records, citing sections 15(1)(b)(i), 15(1)(f) and 19(1)(b) of FOIP. The Applicant requested a review with the OIPC. In its submission to the OIPC, SCIC stated it was no longer relying on the exemptions it raised in its response to the Applicant, but that it would rely on section 29(1) of FOIP to withhold all of the information in question. Further, toward the end of the review, it raised sections 19(1)(e) and 19(1)(f) of FOIP to withhold the information in question. I found that section 29(1) of FOIP was not applicable. Further, I found that neither sections 19(1)(e) nor 19(1)(f) of FOIP applied. However, since the information appeared to be third party business information, I also considered the applicability of section 19(1)(b) of FOIP. I found that section 19(1)(b) of FOIP did apply. Therefore, I recommended that SCIC continue to withhold the information in question.

Response Received

In its response dated March 28, 2014 received in our office on April 2, 2014, SCIC indicated "I have read through your report and found it to be an inclusive summary of the facts. The recommendation supports SCIC's position on this matter."

21. Investigation Report H-2013-003

Dr. Diana Monea and Dr. Diana Monea carrying on business under the name Lakewood Eye Health Centre

As a result of an anonymous call, Commissioner Dickson found personal health information in the custody or control of Dr. Diana Monea near a dumpster located beside Lakewood Eye Health Centre, Dr. Monea's clinic. Although, it was alleged that the personal health information was

planted by a former employee, upon investigation, the Commissioner concluded that Dr. Monea did not have adequate safeguards to protect the personal health information. In particular, Dr. Monea's clinic did not have adequate policies and procedures or training for employees to achieve compliance with section 16 of HIPA. Further, the clinic's procedure to dispose of personal health information was not compliant with section 17(2)(b) of HIPA and did not respect the 'need-to-know' or 'data minimization' principles inherent in section 23(2) of HIPA. Dr. Monea disagreed with the Commissioner's conclusions and refused to develop adequate policies and procedures or change the clinic's disposition procedures.

Response Received

A response was dated and received on October 15, 2013. In terms of recommendation 130, 131 and 132, the trustee's solicitor indicated that it had already complied with these recommendations. The solicitor indicated that the "Lakewood Eye Center believes that it has completed" recommendation 134 but would not notify affected patients as recommended in 135. Confirmation was also provided that the final recommendation at 136 was also complied.

22. Investigation Report H-2014-001

Dr. Gary Hunter (Lakeview Neurology), Five Hills Regional Health Authority, Prince Albert Parkland Regional Health Authority, Prairie North Regional Health Authority, Saskatoon Regional Health Authority, Heartland Regional Health Authority, Sunrise Regional Health Authority, Mamawetan Churchill Regional Health Authority, Regina Qu'Appelle Regional Health Authority, Dr. T.W. Wilson

This 2014 Investigation Report again takes a systematic approach in examining several privacy breaches involving misdirected faxes. In total, this investigation captures ten different trustees, including eight regional health authorities (RHAs), 20 separate files and approximately 1000 affected patients. With a couple of exceptions, all of these

breaches involve not a stand-alone fax machine but rather faxing features with electronic medical records and the electronic health record.

The breaches can be broken down into five categories of breaches:

Category #1: (338 to 922 possible affected patients, seven trustees) Outdated physician fax numbers in the Radiology Information System (RIS) caused faxes containing personal health information to be misdirected to those without a need-to-know. eHealth Saskatchewan (eHealth) is the Information Management Service Provider (IMSP) which provides RIS support to the trustees.

Category #2: (seven affected patients, seven trustees) A third party in Moose Jaw received several faxes for physicians no longer providing services for the organization. These breaches can be attributed to a number of different factors including out of date fax numbers in electronic medical records (EMRs); undue care and attention when entering information, choosing where to send faxes and use of an 'auto suggest function'; and reliance on outdated personal health information in a legacy system.

