

# 2014-2015 Annual Report

It's Time to Update



Office of the  
Saskatchewan Information  
and Privacy Commissioner



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and Privacy Commissioner

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Office of the  
Saskatchewan Information  
and Privacy Commissioner

June 22, 2015

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 my first Annual Report as Information and Privacy Commissioner. I have prepared this Annual Report in accordance with the provisions of section 62 of *The Freedom of Information and Protection of Privacy Act*, section 52 of *The Local Authority Freedom of Information and Protection of Privacy Act* and section 60 of *The Health Information Protection Act*.

I thank the Members of the Legislative Assembly for their support of the Office of the Information and Privacy Commissioner and I ask for their cooperation in the years ahead to update the legislation relating to access and privacy.

I also thank the staff of the Office for making me feel welcome and for their hard work over the past year in accomplishing some ambitious goals and embracing ambitious goals for the current year.

Respectfully submitted,

Ronald J. Kruzeniski, Q.C.  
Information and Privacy Commissioner

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# Commissioner's Message

I was appointed Commissioner in July of 2014 and began my term focusing on five key performance areas. These include:

- Citizens First;
- A New Look;
- Information for All;
- Updating the Rules; and
- Being Efficient and Effective

This past year we made great progress in each of these areas.

This year we welcomed three additional staff members. The extra staff helped us to achieve our goals in the 2014-2015 fiscal year.

Our Office has been plagued with a backlog for several years. Citizens have often lost interest by the time we complete a case file due to the length of time it has taken to resolve the issue. One of our primary goals was to reduce the time to conclude a file. We set a goal to have a resolution of a file within 40 days, 80% of the time and I am pleased to announce that we reached that goal in February of 2015. One of the ways we were able to reach this goal was ensuring Early Resolution Officers begin an informal resolution process between the public body and the applicant/complainant immediately upon receiving a request for review or a complaint of a breach of privacy. This allows for possible resolution at a much earlier stage.

It is time to update *The Freedom of Information and Protection of Privacy Act* and *The Local Authority Freedom of Information and Protection of Privacy Act*. These statutes have not been updated in 22 years and need to reflect changes across the country and the impact of new technology. I am making several recommendations for change. You can see the requested changes in this Report.

During this year, we had begun the process of working collaboratively with public bodies to develop education and training programs and it is hoped that we can embark upon many more joint projects in the coming year.

In September of 2014, the Office began the project of going paperless. This is an ongoing process, but now files from 2010 to present are electronic.

In closing I want to thank the staff of the Office for their hard work, dedication and commitment to ensuring access and privacy rights are afforded to the citizens of Saskatchewan. I also want to thank our many stakeholders including public bodies, local authorities and health trustees for their continued cooperation with our Office.

Ronald J. Kruzeniski, Q.C.  
Information and Privacy Commissioner



# About Us

## Our Mandate

Our Office has duties and responsibilities under three statutes: *The Freedom of Information and Protection of Privacy Act* (FOIP); *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP); and *The Health Information Protection Act* (HIPA).

As such we:

- review decisions by public bodies regarding access requests;
- investigate complaints by individuals who believe their privacy has not been respected;
- provide advice to public bodies regarding access or privacy rights and responsibilities;
- provide education regarding access to information and protection of privacy.

## Our Mission

The people of Saskatchewan shall enjoy access to information and privacy rights enacted by the Legislative Assembly of Saskatchewan.

## Our Values

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

# Five Year Plan

This plan was developed and approved in the summer of 2014 and work began last year, and will continue in the current year, to implement the plan.

## Citizens First

- Develop and implement a collaborative problem solving approach to resolving requests for review and complaints of breaches of privacy.
- Complete all reviews and investigations within six months, 80% of the time.
- Encourage public bodies to adopt an open information strategy.
- Encourage public bodies to develop record retention and disposal policies.

## A New Look

- Design and develop a new visual identity for the Office.
- Redesign and make the website the primary communication tool.
- Explore the effective utilization of social media and other electronic technologies.

