

2015-2016 Annual Report

Striking a Balance



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 27, 2016

Hon. Corey Tochor
Speaker of the Legislative Assembly
129 Legislative Building
Regina, Saskatchewan
S4S 0B3

Dear Mr. Speaker:

I have the honour to present my second Annual Report as Information and Privacy Commissioner for Saskatchewan. I have prepared this Annual Report in accordance with the provisions of subsection 62(1) of *The Freedom of Information and Protection of Privacy Act*, subsection 52(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* and subsection 60(1) 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 their hard work over the last year in accomplishing some ambitious goals and embracing challenging 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 my Office has made great progress in each of these areas. One focus has been to continually provide citizens and public bodies with our reports or responses sooner. We set a goal to have a resolution of a file, on average within 35 days, 80% of the time. We reached that goal in the spring of 2015.

This year my Office issued 100 reports and provided advice on 1,023 matters. Since I have been appointed, the Office has issued 195 reports (as of June 13, 2016).

In last year's Annual Report, I said it is time to update *The Freedom of Information and Protection of Privacy Act* (FOIP) and *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). These statutes had not been updated in 24 years and 23 years respectively. I made recommendations for change. The Legislative Assembly on June 13, 2016 gave first reading to Bill 30, *The Freedom of Information and Protection of Privacy Amendment Act, 2016* and Bill 31, *The Local Authority Freedom of Information and Protection of Privacy Amendment Act, 2016*. I look forward to the discussion of the amendments and hope the Legislative Assembly will pass these amendments in due course.

In this year, my Office began working on proposed amendments to *The Health Information Protection Act* (HIPA). A summary of those proposed amendments are contained in this report and a more detailed document outlining those amendments can

be viewed on our website. In proposing these amendments, I have attempted to strike a balance between access to personal health information and protection of personal health information.

During this year, we had begun the process of working collaboratively with public bodies to develop education and training programs and have made good progress. You can expect to see some new training modules in 2016.

The Office intervened in a case at the Supreme Court of Canada where an issue was being argued as to the extent of solicitor-client privilege.

My Office continues to update resources such as guidelines and templates for a Privacy Impact Assessment, Frequently Asked Questions and *Video Surveillance Guidelines*. These can be viewed on our website.

In closing, I want to express my appreciation to 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 applicants, public bodies and health trustees for their continued cooperation with our Office.

I am looking forward to my third year as Commissioner and I hope we can provide even better service to citizens and public bodies.

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

Our plan was developed and approved in the summer of 2014 and work began, and will continue in the next three years, 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

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 of Saskatchewan 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.

Accomplishments

- The Office was successful in reaching its goal by providing reports or responses within 35 days, 80% of the time.
- The Commissioner presented to the mayors of cities and towns and SUMA printed an article written by the Office in its newsletter. The Office also discussed with the Ministry of Government Relations on putting on a workshop for mayors, counsellors and administrators.
- No progress made with SARM.
- The Ministry of Justice, Access and Privacy Branch has taken the lead in developing a series of tools for government use which would be an update to the framework.
- A number of provincial commissioners' offices have met on this issue.

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.

Accomplishments

- The Office has modernized the website as much as is possible on the existing platform. The Office's goal is to make its website its primary communication tool.
- The Office has developed a new logo and visual identity standard.

Information for All

Goals

- Participate in finalizing a joint project with the Ministry of Justice and the Public Service Commission (PSC) to complete four training modules on privacy and access for public servants.
- Promote a joint project with the Ministry of Justice and PSC to develop an annual refresher access and privacy online course for public servants.
- Participate in a joint project with the Saskatchewan College of Pharmacy Professionals 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 PSC 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* (the Guide).
- Promote and participate in a joint project with the Provincial Archives of Saskatchewan to focus government agencies on having and implementing retention schedules.