Category #3: (three affected patients, two trustees) An incorrect fax number in the College of Physicians and Surgeons of Saskatchewan's (CPSS) *Physicians Mailing List – January 2013* and undue attention paid to subsequent updates caused these faxes containing personal health information to be sent to a third party school. Further, in one case, highly sensitive personal health information regarding a transgendered individual was sent to the wrong recipient via this inherently insecure form of communication.

Category #4: (approximately 125 affected patients, three trustees) Another series of breaches involving RIS in which a configuration would not allow changes or updates to patient

personal health information affecting where results were faxed.

Category #5: (22 affected patients, one trustee) These breaches involved an incorrect fax number which was entered into RIS.

This Investigation Report examined not only the root causes of the breaches in detail, but also evaluated the responses of each trustee and the faxing safeguards each one had in place before the breaches occurred. For these purposes, Commissioner Dickson revisited his *Report on Systemic Issues with Faxing Personal Health Information*.

As a result of this investigation, he identified two common themes that were consistent in these breaches: challenges with keeping fax information up-to-date and a lack of formal mechanisms to ensure that appropriate safeguards and accountability mechanisms are integrated in the RIS setup. This includes a lack of formal agreements between eHealth and the RHAs involved in this Investigation Report that presently use RIS.

Among his 16 recommendations, the Commissioner advised trustees to:

- disable 'auto-suggest' features within its electronic systems if such a technical solution is possible;
- develop consistent privacy breach investigation protocol in accordance with the OIPC's resource *Helpful Tips: Privacy Breach Guidelines* and consistently follow such a protocol, even if its information management service provider may also be investigating the same issue;
- develop comprehensive and specific faxing policies and procedures tailored to its organization;
- develop a procedure that all copies of the CPSS physician directory be manually updated in ink immediately when monthly notifications are received;





- devise strategies and corresponding policies and procedures to audit and update all sources of fax contact information regularly;
- work with eHealth to verify relevant fax numbers within the system immediately and on an annual basis;
- work with eHealth and other regional health authorities to devise a strategy for updating fax information within the system. The regional health authorities must then develop internal procedures that complement the strategy;
- ensure there are adequate and up-to-date agreements in place with eHealth concerning the use of RIS;
- ensure a cover sheet compliant with best practices accompanies faxes sent from this system; and
- verify that faxes sent from all machines and other sources print a fax header that is compliant with best practices.

On or about November 7, 2013, our office shared with each of the trustees a copy of a draft analysis for this Investigation Report. They were asked the following:

We would like you to review the attached draft Report and provide us with the following:

A list of recommendations that you will be committing to accept. We will note your responses in the public Report. Estimated timelines for implementation would be helpful as well... .

We asked that we receive the responses no later than December 9, 2013. As noted below, we received responses from all trustees with the exception of Five Hills Regional Health Authority. Further, the response of Dr. Gary Hunter (Lakeview Neurology) was dated November 12, 2013 but did not arrive at the OIPC until December 19, 2013. With respect to the

recommendations, it stated “We have tried to implement all of these suggestions to the best of our comprehension, acknowledging no specific training in Health Information policies or details of e-health privacy regulations.” It gave no specific details for each recommendation.

The responses are noted in a table on pages 114 to 116 of the Investigation Report. The table includes the following coding:

- C:** Trustee has committed to adopting the recommendation and has already taken steps or provided a plan and timelines.
- L:** Trustee is looking into possibly adopting the recommendation or has committed but provided no details with respect to implementation.
- R:** Trustee has rejected the recommendation.
- N:** Trustee has not provided a response.

Responses Received

The Commissioner made 16 recommendations, [276] to [291], in this Investigation Report. In terms of responses, we only received from seven of the ten trustees in question. Recommendation 15 does not apply to any of the trustees in question as it instead is a recommendation for the Minister of Health.

Heartland Regional Health Authority (HRHA)

We received a response from HRHA on March 5, 2014 dated February 28, 2014. In its response, HRHA indicated the following when it came to each recommendation made:

- Recommendation 1: R
- Recommendations 2-5, 7-14 & 16: C
- Recommendation 6: L (HRHA’s letter indicated “looking into”)
- Recommendation 15: N/A

HRHA also provided deadlines for implementation of recommended actions.

