

## **Best practices for Members of the Legislative Assembly in handling records that contain personal information and personal health information**

Citizens who have a concern(s) and bring sensitive personal information or personal health information forward to a Member of the Legislative Assembly (MLA) may not realize that their information is not protected under *The Freedom of Information and Protection of Privacy Act* (FOIP) or *The Health Information Protection Act* (HIPA).

The Saskatchewan Information and Privacy Commissioner developed this document to assist MLAs in protecting the sensitive personal information and personal health information that they collect.

### **What is personal information?**

For a full definition of what is considered personal information, see subsection 24(1) of FOIP. Generally, the following is considered personal information:

- Information about an identifiable individual;
- Is personal in nature;
- The personal views or opinions offered by an individual are the personal information of that person;
- The personal views or opinions of one individual about another person is the personal information of the other person; and
- Employment history is considered personal information.

### **What is personal health information?**

The definition of personal health information is found in HIPA under subsection 2(m):

- 2(m) “personal health information” means, with respect to an individual, whether living or deceased:
- (i) information with respect to the physical or mental health of the individual;
  - (ii) information with respect to any health service provided to the individual;
  - (iii) information with respect to the donation by the individual of any body part or any bodily substance of the individual or information derived from the testing or examination of a body part or bodily substance of the individual;
  - (iv) information that is collected:

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

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

(v) registration information;

### **What is a “record”?**

Section 2(i) of FOIP describes a record as:

. . . a record of information in any form and includes information that is written, photographed, recorded or stored in any manner, but does not include computer programs or other mechanisms that produce records;

### **Purpose and collection**

Constituents and organizations consult MLAs on problems and issues they have with government and/or the health system. In that process of asking for guidance, they may provide documents or give verbal information which contains considerable sensitive personal information (pi) or personal health information (phi).

Before collecting any pi/phi the MLA should pause and assess the purpose for collecting this information and whether this information is necessary for such a purpose. MLAs should refrain from collecting more pi/phi than is necessary to fulfill the identified purpose. In particular, consider documents that you may not need to collect such as tax returns, doctor’s reports, financial statements, laboratory tests and non-relevant correspondence.

When the MLA or Constituency Assistant speaks with a citizen, have the citizen consent to your collecting, using and/or disclosing information and keep a record of that consent on your file (either hardcopy or electronic). It is best if consent is given in writing, but email or verbal consent is also acceptable. MLAs should ensure consent provided verbally is properly documented and retained.

### **Storage of Record(s)**

MLAs that collect pi/phi have a duty to ensure it is storage securely. Information provided to MLAs will be stored in two types of media:

- Hard copy: physical representations of data, such as paper. This includes, among other things, notes, memos, messages, correspondence, transaction records and reports.

- Electronic copy: information stored on electronic media, such as computer hard drives, copier and printer hard drives, removable solid drives including memory, disks and USB flash drives, mobile phones and magnetic tapes.

Records containing pi/phi, either hard copy or electronic, should be stored in a manner that restricts access to this information. Only employees that need the information to perform their job, also known as need-to-know, should have access to the pi/phi. MLAs should also ensure records are stored either in locked cabinets or saved in a secure network drive. Records should not be stored in personal devices, home filing cabinets, or other personal storage.

### **Retention of the Record(s)**

MLAs that are also serving as cabinet ministers, will handle two types of records: ministerial records and private records. *The Archives and Public Records Management Act* defines ministerial records as:

#### **2 In this Act:**

a record created or received by a minister of the Government of Saskatchewan that relates to the office of that minister and to the administration of the public affairs of Saskatchewan, but does not include:

- (a) record that is of a personal or political nature; or
- (b) record that pertains to constituency business;

*The Archives and Public Records Management Regulations*, provide further guidance on the definition of ministerial record at subsection 3(1):

**3(1)** For the purposes of the definition of “ministerial record” in section 2 of the Act and in these regulations, “a record created or received by a minister of the Government of Saskatchewan that relates to the office of that minister and to the administration of the public affairs of Saskatchewan” includes:

- (a) a record of internal deliberations involving a minister of the Government of Saskatchewan and his or her staff on matters directly relating to that minister’s portfolio or any previous portfolio of that minister;
- (b) a communication between ministers of the Government of Saskatchewan on matters relating to the portfolio of the minister who is categorizing the record;

(c) a copy of a record from the ministry over which the minister of the Government of Saskatchewan presides that provides information or context for an item or issue being dealt with by that minister;

(d) a communication on a matter directly relating to the portfolio of a minister of the Government of Saskatchewan with persons outside the Government of Saskatchewan;

(e) a record concerning any administrative matter respecting the portfolio or office of a minister of the Government of Saskatchewan;

(f) a record relating to the activities of a minister of the Government of Saskatchewan as a member of the Executive Council and its committees if that minister has made notes on the record or marked the record in any manner;

(g) a record that expresses viewpoints of a minister of the Government of Saskatchewan on any Government-related issue, whether or not that issue is directly related to that minister's portfolio.

*The Archives and Public Records Management Act* defines ministerial records as public records. As such, these records will need to be retained and transferred to the Provincial Archives of Saskatchewan based on the statutory requirements provided in that Act.

Unlike ministerial records, there are no statutory requirements for MLAs to transfer private records to the Provincial Archives of Saskatchewan, such as records relating to constituency business, as they are considered private records and are not subject to *The Archives and Public Records Management Act*. Therefore, these records may be disposed of based on internal records management policies and procedures developed by the MLA's office. As part of this process, however, MLAs should consider the transfer of records of historical value to the Provincial Archives of Saskatchewan through a private records agreement.

It is crucial that in-house records management protocols be established to ensure that ministerial records are organized, maintained and stored separately from records defined as private. Ministerial records are managed in accordance with the Ministerial Records Schedule #480, approved by the Public Records Committee in 2012. For a copy of the schedule or further guidance on managing ministerial records, MLAs should contact the Provincial Archives of Saskatchewan. The introduction to the schedule provides information on managing records in a Minister's Office as well as examples of ministerial records and private records that may assist MLA offices in classifying records. A list of the examples provided in this resource for private records are reproduced below for your convenience:

In accordance with the preamble to Schedule 480 the following are examples of political and personal records:

***Political records:*** records created and maintained by the minister (and his/her aides) relating to participation in elections, party caucus deliberations, party conventions and conferences, fundraising events, and party organization and administration. Typically these types of records would include the following activities:

- Caucus
- Party convention
- Party leadership
- Constituency nomination
- Election campaign records (including publications)

***Personal records:*** records created and accumulated by the minister that relate to his/her personal interests and activities and do not relate in any way to his/her official portfolio responsibilities.

In assessing what is the appropriate retention of pi/phi, MLAs should consider the following points:

- Reviewing the purpose for having collected the personal information in the first place is generally helpful in assessing how long certain pi/phi should be retained.
- If pi/phi was used to make a decision about an individual, it should be retained for a reasonable amount of time in the absence of legislative requirements – to allow the individual to access that information in order to understand, and possibly challenge, the basis for the decision (i.e., employment records that hold pi/phi).
- If retaining pi/phi any longer would result in a prejudice for the concerned individual, or increase the risk and exposure of potential data breaches, the MLA should consider safely disposing of it.

MLAs no longer running for office, may wish to transfer or share certain open files related to unresolved issues or cases where the constituent or organization is now represented by another MLA. If there are records of a sensitive nature or containing pi/phi, the MLA should get written consent from the individual before transferring the records.

MLAs need to make informed choices about how long to keep pi/phi and when and how to dispose of it. MLAs may find it necessary to retain employee pi/phi longer than sensitive pi/phi from a citizen who has a complaint or issue. The capacity and desirability to retain massive amounts of pi indefinitely increases the risks and consequences of a potential data breach.

Once the purpose for which the information was being collected has been fulfilled, the pi/phi should be disposed of, unless otherwise required to be retained by law.