Accomplishments

- The Office has worked with the Ministry of Justice and PSC to develop four training modules. It is expected the modules will be released in 2016.
- The Office will promote a refresher training module once the four training modules have been completed and released to government employees.
- The Office has participated in this training course and plans to continue to be involved in the future.
- The Office will promote this training unit after the four module training course is released to the public service.
- The Office will promote this training unit after the four module training course is released to the public service.
- The Office released and held training sessions on the Guide in the spring of 2015. The Office also updated the Guide and incorporated recent reports and decisions from across Canada. The Guide can be viewed on the Office's website at www.oipc.sk.ca.
- The Office, in its presentations, emphasizes the importance of good records management and complying with a retention policy.

- 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.
- An *IPC Guide to HIPA* for trustees was developed and will be released in the spring of 2016 and workshops are planned to explain the *IPC Guide to HIPA* to trustees.
- The Office has worked with eHealth on auditing guidelines and a document on guidelines will be issued in 2016.
- A CBA Access and Privacy seminar was delivered in both Regina and Saskatoon.
- A document entitled *Best Practices for Gathering Informed Consent and the Content of Consent Forms* was developed and released. It can be viewed on our website at www.oipc.sk.ca.

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 Protect 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 *The Health Information Protection Regulations*.

Accomplishments

- Last year the Office made proposals to amend the two Acts. This spring the Legislative Assembly has given first reading to Bill 30, *The Freedom of Information and Protection of Privacy Amendment Act, 2016* and Bill 31, *The Local Authority Freedom of Information and Protection of Privacy Amendment Act, 2016*.
- The Office has worked on proposed amendments to HIPA. Those proposals are contained in this Annual Report and a more detailed document outlining the amendments can be found on our website at www.oipc.sk.ca.
- The Office will continue to take steps in this direction.
- The Commissioner made a submission to the Committee and filed a paper outlining proposals to amend the legislation so that the WCB was subject to FOIP and not subject to HIPA. The submission can be viewed on our website at www.oipc.sk.ca.
- The Office participated in the review by making a submission to the Ministry of Social Services.
- The Office has proposed to the Minister of Health some amendments to *The Health Information Protection Regulations*. Further work will be done on this in the coming year.

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.

Accomplishments

- A database was developed to track reviews and investigations and we are planning to make the database more robust in the coming year.
- A LEAN event was held and office procedures were further refined and streamlined, thus allowing the office to reach its goal on responses, on average, within 35 days, 80% of the time.
- Due to amendments to FOIP, the Office has developed and approved numerous Human Resource and Financial policies and will submit approved policies to the Board of Internal Economy by June 30, 2016.

Goals for 2016-2017

Citizens First

Goals

- Establish and reach a goal that citizens and public bodies will receive their report, response or a resolution within 33 days, 80% of the time.
- Support the Ministry of Justice in a project to update the Privacy Framework 2003.
- Develop a best practices document on the creation, storage and destruction of text messages.

A New Look

Goals

- Re-design and re-platform the Office's website.

Information for All

Goals

- Participate in finalizing a joint project with the Ministry of Justice and PSC to complete four training modules on privacy and access for public servants.
- Promote a joint project with the Ministry of Justice and PSC to develop an annual refresher access and privacy online course for public servants.
- Promote and participate in a project with the Ministry of Justice and PSC to take the four PSC modules and convert them to LA FOIP terminology and make them available to local authorities.
- Promote a joint project with the Ministry of Health and PSC to develop a training module on HIPA for public servants.
- Finalize and publish the *IPC Guide to HIPA* for trustees.
- Develop resources for medical residents and their duties under HIPA.

- Promote and participate in a joint project with eHealth Saskatchewan on developing auditing guidelines for trustees.
- Continue to update, develop and expand the *IPC Guide to Exemptions for FOIP and LA FOIP* and post to the website.
- Develop a guidance document regarding best practices for arbitrators.
- Initiate consultations to develop procedures for the handling of abandoned medical records that contain personal health information.
- Develop and present a workshop for severing in the paper and electronic world.
- Promote and participate in discussion with the Saskatchewan Medical Association to ensure their and IPC resources are complementary to one another.
- Develop guidelines for tribunals in publishing their decisions.
- Develop guidelines on when to get consent from mature minors and post to the website.
- Promote and participate in a joint project to develop an online module for staff of the Saskatchewan Cancer Agency and other trustees and their staff.