Five Hills Regional Health Authority (FHRHA)

FHRHA's response dated February 13, 2014 was received by our office on February 24, 2014. FHRHA indicated it would comply with most of the recommendations. In terms of recommendation 1, it indicated "[f]or our networked fax machines this solution has been investigated and to our understanding it is not possible to turn this feature off. Our stand alone machines do not have this feature."

Sunrise Regional Health Authority (Sunrise)

Sunrise provided its response dated February 10, 2014. It was received in our office on February 12, 2014. Sunrise responded to recommendations 9, 11 and 12 from the Investigation Report. Its response indicates what actions it intends to take and when it will address each of the three.

Regina Qu'Appelle Regional Health Authority (RQRHA)

Our office received RQRHA's January 30, 2014 response on February 6, 2014. In its letter, RQRHA indicated:

As previously indicated by letter to your office dated December 9, 2013, the RQRHA provided a commitment to implement all of the Commissioner's recommendations with one exception. The RQRHA indicated that it would like to further investigate the impact of one particular recommendation prior to accepting or rejecting it.

The RQRHA's position regarding the Commissioner's recommendations in the Investigation Report remains the same as indicated in the December 9, 2013 letter.

Saskatoon Regional Health Authority (SRHA)

The response dated January 24, 2014 from SRHA was received by our office on January 31, 2014. SRHA indicated that it agreed with many of the Commissioner's recommendations and/or has and/or will continue to work or collaborate with others including eHealth to address. However, it also noted the following concerns:

Further to my letter dated December 3, 2013 in which I outlined the Saskatoon Health Region's responses to your recommendations, I have noted that many of my responses were not recorded accurately (page 114-116) in the public report. Please note the discrepancies to my responses which are as follows:

"That all trustees develop consistent privacy breach investigation protocol in accordance with Health [sic] Tips: Privacy Breach Guidelines."

You indicated that the Saskatoon Health Region has "committed to adopting the recommendation and has already taken steps to provide a plan and timelines." In my December 3, 2014 letter, I stated "Saskatoon Health Region, Privacy and Access Office do follow the above guidelines."

"That all trustees consistently follow privacy breach investigation protocol when a privacy breach occurs, even if its information management service provider is also investigating the same issue."

You indicated that the Saskatoon Health Region is "looking into possibly adapting the recommendations or has committed but provided no details with respect to implementation" when in fact the Saskatoon Health Region, Privacy and Access Office agreed and has already begun using the protocol.

"That all trustees using the Radiology Imaging System work with eHealth Saskatchewan to verify relevant fax numbers within the system immediately and on an annual basis."

I responded to this recommendation stating that "Saskatoon Health Region, Medical Imaging Response: before the move to the RIS system, the Saskatoon Health Region would send a verification fax to every physician whose number was listed in the regional RIS system. Physicians would be asked, in this way, to confirm the accuracy of our information. We

have suggested that this practice be undertaken at the provincial level.” I at no time stated that the Saskatoon Health Region “rejected the recommendation”. By sharing our previous procedure that worked very well and suggesting it to eHealth, we are working with them to resolve this very serious issue.

“That trustees using the Radiology Imaging System work with eHealth Saskatchewan and other regional health authorities using to devise a strategy for updating fax information within the system. The regional health authorities must then develop internal procedures that complement the strategy.”

The Saskatoon Health Region has not “rejected the recommendation”, our Medical Imaging has been working with eHealth on solutions to this issue since May, 2012.

“That all trustees using the Radiology Imaging System ensure a cover sheet compliant with best practices accompanies faxes sent from this system.”

My response to this recommendation was as follows: “Saskatoon Health Region, Medical Imaging Response: this RIS is configured to attach a fax cover page to every fax sent with contact information for each region’s RIS administrator. There is no option for an individual to bypass this setting.” In short, a cover sheet is attached within the RIS application as there is no option to do otherwise. At no time did I indicate in my December 3, 2013 letter that the Saskatoon Health Region “rejected” the recommendation as indicated in your report.