## Information for All

- Develop and implement an education and communications program aimed at providing greater information to citizens and public bodies.
- Develop and deliver regular one day training sessions for government, health and local authority professionals.

- Develop an online modular course that can be taken by government, health or local authority officials on access and privacy.
- Develop collaborative arrangements to educate and communicate with Saskatchewan citizens and public bodies.

## Updating the Rules

- Promote, encourage and participate in the development of legislation to fill in gaps and clarify uncertainties in access and privacy legislation.
- Advise on all legislation as to access and privacy impacts.

## Efficient and Effective

- Establish performance measures which will be reported on annually.
- Use LEAN methodology to streamline office processes.
- Convert to an electronic filing system.
- Implement a database for records management, workflow management and statistical information.
- Promote and enter into collaborative arrangements to share services with other officers of the Legislative Assembly.
- Relocate to a facility shared by officers of the Legislative Assembly.

# Goals and Accomplishments

## 2014-2015

### Citizens First

#### Goals

- Request additional staff to deal with the workload and make possible a goal of all reviews and investigations being completed in a timely manner.
- Complete all reviews and investigations within six months, 80% of the time.

#### Accomplishments

- Additional staff were requested in August 2014 and approved by the Board of Internal Economy which assisted the Office in reaching its goal below.
- A LEAN event was held in September 2014 and a new goal was established of completing, on average, reviews or investigations in 40 days, 80% of the time. This goal was reached on February 7, 2015.

### A New Look

#### Goals

- Design and develop a new visual identity for the Office.
- Redesign and make the website the primary communication tool.

#### Accomplishments

- A new visual identity was established and implemented in the spring of 2015.
- The Office has made the website its primary education source. It has updated and modernized its website as much as is possible on the present platform and plans to do a more extensive redesign in the future.

### Information for All

#### Goal

- Work with the Public Service Commission and the Ministry of Justice to develop training modules for public servants on access and privacy.

#### Accomplishment

- The Public Service Commission, the Ministry of Justice and this Office have developed four training modules for public servants which will be available by the summer of 2015.



## Updating the Rules

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### Goals

- Review and suggest changes to Bill #164, *The Health Information Protection Amendment Act, 2014*.
- Develop proposals for amendments to FOIP and LA FOIP.
- Propose amendments to FOIP Regulations including changes to the Request for Review Form.

### Accomplishments

- Suggestions for change were provided and the end result was the Bill was passed by the Legislative Assembly in the spring of 2015. It is planned to make more extensive proposals for change to this Act in the coming year.
- Extensive work was done on amendments to FOIP and LA FOIP, the result of which is proposals for amendments to FOIP and LA FOIP contained in this Report.
- FOIP Regulations were amended to include a new Access to Information Request Form and a Request for Review Form. Both are available on the Office's website.

## Efficient and Effective

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### Goals

- Use LEAN methodology to streamline office processes.
- Convert to an electronic filing system.
- Implement a case file management system.
- Develop an arrangement with the Legislative Assembly Service for the sharing of legal services.
- Develop an exemptions guide for FOIP and LA FOIP.

### Accomplishments

- A LEAN event was held resulting in our office streamlining processes. We established a goal of completing, on average, reviews and investigations in 40 days, 80% of the time. We plan to revisit office processes in 2015-2016.
- We have begun the process of shifting to all records being stored electronically and will complete the process within one year.
- Various options were reviewed but not started. The Office plans to develop a case file management system in 2015-2016.
- An arrangement was reached with the Legislative Assembly Service to allow for the Office to utilize the legal service of the Law Clerk and Parliamentary Counsel.
- Extensive work was done to develop the *IPC Guide to Exemptions for FOIP and LA FOIP*. This guide was provided to FOIP Coordinators in training sessions in the spring of 2015. The *IPC Guide to Exemptions for FOIP and LA FOIP* can be found on the Office's website.