Updating the Rules

Goals

- Implement changes as a result of Bill 30, *The Freedom of Information and Protection of Privacy Amendment Act, 2016* and Bill 31, *The Local Authority Freedom of Information and Protection of Privacy Amendment Act, 2016*.
- Propose and promote amendments to *The Health Information Protection Regulations*.
- Begin the work of developing *Personal Information Protection* legislation for Saskatchewan.
- Research and develop a position or guideline document for professionals regarding transparency on the discipline of members.
- Promote and participate in a joint project where executive government, crown corporations, health regions, trustees and municipalities develop an online individual authentication system with adequate privacy protection.

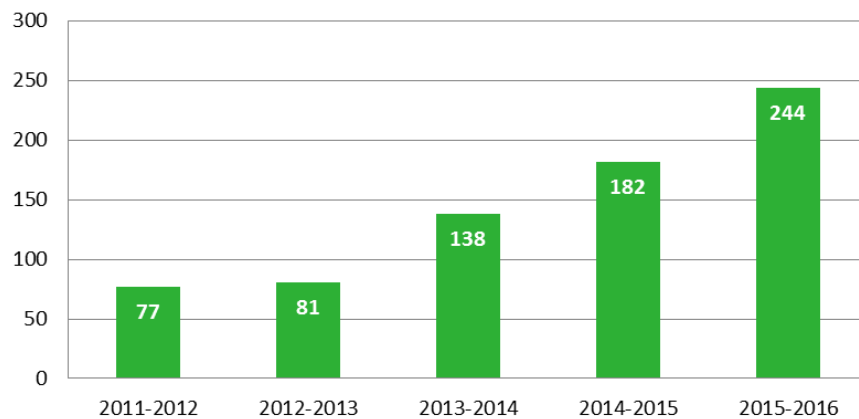
Efficient and Effective

Goals

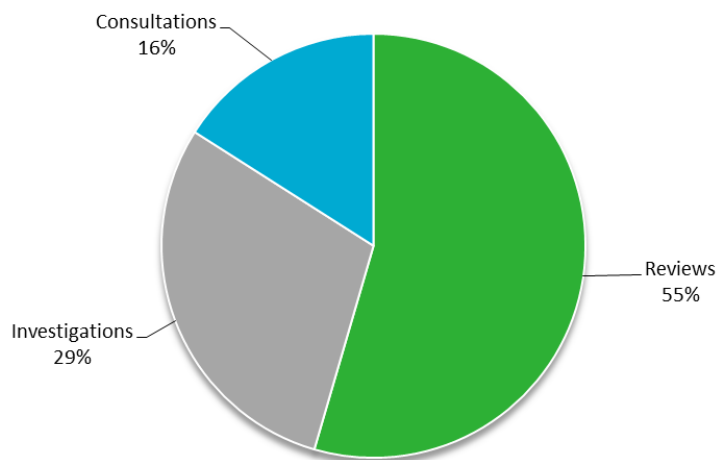
- Develop a database to track the provision of summary advice by the Office.
- Become accredited by the Provincial Archives of Saskatchewan.

Files and Reports

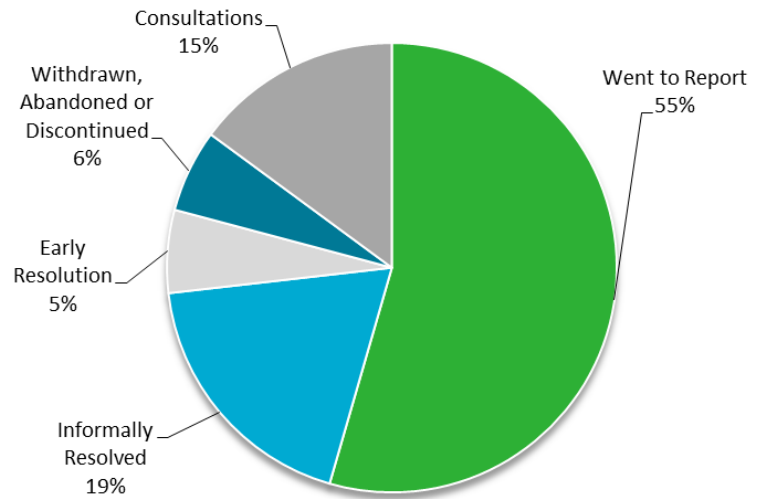
The Office is experiencing a notable increase in reviews, investigations and consultations thus resulting in more files being opened as is reflected in the following bar chart.