“That all trustees ensure all misdirected faxes have been retrieved and securely destroyed.”

You noted that the Saskatoon Health Region “has not provided a response”, however, my response outlined the process that we presently use. Please be advised we agree to the recommendation.

Dr. T. Wilson

Dr. T. Wilson provided his response dated January 27, 2014 on January 30, 2014. He indicated that he agreed, had or would otherwise comply with those recommendations that applied to his practice.

Dr. Gary Hunter (Lakeview Neurology)

Dr. Hunter indicated in his letter dated January 14, 2014 and received in our office on January 30, 2014 that “[w]e have tried to implement all of these recommendations to the best of our comprehension, acknowledging no specific training in Health Information policies or details of e-health privacy regulations. ... Points 275 through 291 have all been reviewed and addressed where relevant to our office.”

23. Review Report H-2013-001

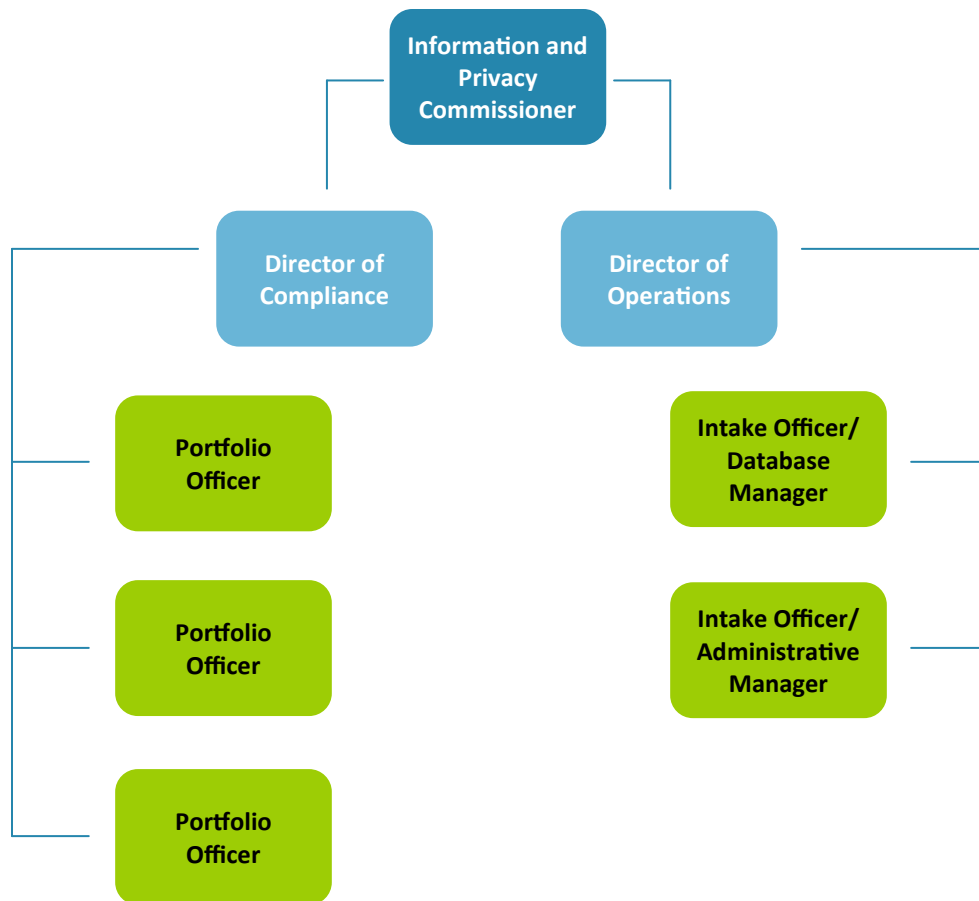
Saskatoon Regional Health Authority

The Applicant requested that the OIPC undertake a review when SRHA refused to release her deceased father’s personal health information to her. Commissioner Dickson found that the Applicant was not a surrogate of her deceased father pursuant to section 56 of HIPA. Therefore, she did not have a right of access to her deceased father’s personal health information pursuant to Part V of HIPA. Further, the Commissioner found that SRHA exercised its discretion properly in refusing to disclose the deceased father’s personal health information pursuant to section 27(4)(e) of HIPA.