# Goals for 2015-2016

## Citizens First

### Goals

- Establish and reach a goal that citizens and public bodies will receive their report, response or a resolution within 35 days, 80% of the time.
- Promote a joint project with Saskatchewan Urban Municipalities Association (SUMA) in the development of an online course for mayors, reeves, counsellors and administrators on the provisions of LA FOIP.
- Promote a joint project with Saskatchewan Association of Rural Municipalities (SARM) in the development of an online course for mayors, reeves, counsellors and administrators on the provisions of LA FOIP.
- Promote and participate in a joint project with the Provincial Archives and executive government to update the Privacy Framework 2003.
- Promote a project with other Commissioners to clarify the roles relating to pharmacists working for large organizations.

## A New Look

### Goals

- Modernize the Office's website with a primary focus on education of citizens, public bodies and their staff.
- Complete the implementation of a new visual identity standard for the Office.

## Information for All

### Goals

- Participate in finalizing a joint project with the Ministry of Justice and the Public Service Commission to complete four training modules on privacy and access for public servants.
- Promote a joint project with the Ministry of Justice and the Public Service Commission to develop an annual refresher access and privacy online course for public servants.

- Participate in a joint project with the Saskatchewan College of Pharmacists to develop and provide the second series of pharmacy privacy officer training and re-certification sessions.
- Promote and participate in a joint project with the Ministry of Social Services to develop a training module for Child and Family Services workers.
- Promote a joint project with the Ministry of Health and the Public Service Commission to develop a training module on HIPA for public servants.
- Continue to develop and expand the *IPC Guide to Exemptions for FOIP and LA FOIP*.
- Promote and participate in a joint project with the Provincial Archives to focus government agencies on having and implementing retention schedules.
- Develop a publication on HIPA guidelines for trustees.
- Promote and participate in a joint project with eHealth Saskatchewan on auditing guidelines for trustees.
- Participate with the Law Society in delivering a seminar on access and privacy in Regina and Saskatoon.
- Develop a guidance document on forms of consent for public bodies and trustees.

## Updating the Rules

### Goals

- Propose and promote amendments to FOIP and LA FOIP.
- Develop proposals to update HIPA.
- Develop proposals to create a *Personal Information Protection Act* in Saskatchewan.
- Prepare and make a submission to the Workers' Compensation Review Committee regarding *The Workers' Compensation Act, 2013*.
- Participate in a review of *The Child and Family Services Act* and make a submission to the Ministry of Social Services.
- Work with the College of Physicians and Surgeons of Saskatchewan to propose amendments to HIPA Regulations.