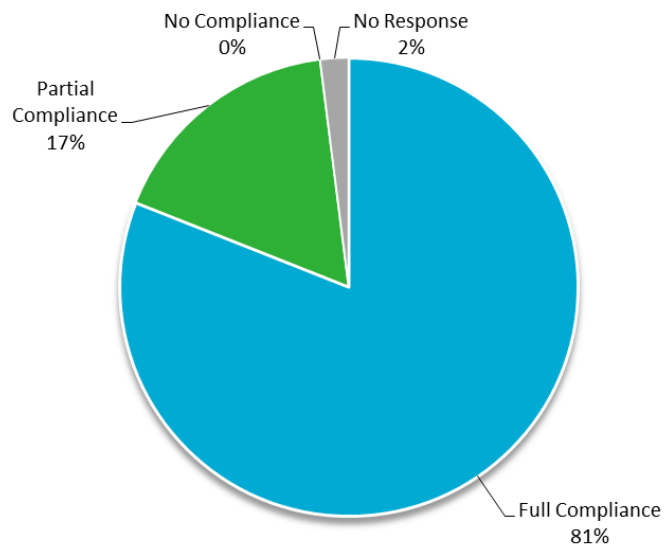
For the 2015-2016 fiscal year the types of files opened are shown in the following chart.



The Office closed 235 files in 2015-2016. The following is a chart summarizing the breakdown of files resolved, including those that went to a Report.



The Office issued 100 Reports in 2015-2016. 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.



Striking a Balance

Summary of Proposals for Amendments to HIPA

For a more detailed version of our proposals, please go to the Office's website at www.oipc.sk.ca.

Introduction

HIPA came into force on September 1, 2003 but has not undergone a formal legislative review. However, there have been some amendments related to employee snooping and abandoned patient records that came into force on June 1, 2016. In addition, some regulations were added (i.e. fundraising and disclosures to police) since HIPA came into force.

The following proposed amendments are intended to strike a balance between access to personal health information and protection of personal health information.

This document sets out a series of proposed amendments to HIPA that attempt to achieve a number of objectives including the following:

- Reduce timelines in certain cases so patients can access their personal health information sooner;
- Ensure that the law is in step with the ever changing digital health care environment;
- Reduce or eliminate confusion/barriers that may hamper the provision of health services;
- Increase accountability and transparency with new notification and reporting requirements;
- Further discourage snooping into patient records; and
- Clarify the authority for the use and disclosure of personal health information for some secondary purposes.

Summary of Proposals

A. Purpose Clause

There is presently no object or purpose clause in HIPA. It is proposed that a purpose clause be added.

B. Definitions

Some key definitions of HIPA are missing or need to be clarified. Those include health services, disclosure, next of kin, research, genetic information, trustee, agent or employee, and record of user activity. These changes are proposed.

C. Data Matching

HIPA does not define or set rules for data matching. Both are proposed to make it clear that authority must exist if data matching is to be undertaken by a trustee.

D. Consent

Express consent is required when using or disclosing personal health information for employment related purposes. It is also proposed that the subsection that authorizes collection for any purpose with consent is repealed as is overly broad.

E. Right to Information About Disclosures Without Consent

It is proposed replacing subsection 10(2) of HIPA as it gives trustees permission to not inform patients/ individuals of disclosures permitted by subsection 27(2). Trustees should be prepared to provide details of these disclosures unless not reasonably practicable.