Response Received

In its response dated November 21, 2013 and received in our office on December 2, 2013, SRHA indicated that it agreed with Commissioner Dickson’s recommendations.

OIPC Organizational Chart



Financial Statements

**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

June 27, 2014

2013 - 2014 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.



Diane Aldridge
Acting Saskatchewan Information and
Privacy Commissioner



Pam Scott
Director of Operations



PROVINCIAL AUDITOR
of 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, 2014, and the statements of operations and accumulated surplus, changes in net debt 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, 2014, and the results of its operations, changes in its net debt and its cash flows for the year then ended in accordance with Canadian public sector accounting standards.

Regina, Saskatchewan
June 13, 2014

Judy Ferguson, FCA
Acting Provincial Auditor

Statement 1

Office of the Information and Privacy Commissioner Statement of Financial Position As at March 31

	<u>2014</u>	<u>2013</u>
Financial assets		
Due from the General Revenue Fund	\$ 30,083	\$ 24,382
Accounts Receivable	<u>12,091</u>	<u>4,130</u>
	<u>42,174</u>	<u>28,512</u>
Liabilities		
Accounts payable	13,399	21,996
Accrued leave entitlements	<u>28,775</u>	<u>6,516</u>
	<u>42,174</u>	<u>28,512</u>
Net debt (Statement 3)	<u>-</u>	<u>-</u>
Non - financial assets		
Tangible capital assets (Note 3)	16,634	13,029
Prepaid expenses	<u>7,788</u>	<u>13,569</u>
	<u>24,422</u>	<u>26,598</u>
Accumulated surplus (Statement 2)	\$ <u>24,422</u>	\$ <u>26,598</u>
Contractual Obligations (Note 8)		

Statement 2

Office of the Information and Privacy Commissioner Statement of Operations and Accumulated Surplus For the Year Ended March 31

		2014	2013
	Budget (Note 4)	Actual	Actual
Revenue			
General Revenue Fund Appropriation	\$ 1,116,000	\$ 1,068,090	\$ 1,005,562
Miscellaneous Revenue	-	3	564
Total Revenue	<u>1,116,000</u>	<u>1,068,093</u>	<u>1,006,126</u>
Expenses			
Salaries and other employment expenses	808,000	798,691	751,126
Administration and operating expenses	62,170	54,957	53,207
Rental of space and equipment	150,200	146,271	143,400
Travel	44,980	31,356	22,870
Advertising and promotion	9,250	10,289	4,346
Amortization		6,794	14,660
Contractual and legal services	41,400	20,090	26,576
Total Expenses	<u>1,116,000</u>	<u>1,068,448</u>	<u>1,016,185</u>
Operating Surplus (Deficit)	\$ <u>-</u>	(355)	(10,059)
Accumulated surplus, beginning of year		26,598	36,657
Adjustment for sick leave benefit obligation (Note 10)		(1,821)	
Accumulated surplus, end of year (Statement 1)		<u>\$ 24,422</u>	<u>\$ 26,598</u>

Statement 3

Office of the Information and Privacy Commissioner Statement of Changes in Net Debt For the Year Ended March 31

	<u>2014</u>	<u>2013</u>
Operating surplus (deficit)	\$ (355)	\$ (10,059)
Acquisition of tangible capital assets	(10,399)	(8,855)
Amortization of tangible capital assets	<u>6,794</u>	<u>14,660</u>
	(3,605)	5,805
Increase (decrease) in prepaid expense	5,781	4,254
	<u>2,176</u>	<u>10,059</u>
Decrease (Increase) in net assets	1,821	-
Net debt, beginning of year	-	-
Adjustment for sick leave benefit obligation (Note 10)	(1,821)	
Net debt, end of year (Statement 1)	\$ <u>-</u>	\$ <u>-</u>