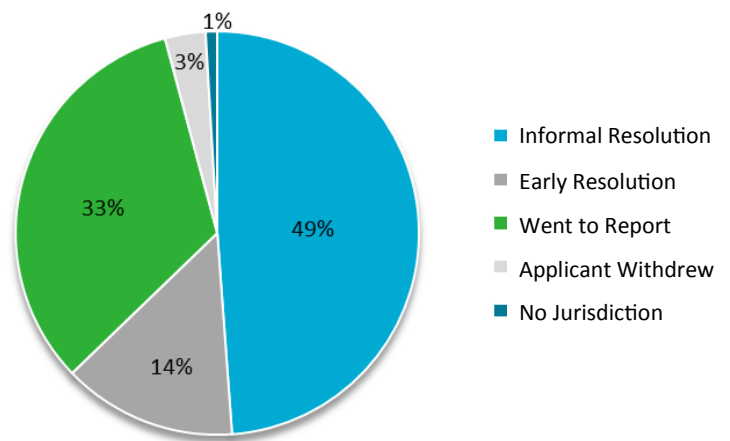
## Efficient and Effective

### Goals

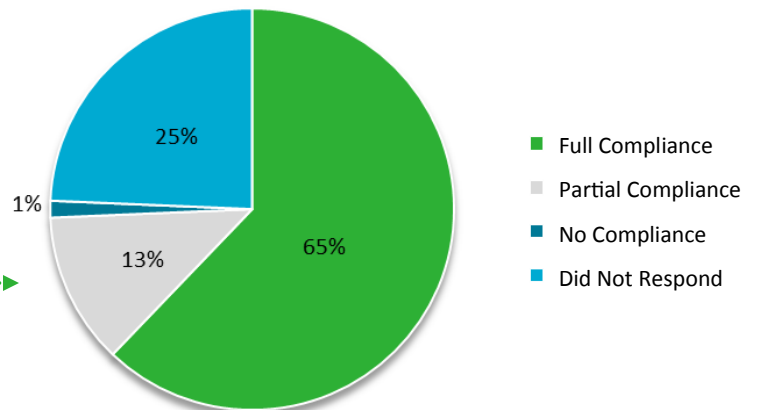
- Develop a database to better track reviews and investigations in the Office.
- Hold a LEAN event to revisit and further streamline processes in the Office.
- Develop a policy manual on Human Resources and Financial Management.

# Reports and Recommendations

The Office closed 225 files in 2014-2015. The following is a chart summarizing the breakdown of files resolved, including those that went to a Report.



The Office issued 74 Reports in 2014-2015 and posted 42 of those to its website. A public body is required to respond to the recommendations within 30 days of receiving the Report. The following is a chart summarizing those responses.



Below is a table summarizing Reports issued in 2014-2015 where the public body indicated it would partially comply with the recommendations.

Report #	Public Body	Recommendation(s) Not Complied With
Review Report LA-2014-002	Saskatoon Regional Health Authority	<a href="#">Paragraph [83]</a>
Review Report F-2014-005	Ministry of Education	<a href="#">Paragraph [34]</a>
Review Report 019-2014	City of Saskatoon	<a href="#">Paragraph [89]</a>
Review Report 063-2014	Sunrise Regional Health Authority	<a href="#">Paragraph [37]</a>
Review Report 086-2014	Prince Albert Parkland Regional Health Authority	<a href="#">Paragraph [26]</a>
Investigation Report 046-2014	Saskatchewan Workers' Compensation Board	<a href="#">Paragraphs [52] and [54]</a>
Investigation Report 072-2014	SaskTel	<a href="#">Paragraph [42]</a>
Investigation Report 088-2013	Regina Qu'Appelle Regional Health Authority	<a href="#">Paragraph [24]</a>
Investigation Report 107-2014	Saskatchewan Research Council	not posted on website

Subsection 7(2) of FOIP requires government institutions to respond to access to information requests within 30 days after the request is made. Subsection 12(1) of FOIP enables government institutions to extend the 30 days for a reasonable period not exceeding 30 days.

Below is a listing of Reports issued in 2014-2015 where the public body did not respond within the legislated timelines.

Report #	Public Body	Number of Days Late
Review Report 110-2014	Ministry of Health	114
Review Report 111-2014	Ministry of Health	125
Review Report 112-2014	Ministry of Health	115
Review Report 113-2014	Ministry of Health	83
Review Report 115-2014	Ministry of Health	267

# It's Time to Update

## Summary of Proposals for Amendments to FOIP and LA FOIP

For a more detailed version of our proposals, please go to the Office's website.

*The Freedom of Information and Protection of Privacy Act* (FOIP) was passed by the Legislative Assembly in 1992. It is 23 years old and has had only minor amendments. *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) was passed in 1993 and is 22 years old. Similarly, it has had only minor amendments. It is time that these two statutes be reviewed and amended to bring them up to date. The updating of a statute gives the legislators an opportunity to recognize court decisions, clarify interpretations and take account of current developments in access and privacy law.

This Report sets out a series of proposed amendments to FOIP and LA FOIP and the amendments are placed in four categories, those that:

- benefit "citizens";
- benefit "public bodies";
- will assist the "Commissioner"; and
- are of a "general" nature.

The proposals attempt to achieve a number of objectives:

- shortening timelines so that citizens get information or decisions sooner;
- creating a similar process for reviews of access requests and investigations of breaches of privacy;
- clarification of provisions;
- recognition of electronic communications;
- efficiencies to save time and taxpayers dollars;
- making provisions similar to Alberta and British Columbia so that provisions are closer to harmonize in Western Canada.