When performing ministerial duties, our office strongly encourages MLAs to use the Government of Saskatchewan email system that is supported by the Ministry of Central Services. Questions about security and records management arise if and when MLAs use non-government email accounts to do government-related activities. The Ministry of Central Services has the mandate, resources, and expertise to support and manage the Government of Saskatchewan email system, including ensuring the security of email accounts.

When MLAs are performing their constituency work, it is also encouraged that those emails are only sent from their MLA issued email address. This is to allow a clear division between ministerial records and private records for records management purposes.

While we encourage that emails are sent and received from the appropriately designated account, should an MLA receive information in their MLA office or MLA email address records created or received may qualify as ministerial records. Ministers should ensure records are classified based on the nature of the record.

MLAs should also refrain from using personal email accounts for ministerial or constituency work. Any emails sent from a personal email account relating to ministerial or constituency matters will still need to be classified and retained appropriately.

### **Securely disposing of personal information/personal health information**

MLAs that have determined pi/phi is no longer need to be retained based on requirements in *The Archives and Public Records Management Act* and/or established in-house records management protocols, the information must be disposed of in a secure manner.

There are a number of commonly accepted ways to properly dispose of pi/phi depending on the form in which it is being stored. The goal is to irreversibly destroy the media which contains pi/phi so that this information cannot be reconstructed or recovered in any way. When going through the process of disposal, MLAs should also destroy all associated copies and backup files.

There are several ways in which pi/phi can be securely destroyed or removed by completely destroying the media, whether hard or electronic copy. It is a way to ensure that the information stored on it can never be recovered. This can be accomplished using a variety of methods including disintegration, incineration, pulverizing, shredding using a cross-shed shredder and melting.

### **Use of third parties**

MLAs should assess the risks and benefits of destroying pi/phi on-site or off-site. If MLAs do not have appropriate tools to safely destroy sensitive information on-site, it may consider the services of a third-party contractor. In some cases, the sheer volume of the pi/phi to be disposed of can tip the balance towards using companies specialized in data destruction.

When considering using a third party to dispose of pi/phi MLAs should take into account the sensitive nature of the information and take steps to manage the risks accordingly.

MLAs should ensure that the third party contractor has verifiable credentials and can guarantee both a secure transfer of records from the MLAs office to their own destruction facility, and a secure destruction method that matches the media and information sensitivity.

If MLAs decide to contract out, it should keep in mind that he/she remains responsible for the information to be disposed of. Best practices when dealing with third parties include:

- Receiving a written contract with the contractor.
- Privacy protection clauses in the contract to ensure the third party provides a level of protection that you are comfortable with; and,
- Monitoring and auditing clauses to ensure track record and quality control.

### **Putting it all together: Developing internal policies and procedures**

In setting up policies and procedures, MLAs should consider the following checklist:

- ✓ Is information in the MLA's office periodically being reviewed to determine whether the purpose of the collection has been fulfilled? How often?
- ✓ Is there an inventory of what pi/phi is being retained, for which purpose and for how long?
- ✓ Have you developed and implemented appropriate records management practices including a records management and disposition schedule?
- ✓ Does pi/phi exist in multiple copies? Are there back-ups? If so, where are the copies and back-ups stored?
- ✓ When should MLAs dispose of the pi/phi ?
- ✓ Do MLAs have a practice in place to securely dispose of pi/phi, copies and backups?

- ✓ What measures should be taken to ensure the equipment or devices used for storing the pi/phi (mobile phones, copiers, scanners, etc.) are properly disposed of, or sanitized?
- ✓ Is pi/phi being segregated and stored in a secure area with restricted access?
- ✓ Is your staff aware and knowledgeable about the proper handling and disposal of pi/phi?
- ✓ Is there a designated secure area for destroying documents?

If you have questions regarding the security or disposal of pi/phi that is in your possession and control during your term, or if you have constituents that may have an access or privacy issue, please feel free to contact the office of the Saskatchewan Information and Privacy Commissioner at:

Telephone: 306-787-8350

Toll Free Telephone (within Saskatchewan): 1-877-748-2298

Fax: 306-798-1603

Email: [webmaster@oipc.sk.ca](mailto:webmaster@oipc.sk.ca)