Statement 4

**Office of the Information and Privacy Commissioner
Statement of Cash Flows
For the Year Ended March 31**

Cash from (used in) operating activities:	2014	2013
General Revenue Fund appropriation received	\$ 1,052,608	\$ 1,028,616
Miscellaneous revenue	3	-
Salaries paid	(776,432)	(773,001)
Supplies and other expenses paid	<u>(265,780)</u>	<u>(246,760)</u>
Cash from (used in) operating activities	<u>10,399</u>	<u>8,855</u>
Cash from (used in) capital activities:		
Purchase of tangible capital assets	<u>(10,399)</u>	<u>(8,855)</u>
Cash from (used in) capital activities	<u>(10,399)</u>	<u>(8,855)</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>

Notes to the Financial Statements

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. Significant Accounting Policies

The Office uses Canadian public sector accounting standards to prepare its financial statements. These statements do not include a Statement of Remeasurement Gains and Losses as the Office has no activities that give rise to remeasurement Gains and Losses. As a result, the accumulated surplus is the same as its accumulated operating surplus. The following accounting policies are considered to be significant.

(a) Revenue

The Office receives an appropriation from the General Revenue Fund to carry out its work. General Revenue Fund appropriations are included in revenue when amounts are spent or committed.

(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.

(c) Sick Leave Benefit Obligation

The Office estimates its sick leave benefit obligation based on accumulated employee sick leave entitlements. A liability for vesting or accumulating sick leave is recorded in the year the employee provides services in return for the sick leave benefits. This liability is only recorded if it is expected to be significant to the organization.

3. Tangible Capital Assets

	2014			Total 2014	Total 2013
	Hardware & Software	Equipment & Furniture	Leasehold Improvements		
Cost, April 1	\$ 68,581	\$ 129,922	\$ 44,551	\$ 243,054	\$ 263,779
Additions	1,947	8,452	-	10,399	8,855
Disposals	-	-	-	-	(29,580)
Cost, March 31	<u>70,528</u>	<u>138,374</u>	<u>44,551</u>	<u>253,453</u>	<u>243,054</u>
Accumulated Amortization,					
April 1	58,746	127,287	43,992	230,025	244,945
Annual Amortization	3,843	2,811	140	6,794	14,660
Adjustment for disposals	-	-	-	-	(29,580)
Accumulated Amortization,					
March 31	<u>62,589</u>	<u>130,098</u>	<u>44,132</u>	<u>236,819</u>	<u>230,025</u>
Net Book Value, March 31	<u>\$ 7,939</u>	<u>\$ 8,276</u>	<u>\$ 419</u>	<u>\$ 16,634</u>	<u>\$ 13,029</u>

4. Budget

These amounts represent funds approved by the Legislative Assembly to carry out duties under *The Freedom of Information and Protection of Privacy Act*. The Office's expenditures are limited to the amount appropriated to it by the Legislative Assembly.

5. 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, the difference is not available to acquire goods and services in the next fiscal year.

6. Costs Borne by Other Agencies

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



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. Contractual Obligations

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 \$136,736 before escalation adjustments.

9. Pension Plan

The Office participates in a defined contribution pension plan for the benefit of its employees. The Office's financial obligation of the plan is limited to making payments of 5% of employees' salaries for current service.

10. Adjustment to Accumulated Surplus

Accumulated Sick Leave Benefit Obligation

During 2013-14, a liability for an accumulated sick leave benefit obligation was reported in accordance with Canadian public sector accounting standards. The liability was accounted for retroactively without restatement of the prior periods resulting in an increase to accounts payable and accrued liabilities and a decrease to opening accumulated surplus of \$1,821.