## Amendments for Citizens

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### 1. Object or Purpose Clause

Some privacy legislation sets out the purposes of the legislation at the beginning of the Act. Such purposes help those interpreting and applying the Act. When dealing with legislation that is quasi constitutional, it is important to have a clear statement of purposes for heads, the Commissioner and the Courts to refer to.

### Proposal

Amend FOIP and LA FOIP to introduce a purposes section similar to that used in section 2 of Alberta's FOIP.

### 2. Definition of "Government Institution"

Government creates many organizations, agencies, and corporations to do its work (it is no longer just executive council and ministries). Government sometimes converts an organization into a corporation, agency or other body. It is difficult to always ensure that all entities are prescribed as "government institutions".

### Proposal

That all government created organizations would be "government institutions" unless specifically exempted by regulation. This would ensure that new organizations would be caught by FOIP unless a conscious decision was made to exempt them. Newfoundland has taken the approach of excluding specified public bodies.

### 3. Definition of "Employee"

There is presently no definition of "employee" in FOIP and LA FOIP. A definition of "employee" would assist with interpretation.

### Proposal

That there be a definition of "employee" which includes contractors and agents similar to the definition in Alberta.

### 4. Duty to Assist

The Acts do not contain an express provision regarding the duty to assist, but *The Health Information Protection Act* (HIPA) has such a duty in section 35.

### Proposal

To be clear as to the public body's responsibility when processing access to information requests, it is proposed that FOIP and LA FOIP have a section which provides a duty to assist similar to that in HIPA.

### 5. Duty to Protect

FOIP or LA FOIP do not have a section with a duty to protect but HIPA has a duty to protect in section 16.

### Proposal

That FOIP and LA FOIP have a section which provides a duty to protect similar to that in HIPA.

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## 6. Mandatory Breach Notification

Breaches of personal information have been occurring more frequently. North America is moving to ensure that individuals are notified when a breach occurs. There are two considerations with mandatory breach notification: (1) when to notify affected individuals; and (2) when to notify the Commissioner.

## Proposal

Amend FOIP and LA FOIP to have wording similar to Alberta's PIPA regarding mandatory breach notification.

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## 7. Grounds for Review

Presently, the reviewable grounds in FOIP and LA FOIP are where an Applicant is not satisfied with the decision of a head, a head fails to respond to an application for access to a record or an Applicant requests a correction of personal information.

## Proposal

Amend section 49 of FOIP and section 38 of LA FOIP to include review of transfer to another institution, fees, fee estimates, refusal to waive fees and any contravention of the Act. And it be made clear that the Commissioner can review any alleged breach of privacy or the improper collection, use or disclosure of personal information.

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## 8. Government Institution Response Time

In today's electronic age, if a citizen makes an access request, waiting 30 days for the record is just too long. If the record is one, two, three or five pages, it certainly does not take 30 days to locate it, review and send it out or claim an exemption. It would be an improvement to the system to require responses in 20 days with an exception for longer records or difficult situations. Quebec has a requirement of 20 days.

## Proposal

Amend FOIP and LA FOIP to require a response in 20 days.

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## 9. Record Will be Published

Presently, if the record will be published within 90 days, FOIP and LA FOIP allow for notice to be given to an Applicant that access is denied. With today's websites and the ease of publication, it is reasonable now to shorten this time.

## Proposal

Amend FOIP and LA FOIP to require publication within 20 days.

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## 10. Manuals Made Available

Currently manuals of government institutions are to be made available to a citizen in the offices of the institution.

## Proposal

Amend FOIP to require government institutions to make their manuals, policies, guidelines or procedures that are used in decision-making processes that affect the public available online or in paper upon request and LA FOIP have a similar section.