F. Exercise of Right or Power by Other Person

Clarification is provided for in terms of which Minister is responsible for The Rehabilitation Act.

G. Retention and Destruction Policy

Presently, HIPA offers no direction as to how long personal health information must be retained. It is proposed that a minimum retention period is adopted by trustees and that if de-identified, information may be retained for purposes other than the original purpose for which it was collected.

H. Researchers

HIPA's section 29 provides the rules around the use and disclosure of personal health information for research purposes, but could be stronger in terms of ensuring accountability. It is proposed that researchers enter into written agreements for this purpose.

I. Access

HIPA presently does not address circumstances when access should be provided within short time limits nor does it address providing access in electronic form or through patient portals. These amendments are proposed.

J. Abandoned Requests

It is proposed that HIPA include a section that clarifies when a request can be considered abandoned.

K. Third Party

HIPA does not explicitly state that any affected third party has a right to make representations in the course of a review. It is proposed that this right is extended to affected third parties.

L. Fees

Additional clarification is provided in terms of what fees a trustee may charge and when a fee waiver may be granted.

M. Duties of Agents and Employees

It is proposed that additional sections be added to HIPA that require trustees take measures to ensure its agents and employees comply with HIPA including requiring orientation and ongoing training but also the signing of oaths of confidentiality.

N. Elements of Information Manager Agreements

HIPA does not presently require trustees to enter into written agreements with information management service providers (IMSPs). This should be a mandatory requirement containing specific elements as outlined.

O. Continuing Duties of Trustees

It is proposed that HIPA include a provision that clarifies responsibilities for costs associated with a failure to carry out duties under HIPA related to section 22.

P. Deceased Individuals

Additional use and disclosure provisions are proposed to assist in the identification of individuals and processing of insurance claims, to authorize the release of information to descendants for health care related purposes and to facilitate the wishes of the individual when it comes to donation of body parts, tissue or other bodily substances.

Q. Other Uses and Disclosures

A similar provision involving the deceased's wishes with regard to donations of body parts, etc. is required in the case the individual is living. This amendment and one to authorize use of personal health information for educating employees or students is suggested.

R. User Logs

HIPA does not presently contain any provisions regarding user activity logs. The proposal requires trustees to create and maintain records of user activity, audit and maintain these records for a least three years. It is also clarified that no fees may be charged to the individual when a copy is requested.

S. Notification of Privacy Breach

It is proposed that mandatory breach notification is included in HIPA.

T. Privacy Impact Assessments (PIA)

It is proposed that HIPA contain a provision that requires trustees to complete and submit PIAs to the Commissioner in certain circumstances.

U. Request for Review

HIPA is silent on the Commissioner's ability to review fees and extensions and should include additional grounds for when the Commissioner may dismiss a request for review as well as access to information requests. It is proposed that language is included to expand the Commissioner's abilities to do so.

V. Powers of the Commissioner

It is proposed that HIPA clearly states that the Commissioner has the same powers in an investigation as in a review including the right to enter premises as is explicit in FOIP and that the Commissioner has the right to set his or her own procedures including having the discretion to disclose information to any person when it is necessary to protect the privacy, health or safety of an individual or when in the public interest. Also, it is proposed that HIPA be amended to require the trustee to provide the Commissioner with any requested documents within 20 days.

W. Additional Offences and Penalties

The proposed amendments would make it clear that no person shall knowingly collect, use, disclose, create, access or attempt to access personal health information in contravention of HIPA. It is also proposed that a specific offence be created for researchers that knowingly violate written agreements with trustees.

X. Review of HIPA

In order to ensure that HIPA is reviewed regularly, it is proposed it be amended to make the process mandatory every five years.

Y. Inter-jurisdictional Investigations

It is proposed that HIPA has a section similar to Alberta to enable information sharing with other oversight bodies when an investigation involves more than one jurisdiction.

Z. Whistleblower Protection

It is suggested that a whistleblower provision be included in HIPA along the lines of similar provisions in British Columbia especially noting that *The Public Interest Disclosure Act* does not apply to trustees.