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## 11. Open Government

In fiscal year 2013-2014, the government received approximately 2200 access requests. Some of those requests were of a similar nature, for example, travel expenses of officials. The Commissioner has set a five year goal to promote public bodies making information available which is frequently requested. The City of Regina has adopted an open information strategy by publishing commonly requested data. Citizens get the information quickly and the public body does not have to respond to numerous access requests.

## Proposal

Amend FOIP and LA FOIP to have sections similar to British Columbia's FOIP at section 71 which would promote and encourage open information strategies.

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## 12. Consultants and Contractors

Today public bodies may have to, in order to carry out their mandate, contract with consultants, advisers, professionals or IT specialists to obtain services. In that process the contractor may collect, use or disclose personal information on behalf of the public body. That personal information in the custody or control of a contractor deserves the same protection it has in the custody of public bodies.

## Proposal

That a new section be introduced into FOIP and LA FOIP partly modeled on section 18 of HIPA but drafted so as to cover IT providers and other contractors.

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## 13. Third Party Personal Information

All provinces and territories, except Quebec and Saskatchewan, have a third party personal information exemption. Currently, public bodies cite subsection 29(1) of FOIP (subsection 28(1) LA FOIP) as its reason to withhold third party personal information when preparing records for an access to information request. Subsection 29(1) of FOIP is a disclosure provision but is being used as an exemption.

## Proposal

That a new section be added to include an exemption that is for third party personal information similar to Alberta's.

Alberta's FOIP provides a third party personal information exemption. This exemption has four parts. It provides:

- a public body must not disclose third party personal information if the disclosure would be an unreasonable invasion of a third party's personal information;
- when a disclosure would not be an unreasonable invasion of privacy;
- when a disclosure would be presumed to be an unreasonable invasion of privacy; and
- circumstances that the head of a public body must consider when determining whether a disclosure is an unreasonable invasion of privacy.

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## 14. Police a Local Authority

Currently police forces are not included as local authorities. Police forces are generally bound by access and privacy provisions in all provinces except Saskatchewan and Prince Edward Island (with appropriate exemptions). The Royal Canadian Mounted Police is covered by the federal *Privacy Act* and the *Personal Information Protection and Electronic Documents Act* (PIPEDA). One of the difficulties in working out proper privacy protections in the Integrated Information Sharing (Hubs) is that municipal police forces are not covered by the same legislation that applies to public bodies. There is a trend toward more information sharing between public bodies in situations where vulnerable persons, including children, are at risk. These information sharing arrangements are going to be more complicated if municipal police forces are not governed by the same privacy laws.

## Proposal

Add the following to the definition of “local authority” in LA FOIP:

2(f) “**local authority**” means:

...

(xviii) a municipal police service as defined in *The Police Act, 1990*;

## Amendments for Public Bodies

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### 15. Frivolous or Vexatious Access Requests

From time to time public bodies have been faced with requests that are frivolous, repetitive, not understandable or vexatious. These can take a considerable amount of time to process. At the moment, public bodies cannot disregard an access to information request for any of the above reasons.

### Proposal

Amend FOIP and LA FOIP to include a new provision similar to that used in Alberta that would enable the Commissioner to authorize a public body to disregard one or more access to information requests if repetitious, frivolous or vexatious.

### 16. Recovery of Personal Information

In the event of a privacy breach where personal information has fallen into the wrong hands, public bodies do not know what to do when it is necessary to retrieve or ensure the return or destruction of personal information.

### Proposal

That FOIP and LA FOIP have sections similar to British Columbia's FIPPA dealing with recovery of personal information and that it be made an offense not to return that personal information.

### 17. Other Forms of Privilege Not Captured

Currently, only solicitor client privilege is covered by FOIP and LA FOIP.

### Proposal

Amend FOIP and LA FOIP to provide for any type of legal privilege including litigation privilege and a section be introduced similar to that in Alberta's FOIP.

### 18. Abandoned Requests

Sometimes Applicants can make an access request but when additional information is requested and there is a failure to follow through, or a fee is requested and the Applicant does not pay or indicate he or she will pay, the access request remains outstanding and cannot be completed. It is in the best interest of all to have access requests processed quickly and not to have access requests outstanding for an unreasonable length of time. This issue is addressed in Alberta's FOIP, section 8.

### Proposal

Amend FOIP and LA FOIP to have a section similar to Alberta as to when applications may be abandoned.

### 19. Publicly Available Information

FOIP restricts government institutions from collecting, using or disclosing personal information but in many instances that personal information is publicly available through various public sources.

### Proposal

That a new section be added to FOIP and LA FOIP similar to that in Alberta's PIPA which clarifies when a public body may collect, use or disclose personal information.

## Amendments to Assist the Commissioner

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### 20. Grounds to Refuse to do a Review

Presently, section 50 of FOIP focuses on not conducting a review if requests are frivolous, vexatious, not made in good faith or involve a trivial matter. Section 39 of LA FOIP has similar wording. Section 43 of HIPA has additional grounds.

### Proposal

Amend FOIP and LA FOIP to include additional grounds, similar to HIPA, Ontario and federal legislation to refuse a review, such as: the request does not involve the individual personally; there is another alternate dispute mechanism or professional body that could be engaged; there is insufficient evidence; the public body already responded adequately; or, a report has already been issued on the subject.

### 21. Production of Documents

Presently, the Commissioner can request production of documents but the head is not obliged to provide them within any specific time. As there is a need to speed up reviews or investigations, it would be helpful to require the head to produce the documents within 20 days unless the request involves a large amount of documents or there are other special circumstances.

### Proposal

Amend FOIP and LA FOIP to require the head to provide the Commissioner with the requested documents within 20 days.

### 22. Notice of Intention to Review

Presently, FOIP and LA FOIP require the Commissioner to give public bodies 30 days notice before commencing a review or investigation.

### Proposal

Amend section 51 of FOIP (section 40 of LA FOIP) to allow a review or investigation to start right away.

### 23. Determine Own Procedures

Presently, FOIP and LA FOIP are silent on the issue of the Commissioner establishing procedures for reviews or investigations.

### Proposal

Amend FOIP and LA FOIP to include language similar to that in the federal *Privacy Act*.

### 24. Cross-jurisdictional Investigations

As we live in a global world, personal information travels across borders daily. Free trade and interprovincial trade increase the likelihood of information flowing across borders. As does online and social media. From time to time, it may be necessary for Commissioners in neighboring provinces to do a joint review or investigation.

### Proposal

That FOIP and LA FOIP have a section similar to Alberta's legislation, to enable information sharing with other oversight bodies when an investigation involves more than one jurisdiction.

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## 25. Conflict of Interest of Commissioner

In cases of conflict of interest of the Commissioner, Saskatchewan has no provision to allow delegation to a staff member. A provision such as the one from PEI's FOIPP at section 58 would assist in these situations.

## Proposal

Amend FOIP and LA FOIP to have a section which would allow the Commissioner to delegate in situations where he or she has a conflict of interest.

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## 26. Issuing Reports

Presently, FOIP and LA FOIP only require a report to be issued in the case of a review. An example of this is in subsection 55(1) of FOIP. Sometimes during the review the government institution releases the information, or the Applicant cannot be found or there are other reasons that the report would be issued with no recommendations. The Commissioner is attempting to be more collaborative and it is hoped matters can be resolved at an earlier stage in the process. The use of the word "shall" takes away the Commissioner's flexibility.

## Proposal

That subsection 55(1) of FOIP (subsection 44(1) of LA FOIP) be amended by replacing "shall" with "may".

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## 27. Response by the Head

Subsection 56(1) of FOIP (subsection 45(1) of LA FOIP) requires a head to respond to the Commissioner's report in 30 days. In today's world that is just too long. Consistent with other proposals, it has been proposed that timelines be shortened, so as to speed up the process.

## Proposal

That the 30 days in subsection 56(1) of FOIP (subsection 45(1) of LA FOIP) be reduced to 20 days.

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## 28. Appeals

Presently, FOIP and LA FOIP do not allow the Commissioner to participate in appeals made to the Court of Queen's Bench. There are times when the Commissioner should have the ability to intervene at the appeal stage.

## Proposal

Amend FOIP and LA FOIP to allow the Commissioner to intervene and make representations to the Court.

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## 29. Offences Under the Act

Presently, FOIP provides that the Commissioner and staff are non-compellable (section 47) and that the Commissioner shall conduct every review in private (section 53 of FOIP and section 42 of LA FOIP). In cases where there is a prosecution of an offence under the Act this can hinder the Commissioner's ability to be called as a witness and/or to produce relevant documentation during a prosecution. This ability is provided for in section 45 of BC's FOIP.

## Proposal

Amend section 47 of FOIP to allow the Commissioner and staff to be a witness and/or produce relevant documentation in the event of a prosecution only and a similar section be added to LA FOIP.

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## 30. Offence Provisions in FOIP and LA FOIP

Presently, in FOIP and LA FOIP, the offence provision only includes a fine of \$1,000 and imprisonment of up to three months. HIPA, in section 64, provides for higher maximum fines, an imprisonment for up to one year and prosecution within two years. Public sector privacy legislation in Alberta and New Brunswick prescribes a statutory time limit on the commencement of prosecutions at two years.

## Proposal

Amend FOIP and LA FOIP to parallel HIPA's section 64 with increased maximum fines, up to one year imprisonment and a two year limitation on prosecution.

An offence be added of purposefully destroying a record.

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## 31. Privacy Impact Assessment

Public bodies deal with a lot of personal information. They introduce new programs and develop new computer systems. When these major changes occur, it is only reasonable that they do a privacy impact assessment (PIA). This fits with the concept that entities should manage risks. Inappropriate release of personal information is a risk. Doing a PIA at the beginning reduces the risk of breaches.

## Proposal

That wording similar to Alberta's HIA at section 64 be included in FOIP and LA FOIP which would provide for mandatory PIAs in some cases.

A PIA is a diagnostic tool designed to help organizations assess their compliance with the privacy requirements of Saskatchewan legislation. No legal obligation exists presently for public bodies in Saskatchewan to complete these, nor is there a requirement for providing those to the Commissioner for comment. In order to ensure that privacy protective practices are embedded in program design at the beginning, PIAs should be mandatory in some cases. It is always more difficult, time consuming and costly to try to make changes after the fact if missed in the design and implementation phases.

## General

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### 32. Statutes Subject to FOIP and LA FOIP

FOIP is 23 years old and as time passes the government has opted to add sections of Acts that are not subject to FOIP. The list has become rather long and consists of some 31 exceptions.

#### Proposal

That there be a careful review of the list of exceptions in FOIP and LA FOIP. In that review, it is suggested that where an Act or a part of an Act is exempted, consideration be given to exempting only specific sections that restrict or prohibit access.

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### 33. Five Year Review

Many access and privacy laws in Canada contain a statutory requirement for a review by a legislative committee after a fixed period of three or five years. An example would be the provision in Alberta's FOIP.

FOIP was introduced in 1992 and LA FOIP was introduced in 1993. Neither of these Acts has been periodically reviewed or updated. To ensure that these Acts are regularly reviewed, a section in each Act is required.

#### Proposal

Introduce a new section in FOIP and LA FOIP that would provide for a five year review.

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### 34. Saskatchewan's Private Sector Employees

Should Saskatchewan adopt a law similar to British Columbia's PIPA and Alberta's PIPA to displace PIPEDA and thereby extend privacy protection to all private sector employees?

#### Proposal

That legislation be introduced to provide protection to employees in the private sector similar to the protection employees have in the public sector.

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### 35. Consolidation of FOIP/LA FOIP

FOIP and LA FOIP have many similar provisions but the similar provisions have different section numbers. Citizens can be confused as to which Act applies.

#### Proposal

That FOIP and LA FOIP be merged to eliminate confusion as to which Act applies and to address discrepancies between the two.

All other provinces have one statute except Ontario who has two.